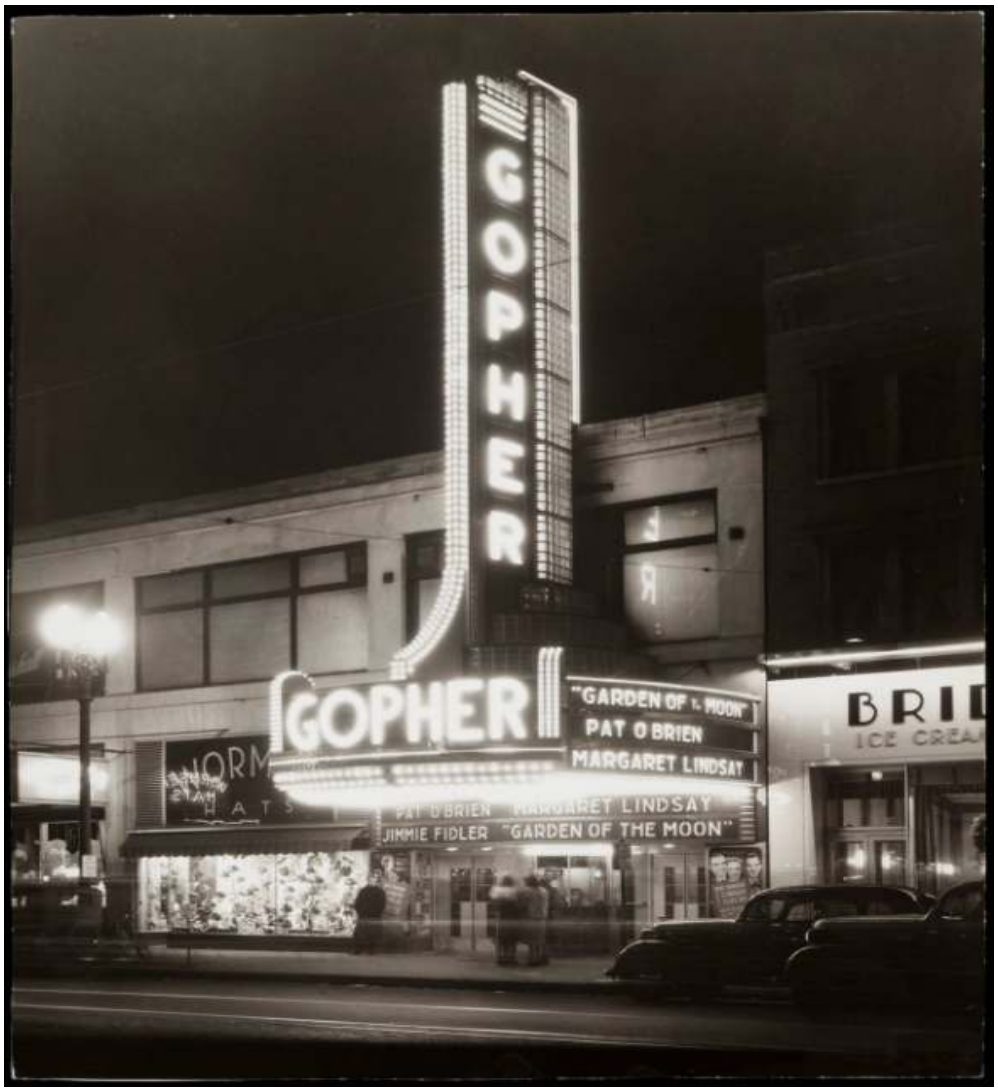

Gopher Theater, Minneapolis (c. 1938)

The Gopher, on Hennepin Avenue in downtown Minneapolis, was originally a Finkelstein and Ruben theater but in this era was owned by independent exhibitor Benjamin Berger. The Gopher was among a few large metropolitan independents that contended, often unsuccessfully, for major first-run feature films.

Blockbusters:

Minnesota's Movie Men Slug it out with Studio Moguls, 1938-1948

By

Thomas L. Olson

In the decade from 1938 to 1948 independent movie theater owners nationwide clashed with the major motion picture studios over "unfair" trade practices that profited them and their subsidiary theaters to, the independents charged, their manifest detriment. As the struggle shifted to the states, Minnesota took center stage in this battle between "little guy" theater owners and powerful studio corporations. Importantly, the courtroom arguments and judicial decisions in the disputes show clearly that the titanic legal and political issues over property rights that had gone on in Congress, state legislatures, and the courts since the founding of the republic, and remain unsettled, were mirrored in Minnesota's courts.

The Independents vs. Hollywood

Commercial exhibition of motion pictures began simply with films first purchased outright and then rented from exchanges.[1] But before long the business became far more complicated. Better and longer films demanded larger theaters and amenities. Weak competitors failed. Expenses mounted. Other hurdles arose. Early on, for example, Paramount Studios began renting its films exclusively through a wholly-owned distributor. By the late 1920's production and distribution were dominated by a "big eight" — Paramount, Warner Bros., Twentieth Century Fox, RKO, Metro-Goldwyn-Mayer, United Artists, Columbia, and Universal. Five of these major producer-distributors built and bought theaters in the nation's largest cities. [2] Additionally, by mutual agreement, they focused their theater acquisitions regionally to reduce competition between themselves. In Minnesota, the result of this regionalism was that all studio-theaters were owned by Paramount through its wholly-owned subsidiary, The Minnesota Amusement Company.

Despite theater acquisitions by major producer-distributors, the majority of movie houses continued to be owned by independent chains or by individuals operating one or two houses. In Minnesota, the best known of the early independent

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[1] Lucille M. Kane and John A. Dougherty, "Movie Debut: Films in the Twin Cities, 1894-1908," *Minnesota History* 54.8 (Winter, 1995), 342-358. See also David Q. Bowers, *Nickelodeon Theaters and Their Music* (Vestal, N.Y.: Vestal Press, Ltd., 1986), passim.

[2] Thomas Edison's Motion Picture Patents Company, which claimed exclusive rights to equipment and processes, demanded royalties from movie exhibitors; but with technology changing rapidly patents were difficult to enforce and the MPPC disintegrated. Tino Balio, "Struggles for Control: 1908-1930" and Jeanne Thomas Allen, "The Decay of the Motion Picture Patents Company," in Tino Balio, ed., *The American Film Industry* (Madison: University of Wisconsin Press, 1976), 103-109; 119-134.

chains was Finkelstein and Ruben, which owned as many as 140 Upper Midwest theaters in the 1920's, including the region's largest ever movie house, The Minnesota, a 4,000 seat Minneapolis behemoth. In the early sound era the Minnesota and other Finkelstein and Ruben theaters were purchased by Paramount's subsidiary, The Minnesota Amusement Company. By the late 1930's, of 450 movie theaters in the state, Minnesota Amusement owned 56 or 12%, including theaters in Rochester, Mankato, St. Cloud, Winona, Moorhead, Virginia, Hibbing, Austin, Fairmont, and St. Cloud. Those houses, however, accounted for 92% of the "first-run" theaters in Minneapolis, St. Paul, and Duluth and captured nearly 80% of the state's total film audience.[3]

Park Theater, St. Louis Park (c. 1940)

The Park was designed by Minnesota theater architect Perry Croiser in Streamline Moderne style. It opened in 1939 with 1200 seats and was among the first-ring suburban theaters that were part of a theater building "boomlet" between 1936 and 1940.

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[3] Fred H. Strom Affidavit, *Vitagraph, Inc. vs. James F. Lynch*, (August 4, 1941), Attorney General Papers, Minnesota Historical Society, Saint Paul, 101F52F, Box 72 (hereafter "MHS").

Of Minnesota's non-Paramount theaters, most were family owned but about 50 were owned by regional independent chains. Notable among them were Benjamin Berger's dozen theaters. [4] A second prominent independent chain was Eddie Ruben's Welworth Theaters which grew to approximately 40 houses in Minnesota, Wisconsin, and South Dakota.[5] Although the Great Depression killed many independent theaters,[6] the Berger and Ruben chains grew and there was a "boomlet" in theater remodeling and new construction between 1936 and 1940. Credit had contracted at a time when many older theaters needed updating for sound and color and to meet modern design and comfort sensibilities. Because of their experience, economies of scale and collateral, chains secured credit far more easily than individual theater owners.

All independent operators faced what they saw as unfair practices. Primary among them was compulsory block booking which required that theaters lease films in pre-determined units of from 15 to a producer's entire annual output of as many as 50 pictures. The practice forced independent exhibitors, if they wanted better pictures, to lease poor films that they weren't obliged to show but had to purchase unless their contract included partial cancellation privileges.[7] There were other objectionable practices as well. "Full line forcing" compelled theaters to lease newsreels and short subjects along with features. "Clearance" withheld films from independent theaters until time passed (typically 8-10 weeks) after a film ended its "first run" at a company-affiliated or large independent metropolitan theater. Finally, the producers sometimes included much-anticipated films as part of a block but later "busted" the block to tour that "blockbuster" film as a "road show" at high

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[4] Robert K. Krishef, *Thank You, America: The Biography of Benjamin N. Berger*, (Minneapolis, MN: Dillon Press, 1982), 70-74, 102. Also see Benjamin N. Berger Papers, MHS. Berger at one time owned as many as 19 theaters as well as the Minneapolis Lakers and Minneapolis' Sheik's Café.

[5] Edmund Ruben was the son of Isadore Ruben of the Finkelstein and Ruben Chain.

[6] Kathryn H. Fuller-Seeley, "Dish Night at the Movies: Exhibitor Promotions and Female Audiences during the Great Depression," in Jon Lewis and Eric Smoodin (eds.), *Looking Past the Screen: Case Studies in American Film History and Method*, (Durham, N.C., Duke University Press, 2007), 246-251.

[7] In some respects exhibitors liked block booking because films were generally lower priced than when sold individually. What exhibitors most wanted was the right to unlimited cancellations for credit. Independent film producers, who released about 25% of all pictures by the late 1930's, also objected to block booking because in practice it meant scant theater time for their films. See *Hollywood Renegades Archive: The SIMPP Research Database,* at http://www.-cobbles.com/simpp_archive.htm.

admission prices until, as anti-trust attorney Thurman Arnold wrote, ". . . the cream was all skimmed off."[8]

Although independent theater owners hoped for action,[9] FDR's New Deal demurred. Indeed, under the National Industrial Recovery Act, "unfair" practices were tacitly encouraged in an effort to forestall deflation by keeping price competition at bay. By the mid-1930's, as a result, the independents were convinced that they needed to act collectively. [10]

Preview of Coming Attractions - North Dakota in the Limelight

The independent's nationwide trade organization, which began in 1929, was the Allied States Association of Motion Picture Exhibitors. Its leader, who *Time* magazine called the "kingpin," was William "Al" Steffes, owner of the Minneapolis and St. Paul World Theaters. Steffes, heavyset with graying jet black hair, was 46 years old and had owned theaters for 22 years. According to Steffes, Allied States had failed to negotiate with the producer-distributors and was pushing instead for state legislation.[11] As a result of Allied States efforts, North Dakota passed a law divorcing theater ownership from production and distribution. [12]

Paramount promptly challenged the law's constitutionality in federal court.[13] The case was tried by a specially constituted three judge panel. The judges were

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[8] Thurman Arnold, *The Bottlenecks of Business* (New York: Reynal & Hitchcock, 1940), 168. Arnold's prime example of road shows was Columbia Pictures exploitation of Lost *Horizon* (1937). In Minnesota Benjamin Berger successfully sued Columbia when it withdrew that picture from a block Berger had purchased. Robert K. Krishef, *Thank You, America: The Biography of Benjamin N. Berger*, supra note 4, at 105.

[9] Mae D. Huettig, "Economic Control of the Motion Picture Industry," in Gregory A. Waller (ed.), *Moviegoing in America: A Sourcebook in the History of Film Exhibition* (Malden, Mass.: Blackwell Publishers, 2002), 214-218.

[10] Thomas Schatz, *Boom and Bust: American Cinema in the 1940's, History of American Cinema,* (first paperback edition, Berkeley: University of California Press, 1999), 15.

[11] "Business: Al & Allied," *Time* (June 7, 1937).

[12] It was titled *An Act to prohibit the operation of motion picture theaters which are owned, controlled, managed, or operated, in whole or in part, by producers or distributors of motion picture films, or in which such producers or distributors have an interest.* Chapter 165, Laws of North Dakota of 1937.

[13] *Paramount Pictures v. Langer*, 23 F. Supp. 890 (N. D. 1938). William Langer was then North Dakota governor. Later, as U.S. Senator, Langer continued to champion the cause of independent exhibitors. See Agnes Geelan, *The Dakota Maverick: The Political Life of William Langer, also known as "Wild Bill" Langer* (Fargo: Kaye's Printing Company, 1975).

Circuit Judge John B. Sanborn, a St. Paul College of Law graduate and appointee of Herbert Hoover, Circuit Judge Seth Thomas, a graduate of the University of Iowa law School, and District Judge George F. Sullivan, a graduate of the University of Minnesota Law School. Thomas and Sullivan were recent FDR appointees.[14]

In a classic defense of property rights, Paramount's attorneys argued that North Dakota's law violated the 14th Amendment because it deprived Paramount of property without due process. They also argued that the state could not show that its law corrected any demonstrated evils. The state's attorneys countered that North Dakota's independent exhibitors were entitled to *preventive* protection against unfair competition from "affiliated theatres grown so large as to constitute a menace to the general public welfare due to their superior buying and bargaining power, wealth and organization." [15]

Although the due process argument had doomed state regulation for years, the *Langer* panel disposed of it easily by citing and quoting *Nebbia v. New York* (1934). "The guarantee of due process," the U.S. Supreme Court had said on the cusp of liberalism, "demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." [16] The panel added that North Dakota's law bore a reasonable relationship "to the . . . maintenance in North Dakota of a free and open market for motion picture films." Then, in a cogent statement of "judicial restraint" as expounded by the Supreme Court when reviewing economic and social welfare legislation, the panel noted that when a legislature acts within the scope of its power "the Court is not required to determine what would be the "best, fairest, or wisest solution. . . [thus] the wisdom of the policy . . . is not for the Court to pass on." [17] *Paramount v. Langer* was appealed to the U. S. Supreme Court, but dismissed as moot in 1939, when the Roosevelt Administration changed course to pursue anti-monopoly cases vigorously.[18]

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[14] Federal Judicial Center, "History of the Federal Judiciary: Biographical Directory of Federal Judges," http://www.uscourts.gov/JudgesandJudgeships.aspx

[15] *Paramount Pictures v. Langer*, supra note 13.

[16] *Nebbia v. New York*, 291 U.S. 502 (1934).

[17] *Paramount Pictures v. Langer*, supra note 13.

[18] *Paramount Pictures v. Langer,* 23 F.Supp. 890 (N. D. 1938), *dismissed as moot,* 306 U.S. 619 (1939).

Consent Decree of 1940

In 1938, under avid, anti-monopolist Thurman Arnold, the Justice Department's Anti-Trust Division attacked both theater ownership and unfair trade practices.[19] The trial began in June, 1940. By then, however, with war production gearing up, the New Deal backed off.[20] Consequently, the trial was adjourned and protracted negotiations led to a "consent decree," between the five theater-owning producer-distributors and the federal government.[21] Under the agreement, which was to run for a three-year trial period, the companies were permitted to own and operate their theaters without fear of prosecution. In exchange, block booking was permitted only in blocks of no more than five films and blind selling and forced newsreel, serial, re-issue, and western sales ended. "Clearance" and other disputes were to be submitted to arbitration.[22]

To most independent exhibitors, however, "blocks of five," without a guaranteed option to cancel some films, was no victory. Indeed, many claimed "blocks of five" forced them to buy four bad films for every good one. Two *Motion*

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[19] Thurman Arnold expressed his pro-exhibitor views in *The Bottlenecks of Business*, *supra* note 8, at 168-170.

[20] On the government's wartime cooperation with big business, see John Morton Blum, *V Was for Victory: Politics and American Culture during World War II,* (New York: Harcourt Brace & Company, 1976), 131-146. Although the government changed course, Thurman Arnold remained an anti-monopolist. As a result he was "kicked upstairs" in 1943 to be a federal appeals judge where he was bored. He resigned after two years and resumed private law practice in Washington, D. C. See his entertaining autobiography, *Fair Fights and Foul: A Dissenting Lawyer's Life* (New York, Harcourt, Brace & Co., 1965).

[21] The five producer-distributors were Paramount, MGM, Warner Bros., Twentieth Century Fox, and RKO Pictures. However, the decree also provided that If, within two years the Justice Department was unable to gain the agreement of United Artists, Universal, and Columbia Pictures to the stipulations on block booking, then those terms were no longer binding upon the original five parties. See *The Consent Decree: Entered in the District Court of the United States for the Southern District of New York, November 20, 1940. In the Matter of The United States of America vs. Paramount Pictures, Inc. et. al.* (New York: Arbitration Association Edition for the Motion Picture Arbitration System), n.d. [1940].

[22] Although independent exhibitors complained about arbitration, the producer-distributors welcomed it as a self-regulatory device to keep government and the exhibitors at bay. The actual number of cases arbitrated was small. See "Antitrust Scenario," *Business Week* (September 6, 1941), 32, 37.

Picture Daily headlines, "Independents Will Demand Cancellation," and "92.4% of Exhibitors Are Opposed to Blocks-of-Five," said it all. [23]

The Minnesota Battleground

Although independent theater owners nationwide scowled at the Consent Decree, discontent was especially strong in the Upper Midwest where the *Langer* decision bolstered existing faith that sympathetic state legislatures could provide greater assistance than Congress or the courts.[24] In Minnesota, the regional independent exhibitor association, the Allied Theater Owners of the Upper Midwest, was the most active of a score of organizations affiliated with the Allied States association.

The Minnesota independents had earlier tried to obtain a theater divorcement law similar to North Dakota's. But where Farmer-Labor governor Elmer Benson favored the measure, the new Republican governor, Harold Stassen, was non-committal.[25] As a result, the theater owners, in the wake of the consent decree, directed their attack at "blocks of five" and their "right" to cancel undesirable films. To gain support from churches, parent-teacher associations, and women's clubs, the independent exhibitors linked desirability to decency and held themselves out as moral sentries.[26] In reality, because Hollywood effectively self-censored content through its production code beginning in 1934, for most exhibitors desirability simply equated to good box office. Westerns and "fast action" films drew well in small towns but flopped in the cities while the reverse was true of "historical" and "sophisticated" pictures. Illustrative was the clash between Ben Ashe, owner of Fergus Falls' Lyric Theater and H.B. Johnson, Universal Pictures Minneapolis branch manager, over *Tower of London.* To Ashe, the film was "the most horribly brutal and revolting picture I have ever seen." Johnson replied that *Tower of London* was "an entertaining, truly historical document" and forced Ashe to lease it,

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[23] "Independents Will Demand Cancellation," *Motion Picture Daily* (August 29, 1940), 1; "92.4% of Exhibitors Are Opposed to Blocks of Five," *Motion Picture Daily* (October 1, 1940), 1.

[24] "Pact Opponents Represent 98% of Nation's Theaters," *Motion Picture Daily* (November 16, 1940), 1.

[25] "Minn.'s New Gov. Stassen Fails to Commit Himself on Divorcement," *Variety* (January 11, 1939), 6.

[26] See P.S. Harrison, "Give the Movie Exhibitor a Chance," in Gregory A. Waller, ed., *Moviegoing in America: A Sourcebook in the History of Film Exhibition*, supra note 9, at 211-212.

although Johnson never showed it, as a condition for booking *Destry Rides Again*, a "big" western Ashe wanted. [27]

Ritz Theater, Minneapolis (c. 1953)

The Ritz, built in the 1920's in Northeast Minneapolis, was typical of the independent neighborhood or "nabe" theaters that struggled financially and were heavily impacted by block booking and "clearance" practices.

When the 52nd Minnesota legislature convened in 1941, independent exhibitors enlisted supportive lawmakers who introduced a bill, written by the Allied Theater Owners of the Upper Midwest, that, astonishingly, required distributors to sell their entire season's output, about 50 features per major studio, in one block but allowed theater owners to reject up to twenty percent of the pictures. Violators, moreover, were subject to criminal penalties.[28] **Although the proposed law contradicted theater**

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[27] **Fred H. Strom Affidavit, *Vitagraph, Inc. vs. James F. Lynch et.al* (August 4, 1941) Attorney General Case Files, MHS, 101F52F Box 72. *Tower of London* was Universal's telling of the Richard III story of the princes in the tower.**

[28] **1941 Laws, Chapter 460, at 836-839 (effective April 26, 1941). It is posted in the Appendix below, at 24-26.**

owners' objections to block booking, proponents claimed that cancellation privileges trumped block booking evils.

To producer-distributors, on the other hand, the Minnesota legislation was a dangerous foreshadowing of 48 separate and conflicting state laws and a death blow to industry self-regulation.[29] Although Minneapolis attorney David Shearer, representing Paramount Pictures, lobbied against the measure, legislators, lest they be accused of favoring dirty movies and big business over small, piled on as co-sponsors. As a result, the bill whizzed through both chambers (104 to 3 in the House and 70 to 1 in the Senate) and Governor Stassen signed it on April 24.[30] A blow, it seemed, was struck for small business and morality.

Although the Consent Decree allowed producer-distributors to opt out of the agreement where it clashed with state law, the Big Five, preferring the Consent Decree, provoked a film shortage by claiming they could not serve conflicting legal masters—the Federal government and the State of Minnesota. They chose, not surprisingly, to honor the Consent Decree and refused to book new features with Minnesota independents. In an era when theaters offered 130 or more films per year, their decision left local independents with no new films from the five largest distributors. As a result, exhibitors scrambled to fill their 1941-42 schedules with pictures from Columbia and Universal, independent and "poverty row" producers, and foreign and previously-shown movies not subject to the new Minnesota law. [31]

Minnesota's Block Booking Law Goes to Court

While exhibitors fretted, the national trade press began paying attention to Minnesota goings on and particularly when the producer-distributors headed to Ramsey County District Court in search of a temporary injunction to keep

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[29] "Movie Dynamite?" *Business Week* (April 5, 1941), 30.

[30] Journal of the House of Representatives, (February 20, 1941), 378; (March 7, 1941), 633; (March 13, 1941), 714; Journal of the Senate (April 22, 1941) n.p.

[31] Also Joint Memorandum of Defendants James F. Lynch, Ed J. Goff and Thomas J. Gibbons in Opposition to Separate Motions of Plaintiffs for Temporary Injunction. *Paramount Pictures v. James F. Lynch et. al.* , State of Minnesota, Ramsey County District Court, Second Judicial District, Case No 241096, Attorney General Case Files, MHS, 101F52F Box 72, 27.

For the story of how this crisis affected one theater manager, John Wright, at Red Wing's Auditorium Theater, see Thomas L. Olson, *Sheldon's Gift: Music, Movies, and Melodrama in the Desirable City* (St. Cloud, MN: North Star Press of St. Cloud, 2009); 143-160.

Minnesota's law from being enforced.[32] The case was heard by Judge Hugo Otto Hanft in August, 1941. Hanft was then aged 69 and had been on the bench 31 years.[33] Paramount was represented by local attorneys David Shearer and Joseph Finley. Defendants were James Francis Lynch, Ramsey County Attorney,[34] Ed J. Goff, Hennepin County Attorney, and Ramsey County Sheriff Thomas J. Gibbons, the principals who would, in the absence of an injunction, be called upon to enforce state law in the two counties with the largest number of theaters. The briefs on both sides totaled 203 pages and cited 190 state and federal cases. Twenty cases were cited by both sides. A joint memorandum by the defendants ran to 49 pages and another on constitutionality, contributed by Attorney General Joseph A. A. Burnquist's office, added another dozen. Oral arguments consumed three lengthy sessions. Before Judge Hanft delivered his decision, companion cases were filed by other producer-distributors.[35]


Judge Hugo Hanft (c. 1928)

In briefs and at trial Paramount argued the Minnesota law's unconstitutionality based upon due process and equal protection, federal control of interstate commerce, and the "liberty" to contract eely—all longstanding arguments against business regulation.[36] In contrast, although they also

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[32] "Assault on Minn. 'Anti-Five' Law Next Week," *Greater Amusements* (June 27, 1941), 4.

[33] His biographical sketch in the 1943 Minnesota Legislative Manual, at 211, provided:

> Hugo O. Hanft, born Dec. 16, 1871, St. Peter, Minn. Master's degree in law, University of Minnesota, 1897. Spanish war veteran, Philippines. Assistant Ramsey County Attorney 1900-1906. Judge of municipal court by election 1906-1914. District court judge by election since 1915. Senior judge since 1930.

[34] James Francis Lynch was a well-known and respected member of the bar. The Saint Paul native graduated from St. Paul Law (now William Mitchell College of Law) in 1916 at age 23. During the 1930's he became known as a fearless county prosecutor of gangsters and corruption. A Democrat, he was elected Ramsey County Attorney in 1938.

[35] *Paramount Pictures Inc. vs. James F. Lynch et. al*, State of Minnesota, Ramsey County District Court, Second Judicial District, Case File 241096, October 3, 1941. Attorney General Case Files, MHS, Box 72, 101F52F (hereafter "Judge Hugo Hanft Decision, *Paramount Pictures v. Lynch*").

[36] The most controversial Supreme Court decision denying state regulation was *Lochner v. New York* 198 U. S. 45 (1905). During the mid-1930's the Supreme Court began to embrace

addressed its constitutionality, Lynch and Goff argued that the only question before the court was whether, without a temporary injunction, cancellation of up to 20% of pictures irreparably damaged the producer-distributors—a notion they found absurd. Minnesota, they said, accounted for just 3% of major producer business and cancelled films could readily, since there were only 4 to 10 prints of any one film circulating in Minnesota, be shown elsewhere. Where, they asked, was the damage? Minnesota law, they argued, "did not seek to take away or deprive the distributors or producers of their property. It merely regulates and this to a very limited degree—the performance of their contracts in this state." [37]

On October 3, 1941, Judge Hanft denied Paramount's request. "This court," Hanft wrote, "cannot vision such exceptional circumstance and great and immediate danger of irreparable loss to plaintiff as would justify the exercise in equity of the extraordinary power of restraining enforcement of the act at this time." That was all he needed to say. Yet Hanft also, in a twenty-six page memorandum, addressed the merits of the issues raised by Paramount.[38]

Echoing and citing the *Langer* decision, Judge Hanft concluded that Minnesota's law was reasonable and judicial restraint was called for. [39] Second, Paramount argued that the Minnesota and U.S. Constitutions prohibit laws impairing the obligations of contracts. Hanft agreed. He wrote, however, that producer-distributors had discriminated against independents for years and that previous attempts to right that wrong had "foundered on the rock of inviolability of the right to contract." Had Minnesota's law been enacted a decade earlier, in all likelihood it would have been found unconstitutional "as a temerarious interference with the rights of property and contract and the law of supply and demand." Fortunately, he wrote, progressive change had occurred and it was recognized that only government could address many problems. Citing Minnesota Supreme Court Justice Royal A. Stone's opinion in

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judicial restraint in economic and social welfare matters. See especially *Nebbia v. New York*, 291 U.S. 502 (1934), and *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

[37] Joint Memorandum of Defendants James F. Lynch, Ed J. Goff and Thomas J. Gibbons in Opposition to Separate Motions of Plaintiffs for Temporary Injunction in *Paramount Pictures v. Lynch,* Ramsey County District Court, Second Judicial District, Case No. 241096, n.d., Attorney General Case Files, MHS, 101F52F Box 72, 24.

[38] Judge Hugo Hanft Decision, *Paramount Pictures v. Lynch*, supra note 5.

[39] *Ibid.* In his ruling, Judge Hanft cited both *Nebbia v. New* York, 291 U.S. 502 (1934), and *Paramount v. Langer* (1938).

McElhone vs. Geror (1940), Hanft concluded that the freedom to contract is not absolute and pointed to the need to protect the weak against the strong. [40]

In the wake of Judge Hanft's ruling, positions on both sides hardened. Warner Bros. refused sales to Minnesota independents until all legal issues were resolved. United Artists announced that it would close its Minneapolis branch and service its accounts from other exchanges. Others threatened to relocate to Hudson, Wisconsin.[41] On the exhibitor side, independent theaters became so desperate for films that a few closed or reduced operations. As hostilities intensified, Minnesota theater-goers, who were largely ignorant of the brouhaha, began to notice. By October 1941, a number of big new pictures, including *Dumbo, Sergeant York*, and *Citizen Kane*, which should have been showing on independent screens, were not and the public, in letters and phone calls, wondered why. But, as *Variety* reported, the public learned little because both sides decided to "keep quiet and hope for an early settlement." [42]

In November, at last, the distributors received a release from Consent Decree terms in Minnesota so that they could resume sales. That release could have been gotten months earlier but for the distributors' desire to pressure independents in a "fight to the finish." [43] Although the big distributors now sold in Minnesota, the crisis deepened when the distributors announced new terms and prices that independents described as "brutal" and "exorbitant." Where the major distributors, with some MGM exceptions, previously sold to Minnesota independents at "flat" rates, i.e., so many dollars for a film, most now declared that some pictures would be priced at a percentage of gross receipts and set whopping price increases for all

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[40] *McElhone v. Geror*, 207 Minn. 580 (1940). Justice Stone also wrote that "The independent merchant, small or large, is a legitimate object of legislative solicitude. It cannot be otherwise in view of his contribution to the building of, and his present place in, our economic structure."

[41] "All May Stop Biz in Minn.," *Variety* (October 15, 1941), 7.

[42] "Duluth Fans Now Getting Curious About Delay of Nat'l Advertized Pix," *Variety* (October 22, 1941), 22.

[43] "Movie Relief," *Business Week* (November 29, 1941), 44; also see "Minn. Anti-Consent Decree Mess May Force Distribs to Get Ruling from Judge Who Signed Law in N.Y.," *Variety* (October 15, 1941), 7.

films. Paramount's demand of two pictures at 50% of gross, four at 40%, two at 25%, and 50-100% increases on flat rate films, was typical. [44]

Madelia Theater (c. 1940)

The Madelia opened in 1934 and had 397 seats. It was typical of hundreds of small town independent movie houses. To succeed in business, many small theaters included small rental income shops to one or both sides of the box office.

Although many small town theaters accepted the new terms, metropolitan and suburban independents declared they would close before succumbing.[45] Worse, the stiff new terms capped a year characterized by a nationwide slump in movie going, most likely due, as *Time* reported, to a "paucity of good pictures." [46] In early December Northwest Allied appointed a twelve man committee to attend a "unity" conference in Chicago where they would "lay the [Minnesota] situation before the

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[44]"WB's and PAR's % and RKO's Upped Rentals Stalemate Minn. Buying," *Variety* (December 3, 1941), 7; "Minn. Indies Feeling Kickback Of Anti-Decree Law; 20th Proffers 'Unacceptable' Deal Like Metro's," *Variety* (January 14, 1942), 18.
[45]"WB's and PAR's % and RKO's Upped Rentals Stalemate Minn. Buying," *Variety* (December 3, 1941), 7.
[46] "Slump," *Time* (June 30, 1941), 65.

industry." [47] **There, the independent owners' rage was expressed forcefully by Benjamin "Bennie" Berger who charged that distributors were punishing independents for sponsoring the 1941 state law. "We do not propose," Berger said, "to permit the distributors to establish the principle and precedent [of percentage sales]. Once established, we know how it would be expanded and how every company would come along with similar demands."** [48] **Among the independents, however, there was grumbling and some, as *Variety* noted, "now declare the boys should have 'let well enough alone' and given the decree a trial, the same as exhibitors have done in other states." Sensing crumbling unity, the major distributors held to the belief that the boycotting theaters were "bluffing" and wouldn't "cut their noses to spite their faces."** [49] **And, as if to salt the independents' wounds, Paramount announced that its 1941 domestic net profit exceeded $8.5 million, its highest earnings in many years.**[50] **Thus, as 1941 ended, some sales had resumed but the constitutional issues were not resolved. Far from it.**

Meanwhile, although neither the Ramsey or Hennepin County attorney had acted to enforce the law prior to Judge Hanft's ruling, both were prepared to do so upon receiving a complaint. A test case arose when, by prior arrangement, Harold St. Martin of the White Bear Theatre Corporation accused several producer/distributors of willfully selling in blocks of five in violation of Minnesota law.[51] **Ramsey County Sheriff Thomas Gibbons then arrested local exchange heads Ben Blotcky (Paramount), C. Jay Dressell (RKO), and Joseph Podoloff (20th Century Fox).** [52] **At the same time the producer/distributors, fearing legislation against them in other states, filed civil suits asking that the Minnesota law be found unconstitutional.** [53]

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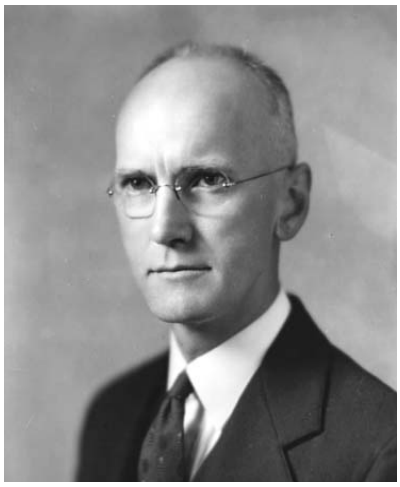
[47] **"Minn. Indies Will Take Beefs to Unity Confab," *Variety* (December 3, 1941), 6.**
[48] **"Mpls. Indies Await Talk with Agnew Before Asking State Action Against Majors; WB's % Terms Stymie Deal," *Variety* (January 21, 1942), 14.**
[49] **WB's and PAR's % and RKO's Upped Rentals Stalemate Minn. Buying," *Variety* (December 3, 1941), 7.**
[50] **"Par's 1941 Earnings Should Exceed $8,500,000 Sans $1,000,000 From Eng.," *Variety* (November 26, 1941), 5.**
[51] ***State of Minnesota v. R.K.O. Pictures* (October 20, 1941). Criminal Cases Nos. 16487 (R.K.O.), 16488 (20th Century Fox), and 16489 (Paramount Pictures). MHS, SAM 47, Criminal, Roll 36.**
[52] **"File Test Suit on Minn. Law," *Variety* (October 22, 1941), 7.**
[53] **"Movie Law Upheld," *Business Week* (October 11, 1941), 17.**



Judge Albin Pearson (c. 1940)

The criminal and civil cases in Ramsey County District Court were assigned to 48 year old Judge Albin S. Pearson, a 1939 appointee of newly elected Republican Governor Harold Stassen and a jurist of corporate temperament.[54] In an unusual procedure, Judge Pearson consolidated the criminal and civil cases for non-jury trial. Ramsey County Attorney James Lynch and Assistant County Attorney William Desmond prosecuted the criminal offense and defended state law. The motion picture companies were again represented by David Shearer and Joseph W. Finley as well as corporate attorneys. The companies also fattened their witness list. Ned Depinet was RKO's national sales manager; Neil Agnew, who grew up in Grand Rapids, Minnesota, held a similar position with Paramount; and Col. Jason S. Joy, the son of a Methodist minister, had headed the Association of Motion Picture Producers and Distributors of America's self-regulation production code office before becoming a senior 20th Century Fox executive.[55]

At the trials, the producers' witnesses illuminated the workings of the movie business and argued the reasonableness of their practices. Ned Depinet was homey and persuasive in making the case that RKO employed only evenhanded practices to bring the public the best pictures possible. [56] Before the consent decree and the Minnesota law, Depinet said, the company negotiated as to how many films, typically far fewer than all of its pictures, would be licensed and the fees to be charged. There were no set *prices.* It was a matter of equal parties, distributor and

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[54] Pearson grew up in Hudson, Wisconsin and graduated from the University of Minnesota Law School in 1916. He was elected to the Minnesota legislature in 1923 and 1925 and as an attorney specialized in estate law. He was appointed a probate judge in 1930 by Republican governor Theodore Christianson. The next Republican governor, Harold Stassen, elevated him to the Second Judicial District bench on October 4, 1939.

[55] Joy's background, including his degree from Connecticut's Wesleyan College, stood him in good stead as a moral spokesperson for the industry. Joy, who entered the U.S. Army a private and left a Colonel at the end of World War I, continued to use the honorific "Colonel" title.

[56] "Exhibs Testifying against Majors at Minn. Anti-Decree Law Hearings," *Variety* (January 14, 1942), 20.

exhibitor, negotiating fair and legal contracts. What's more, there were plenty of pictures to choose from.[57]

The producer-distributors also cast independents as uninformed and naïve, unaware that film production cost between $75,000 (low budget westerns) to over $2 million (*Gunga Din*).[58] In his testimony, Jason Joy added that the rights to successful stage plays such as *Lady in the Dark* cost as much as $285,000 while popular novels such as Ernest Hemingway's *For Whom the Bell Tolls* fetched not only lofty prices but carried fat royalties as well. Because of such high overheads and risk, there were inevitable box office disappointments. As a result, it was necessary that theaters present a wide variety of pictures so that successful movies offset financial flops. [59] Adding to the producers' problems, Ned Depinet testified that independent theaters booked the best and most expensive films, such as his company's *Mary Queen of Scots* and *Abe Lincoln of Illinois*, significantly less than run-of-the-mill comedies. On one hand independents complained about a shortage of high quality films but also took advantage of cancelation clauses to scrap important pictures. If the Minnesota law aimed to improve movie quality, Depinet concluded that it actually encouraged the opposite result. [60]

Attorneys Lynch and Desmond engaged the witnesses in tough and spirited cross-examination. The constitutional questions, a rehash relying heavily on the briefs and memoranda laid before Judge Hanft, were argued vigorously on both sides.[61] Throughout, the distributors' witnesses came across as levelheaded and persuasive while the independent's witnesses seemed to have lost heart for Minnesota's law.

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[57] Ned E. Depinet Testimony, January 7, 1942, (transcript), *Paramount Pictures Inc. v. James F. Lynch, et al.,* State of Minnesota, Ramsey County, District Court, Second Judicial District, Attorney General Files, MHS, Box 72.

[58] *Ibid.*

[59] Jason S. Joy Testimony, December 16, 1941, (transcript), *Paramount Pictures Inc. v. James F. Lynch*, supra note 57.

[60] Ned E. Depinet Testimony, January 7, 1942 (transcript), *Paramount Pictures Inc. v. Lynch*, supra note 57. In regard to cancellations, the distributors pointed out that the law didn't allow for individual sales of cancelled films since they were less than a season's entire output.

[61] David Shearer and Joseph W. Finley, "Reply Memorandum on Behalf of Defendants in the Criminal Cases and the Plaintiffs in the Civil Cases," *State of Minnesota v. Twentieth Century Fox et al., and Paramount Pictures, Inc. v. Lynch*, supra note 57.

On April 14, 1942, Judge Pearson's ruled the Minnesota law unconstitutional and acquitted the company executives of criminal charges. Judge Pearson demonstrated that he held a far different judicial philosophy than Judge Hanft. Where Judge Hanft applauded the judicial interpretations brought about by the New Deal, Judge Pearson did not.[62] Given the lengthy pleadings, memoranda, and Judge Hanft's ruling, which Judge Pearson neither acknowledged nor cited, it wasn't surprising that his decision spanned twenty-three pages and detailed eighteen legal findings. Key among them were his conclusions that contracts were inviolable agreements between two equal parties, that corporations were legal persons entitled to 14th Amendment protection, and that Minnesota's law deprived the producer-distributors of property rights. He found also that the law was harsh, arbitrary and without bearing on the public health, safety, or morals; that it was special or class legislation repugnant to the Minnesota constitution, that it violated copyright laws, and that it attempted to regulate interstate commerce in defiance of the U.S. Constitution.[63] When the counties' attorneys asked for a new civil trial Judge Pearson denied their motion and issued a writ of permanent injunction.

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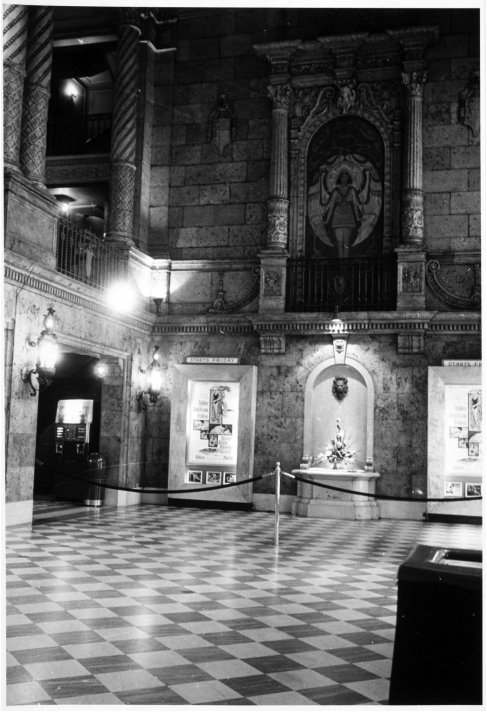
[62] **"Anti-Consent Law Kayoed in Minn.,"** ***Variety*** **(April 15, 1942), 18; "Appeal From Booking Law Decision Seen,"** ***Minneapolis Star Journal*** **(April 15, 1942), 28.**

[63] **Judge Albin Pearson, "Findings of Fact and Conclusions of Law,"** ***Vitagraph, Inc. v. James F. Lynch,*** **File 241098, State of Minnesota, County of Ramsey, District Court, Second Judicial District, (April 14, 1942); Minnesota Constitution Article IV, Sec. 33. The Minnesota constitution read "The legislature shall pass no law . . . granting to any corporation, association or individual any special or exclusive privilege, immunity, or franchise whatever. Provided, however, that shall not be construed to prevent the passage of general laws on any of the subjects enumerated." Expanded but nearly identical language is today found in the Minnesota Constitution Article XII, Sec. 1**



Paramount, St. Paul (c. 1965)

The Spanish Baroque Paramount on 7th Street was originally Finkelstein and Ruben's Capitol Theater. In opened in 1920 with 3000 seats and was typical of the expansive, ornate movie houses purchased or built by Paramount and its predecessor, Publix, between 1927 and 1932.

Aftermath: United States v. Paramount

Judge Pearson's decision did not mean, however, that it was "blocks of five" after all.[64] The 1940 consent decree provided that if the Justice Department could not come to terms with Columbia, United Artists, and Universal by June 1, 1942 that "blocks of five" would expire for all.[65] When negotiations failed, "blocks of five" ended and the distributors were freed to sell as they chose.

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[64] **The decision was not appealed; the state, counties, and independent exhibitors had had enough.**

[65] **"Film Decree a Fliv So Far,"** ***Variety*** **(November 26, 1941), 5.**

When the Consent Decree expired entirely in November 1943 the government's wartime aversion to trust busting was unchanged.[66] But when the producer-distributors and the Justice Department, prodded by independent exhibitors and the Society of Independent Motion Picture Producers (SIMPP), failed to reach agreement, President Truman's new Attorney General, Tom Clark, restarted the government's anti-trust campaign. In that case (1946) the court rejected theater ownership divestiture but banned block booking. Most importantly, and controversially, the court mandated theater-by-theater and film-by-film sales and auction film bidding in competitive markets. [67]

At the same time independent exhibitors also filed several suits against the major producers with mixed results and numerous appeals. Those cases were consolidated and a unanimous Supreme Court decision in *United States v. Paramount Pictures Inc.* was issued in May, 1948. The lengthy opinion, written by Minnesota-born Associate Justice William O. Douglas, compelled the divesture of the major studio-distributors from their theaters. Although some producers resisted the decision, Paramount, which owned Minnesota's major studio theaters, capitulated on December 31, 1949 when Paramount Pictures Incorporated was replaced by Paramount Pictures Corporation and United Paramount Theaters—a chain of over 1,000 theaters.[68]

Minnesota and the End of the Studio System

Although Minnesota independents welcomed the death of "blocks of five", there was scant else to cheer. Already in 1942 the distributors had gotten percentage bookings. What is more, the industry was ending the "studio system." Film stars, for artistic and tax reasons, demanded release from contracts committing them to a single studio and to films they didn't want to make.[69] At the same time, the major

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[66] See John Morton Blum, *V Was For Victory: Politics and American Culture during World War II* (San Diego, Harcourt Brace & Co., 1976), 131-140.

[67] The case was a second phase of *United States v. Paramount,* and was called "The New York Equity Suit." For a comprehensive discussion and documentation, see *Hollywood Renegades Archive: The SIMPP Research Database,* at http://www.cobbles.com/-simpp_archive/1film_antitrust.htm.

[68] *United States v. Paramount Pictures Inc.* 334 U.S. 131 (1948); discussed in Thomas Schatz, *Boom and Bust: American Cinema in the 1940's, History of American Cinema 6* (first paperback edition, Berkeley: University of California Press, 1999), 326-328.

[69] Olivia DeHavilland's case was the most well-known. *De Havilland v. Warner Bros. Pictures*, 67 Cal. App. 2d 225 (1944).

studios reconsidered their commitments to 50 releases per year and to hundreds of regular employees. As output and employees were reduced, they released fewer films which they offered at higher prices.[70]

Neither the death of block booking nor the 1948 *Paramount* decision benefited Minnesota's independent exhibitors. Instead, the greatest benefit fell to the growing number of independent producers for whom the breakup of the producer-owned theaters meant improved access to the nation's best movie houses. For most of Minnesota's independent theater owners, films purchased individually on percentage of gross were more expensive than flat rate movies bought in blocks. In competitive markets independents now found themselves forced to bid against rivals for desirable films. As a result, costs increased, sometimes dramatically. And "clearance," the time between the first and subsequent "runs" of a feature, remained an issue. A 1947 plan by Benjamin Berger, who was recognized in the trade as the most aggressive regional leader, to form a buyer's combine came to nothing.[71] At the same time, small town independents griped because diminished output created a shortage of the "B" grade features their audiences welcomed. Indeed, the shortage of such features helped drive their audiences to television. As Benjamin Berger remarked in 1962, much of television was a "B" movie.[72]

Minnesota's theaters also faced a raft of new problems. Although movie attendance set new records in 1947, just a year later audiences began declining in a falloff that saw attendance drop by about 10% per year for the next dozen years. Because good films continued to draw well, the decline may have begun in part by audience displeasure with film content.[73] But there were larger forces at work. The postwar focus on rebuilding family lives and the onset of the baby boom, the

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[70] "20th Set to Cut 'B' Output," *Variety* (August 12, 1942), 5.

[71] "Paramount Attack Holds NCA Meet Spotlight," *Greater Amusements* (March 26, 1948), 3; "NCA Aims at Power through Buying Combines," *Greater Amusements* (April 25, 1947), 8. Berger's aggressiveness was said to have been responsible for a North Central Association membership decline.

[72] Benjamin Berger Testimony, Partial Transcript of Proceedings, II, *John Wright and Associates Inc., plaintiff, v. Harold R. Ullrich et. al., Defendants.* Civ. No. 3-59-169 United States District Court for the District of Minnesota Third Division, 203 F. Supp. 744, 416-439 (1962).

[73] Lary May, *The Big Tomorrow: Hollywood and the Politics of the American Way* (Chicago: University of Chicago Press, 2000), 224.

population shift to cities and especially suburbia,[74] and by 1950-51, television, were all responsible. Nationally, exhibitor profits fell from $325 million in 1946 to just $111 million in 1950.[75]

As audiences were drawn to drive-in and postwar suburban theaters, some single screen urban and neighborhood houses converted to art and foreign formats, an option that small town theaters didn't have. Closings accelerated as hostilities between distributors and exhibitors continued. In 1955 Twentieth Century Fox President Spyros Skouras addressed surly theater owners at the Allied States Association national convention. Yet Benjamin Berger, who abhorred industry practices, caustically admired Skouras. "You don't see any other blood suckers here," Berger said. [76] Four years later, John Wright, owner of Red Wing's Chief and New Prague's Granada theaters said that competitive bidding was "unfair, inequitable, and unreasonable." "The film companies," Wright added, "stand there and sandbag each exhibitor for everything they can get. They break them both financially." [77]

Over the next decade television, shifting populations, and continuing business strife shuttered hundreds of single screen movie houses. The advent of multiplexes and home video entertainment did in more. Yet in Minnesota's towns and urban neighborhoods a surprising number of the old structures survive. Many are abandoned, decrepit, and bear weathered "for sale" signs. Others, long since converted to other commercial purposes, can be difficult to spot. Astonishingly, a few of the old theaters survive as movie houses. In small towns, frequently on week-ends only, they present new features with broad general audience appeal. In a few instances, developers have re-created the illusion of the old single screens in new, modest-sized multiplexes located at the center of small cities or urban neighbor-hoods. Whatever the circumstance, these survivors and their imitators encourage

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[74] In one Minnesota county, Goodhue, population was static for the twenty-five years from 1940-1965. Considering birth and death rates this can only be accounted for by outmigration of people of prime movie-going age. See Lowry Nelson and George Donohue, *Social Change in Goodhue County, 1940-1965*, Bulletin 482 (Minneapolis: University of Minnesota, Agricultural Experiment Station, 1966), 7, 17-18.

[75] Thomas Schatz, *Boom and Bust: American Cinema in the 1940's, History of American Cinema, supra* note 68, at 6.

[76] Robert K. Krishef, *Thank You America: The Biography of Benjamin N. Berger*, supra note 4, at 65.

[77] John Wright Deposition, October 19, 1959, *John Wright & Associates, Plaintiff, vs. Harold R. Ullrich, et. al, Defendants, supra* note 72, at 26.

nearby eating and drinking establishments that keep night time alive. And, by bringing people together for shared communication, even though one-way and often of pure fluff, they encourage the survival of community. Jeff Frank, owner of the sleek, single screen art deco Drexel in Bexley, Ohio, has said that these single screen theaters are places where "for a short time, you take people someplace they've never been before." [78]

Author

Thomas L. Olson was born and grew up in Red Wing, Minnesota. He earned a bachelor's degree from Wisconsin State University at River Falls and a Ph.D. in American History from the University of Minnesota. He taught at Mankato State University and the University of Minnesota and then enjoyed a career in university administration and in philanthropic development for educational, arts, and health care organizations. He is retired and lives in Las Cruces, New Mexico.

His book, *Sheldon's Gift: Music, Movies and Melodrama in the Desirable City* (North Star Press of St. Cloud, 2009, 260pp.) recounts the stormy history of show business in Red Wing, especially it's iconic Sheldon Theater. More than local history, the book addresses the unique predicaments of entertainment enterprises, highbrow and low, in small cities. The book also has a good deal of courtroom drama in relating the story of movie-related lawsuits in the 1930's and again in the 1950's that challenged municipal theater ownership. The book is available from the publisher, Amazon.com. or, alternatively, viewers of the Minnesota Legal History Project may buy an autographed copy directly from the author, who may be contacted at tlolson4377@comcast.net.

Acknowledgment

The photographs illustrating this article are posted with the permission of the Minnesota Historical Society.

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[78] **Dan Barry, "This Land: Bringing Hollywood Boulevard to Main Street," *The New York Times*, September 23, 2007.**

APPENDIX

This is the law that Judge Hanft upheld and Judge Pearson struck down:

1941 Laws, Chapter 460.

An act relating to the distribution of motion picture films, providing terms and conditions of licensing the same, and providing penalties for violation of this act.

WHEREAS, the motion picture industry is made up of three branches, namely, production, distribution and exhibition; and

WHEREAS, the production and distribution branches are dominated and controlled by eight major companies with great economic power and exhibition is accomplished through two classes of theatre owners, namely, those wholly owned or affiliated with the producer-distributors and the independent exhibitors; and

WHEREAS, the major producer-distributors license, lease and distribute substantially all of the feature motion pictures exhibited in the state of Minnesota and the other states of the Union; and the needs of the independent exhibitor requires that he license or lease feature motion pictures from substantially all the major producer-distributors; and

WHEREAS, by reason of arbitrary terms and conditions imposed by the producer-distributors, the independent exhibitor has been:

(a) compelled as a condition precedent to licensing feature motion pictures, to also license short subjects, newsreels, trailers, serials, re-issues, foreign and western pictures far in excess of his needs or requirements;

(b) unable to cancel feature motion pictures injurious and damaging to his business, and therefore compelled to play pictures offensive, on moral, religious or racial grounds, and undesirable and harmful to the public; and

WHEREAS, the long-established trade practice of licensing feature motion pictures for a full season (one year) is essential to the best interests of the producer-distributors, exhibitors, and the public; but the above conditions imposed by the producer-distributors have subjected the independent exhibitors to unfair dis-advantages, preventing him from responding to the community and local public influence and preferences with respect to selection of desirable feature motion picture films and are inimicable to public welfare and against public policy; now, therefore,

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Definitions.—For the purpose of this act, unless the context otherwise provides:

(a) the term "person" includes an individual, partner-ship, association, joint stock company, trust or corporation;

(b) the term "distributor" includes any person who engages or contracts to engage in the distribution of motion picture films and is a resident of or legally authorized to do business in this state;

(c) the term "exhibitor" includes any person who engages or contracts to engage in the exhibition of motion picture films and is a resident of or legally authorized to do business in this state;

(d) the term "license" includes the offering, intending or making of a license agreement, contract, or any type of agreement whereby a film, the distribution of which is controlled by one of the parties is to be supplied to and exhibited in a theatre owned, controlled or operated by the other party;

(e) the term "feature motion picture film" means all motion pictures, whether copyrighted or uncopyrighted, including positive and negative prints and copies or reproductions of such prints, which films contain photoplays or other subjects and are produced for public exhibition. The term shall not include films commonly known as short subjects, newsreels, trailers, serials, re-issues, foreign and western pictures, and road shows;

(f) the term "exhibition season" shall mean a period of twelve months as may be selected by the producer-distributor, provided, however, that there shall be no lapse of time between the termination of one season and the beginning of the next.

Sec. 2. Contents of licenses.—No distributor shall here-after license feature motion picture films to an exhibitor to be exhibited, shown or performed in this state unless the license provides:

(a) that all the feature motion picture films, which such distributor will license during the exhibition season, or the unexpired portion thereof, shall be included. The term "all the feature motion picture films" shall apply to each producer for whom the distributor is acting.

(b) that the exhibitor shall have the right to cancel a minimum of 20 per cent of the total number of feature motion pictures included in such license where the exhibitor deems the same injurious and damaging to his business or offensive on moral, religious or racial grounds. Such cancellation shall be made proportionately among the several price brackets, if there be such price brackets in the license agreement. Any number of cancellation to which an exhibitor is entitled, may be made the lowest price bracket at the exhibitor's option.

The right to cancellation shall not be effective, unless the exhibitor exercises such right by giving notice thereof, to the distributor, by registered mail, within 15 days after being notified of the availability of a feature motion picture.

In determining the number of feature motion pictures that may be cancelled, fractions of one-half or more shall be counted as one and fractions of less than one-half shall not be counted.

Sec. 3. May not contain certain restrictions.—No distributor shall license feature motion picture films to an exhibitor to be exhibited, shown or performed in this state, upon the condition that the exhibitor must also license short subjects, newsreels, trailers, serials, re-issue, foreign and western motion picture films. .

Sec. 4. Licenses to be void.—Any provision of any license hereafter made and entered into which is contrary to any provisions of this act, is hereby declared to be against public policy and void.

Sec. 5. Penalties.—Every person violating any provisions of this act, or assisting in such violation, shall, upon conviction thereof, be punished by a fine not exceeding $1,000, or, in default of the payment of such fine, by imprisonment in the county jail for not more than one year. In the case of a corporation, the violation of this act shall be deemed to be also that of the individual directors, officers or agents of such corporation who have assisted in such violation, or who have authorized, ordered or done the acts or omissions constituting, in whole or in part, such violation, and upon conviction thereof, any such directors, officers or agents shall be punished by fine or imprisonment, as in this section provided.

Sec. 6. Provisions severable.—If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

Sec. 7. Application of act.—The provisions of this act shall not apply to the licensing of motion picture films to any school, college, university, church, or any educational, fraternal, or religious organizations in this state.

Approved April 26, 1941. ■

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