MINUTES OF THE MEETING

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

February 8, 1977

The thirteenth meeting of the Public Health, Welfare and Safety Committee was called to order by Chairman Stephens on the above date in the Governor's Reception Room of the State Capitol at approximately 11:00 A.M.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 341: The Chairman turned the meeting over to sponsor of the above bill, Senator Dover. The Lewistown Senator explained the need for this bill and the reasoning behind it by reading his opening remarks to the Committee (see Exhibits "A" and "B").

Senator Rassmussen followed the sponsor, testifying in support of the bill. He questioned the communities' need for X-rated movies as entertainment. The Senator said movies of this calibur were unthinkable 15 years ago; we seem to be witnessing increasing depths of perversion. He said the public is being had by the theatre owners who enjoy an immense profit from these movies. The profit margin is so large, in fact, organized crime is into X-rated films. The Senator does not want to legislate morals, but he is opposed to the commercialism of these movies in our streets. The favorite argument is that a bill of this nature would violate citizens' First Amendment rights. However, obscene material is not under the protection of the First Amendment. The Senator stated he thinks the State and this Committee has the right and the duty to act on this social problem.

Pearl Winsor testified next in support of the bill. She drew the Committee's attention to the effects of advertising, i.e., after seeing an advertisement, portions of the public will buy the advertised product. A parallel was then drawn between the X-rated movies and an advertisement. Mrs. Winsor then talked of the health of the communities' marriages and the detrimental effect X-rated movies have on that relationship. As to the rights of the State to control what is being shown in the community theatres, she asked the Committee to consider other restrictions we in the community tolerate, such as traffic ordinances, city building codes, etc. This, she said, is not the beginning of a witch hunt.

Tim Berry, Montana Conference Seventh Day Adventists, said if the majority of the people are convinced that a distinction can be made between that which is obscene and that which is not, the laws should reflect that conviction. Berry said overwhelming evidence shows that television and motion pictures are very important in teaching values and social behavior. Remember that these movies, as in alcohol usage, affect people differently - some have higher tolerances than others. Porno can and does contribute to our social ills. Berry said there are three possible routes legislation can follow, i.e., (1) Where the mores are strong, there is no need

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for law and where they are weak, the law cannot be effective; (2) The State should limit itself to the deliberalization and prosecution of that which threatens the well-being of others, and (3) The purpose of all legislation is to protect morality . . .

Mrs. B. K. Jordan, Assistant Professor in Family Studies at Montana State University, read her testimony to the Committee regarding the negative effect of X-rated materials on the family and society in general (see Exhibit "C").

Tom Hanzel, County Attorney, Lewis and Clark County, representing Montana County Attorneys, stated the County Attorneys hear complaints from citizens regarding X-rated movies but, at this time, no law is on the books that would give them the tools to work with. We need one the people tell the attorneys something is needed. Regarding Senator Dover's amendments, Mr. Hanzel said these would be needed because of the present status of case law. Also, Mr. Kronan of the County Attorneys' Association would be happy to work with Mr. Dover and the Committee on these amendments.

Sheryl Teini, Tom Hocutt, and Rose Mary Rodgers then stood up to identify themselves and voice support of the bill.

The opponents' side was first presented by William Romine, lobbyist for the Montana Theater Owners Association, who testified at length, first from the legal standpoint, the philosophical standpoint and then the technical standpoint (see Exhibit "D"). He believes the bill to be harrassment, censorship and against adults' freedom.

Tom Keegan, representing the Motion Picture Association of America (MGM, etc.) testified in opposition, mentioning the voluntary rating system (G, PG, R, etc.) which the movie industry has today. Keegan thinks adults should be allowed to see whatever they wish in movies, while America's children are protected now by laws prohitibiting persons under 18 admission to X-rated films.

James Zion, President, A.C.L.U., testified in opposition - he covered specific sections in the bill that, to him, were unacceptable. In Section 3, Zion objects to the phrase, "specially susceptible audience", because of enforcement problems. In Section 5, objection was made to county attorneys having the duty of prosecuting these cases for the reason that a violation of that duty would make county attorneys susceptible to prosecution for official misconduct.

Dan Cossette, Portland, Oregon, in opposition of the bill, presented a news clipping to the Committee (see Exhibit "E"). Cossette maintained that in Portland, at least, the anti-obscenity law is not working.

Sponsor Dover read his proposed amendments. Mr. Taylor will bring them back to the Committee in proper form later in the week for action.

ADJOURNMENT: Chairman Stephens adjourned the hearing at 12:15 P.M.

STAN STEPHENS, Chairman

ROLL CALL

PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE

45th LEGISLATIVE SESSION - 1977

DATE: 3/8/77

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February 8, 1977 Lublic Kealth

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February 8-77 COMMITTEE ON Public Nealth (Senate) BILL NO. 341 VISITOR'S REGISTER Check One REPRESENTING Support Oppose I'm Warner BOZEMAN THEATBES Harre Thates Cyry Scani -Bozsanow-NATO moton Correll Clarege

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EXHIBIT "A"

TESTIMONY ON SENATE BILL 341

Mr. Chairman and members of the committee:

Senate Bill 341 gives communities in Montana some control on the obscene motion pictures that can be shown in their area.

At the present time there are at least 18 areas where free speech can be limited, prohibited, or in some way "censored" because this censorship is viewed in the best interest of our society. I won't go into all of them, but for example:

- 1. Speaking a prayer, reading the Hible, or giving instruction in religious matters in public schools.
 - 2. Libel, slander, defamation of character.
- 3. Words which tend to create a "clear and present danger" such as yelling "fire" in a crowded theatre.
 - 4. Words offering a bribe to a government official.
- 5. Words form a loud speaker at 3:00 a.m. in a residential neighborhood, disturbing the peace.
 - 6. Television cigarette advertisements.
- A. Despite the commitment to free speech in the Constitutions first amendment the legislative arm of the government as well as the majority of state and federal courts have always felt that there were certain types of speech and expression which society has a right to restrict, censor, or protect itself from.

The United Sates Supreme Court is responsible for interpreting the Constitution and it has consistently held that obscenity is NOT constitutionally protected speech and that the states have broad power to control the commercial production, sale, distribution, or exhibition of obscene materials. The most recent Supreme Court decision includes Mitler vs. California and the Hamling case decided

VII T D T T 12

A Psychiatrist Looks At Pornography

By Melvin Anchell, M.D.

Why showed anyone went to outline obscene movies?" a Los les IV commentator editorialized at the end of his newscast, another prefines have come under severe criticism by some gople actorare distanced by their presentation of certain sexual victies, he communed. "OK, let them express their opinions. And he don't ake then. Inc. let them stay away from them. But do nev, or I, have the right to keep someone else who is 'turned on' by these types of shows from enjoying them?"

Perhaps dus commentator believed that he was voicing what he felt is an objective opinion on pornography. But I am sure that it would be occur to him to question the right of the health department to dose down a restaurant serving a patron contaminated food.

Inc newscaster's point of view, and others like him who advocate the acceptance of pornography, arises in some measure from the most that pornography causes no social or individual harm. But my nactical opinion is that this assumption, unrelentingly promoted by pornographers, is fallacious.

The adverse effects of audio-visual obscenities permitted in today's fectuamment media are sexually devastating to children and adults, we bekef that pornography is unsuitable mental fare for children but harmless for adults is illogical. It is like saying a human being suddenly recomes immune to poison at age 18.

EFFECTS OF PORNOGRAPHY

The cumulative result of pornography on a young person is practically equivalent to the sad effects felt by the victim of a child seducer. In later life, a youth so molested fails, frequently, to make a mature justment. He remains stunted in self-love which is satisfied with mature forepleasures. In much the same way, a young person constantly exposed to oral, anal, exhibitionistic, voyeuristic and sadisticinal occurrences acts often allows these perversions to take precedence for his genital sex aim.

th adults—even sexually mature ones—pornography has a sexually egressive effect. It encourages sexual behavior characteristic of perverts.

Pornography embelishes the physical sex life of free lovers and its who find it difficult to fulfill their complete sexual needs. But lete sexuality is more than a physical relationship. To be life-standing, human sexuality must encompass the mind as well as the sex of the affectionate component is as important as the physical. Softout companionship and affection, the sex act alone produces estrations that can lead to serious sexual maladjustments. Free lovers discussed deviants are in a constant state of conflict with themselves. They project their conflicts onto others with sadistic vengeance. Whether pornography and perversion are morally "right" or "wrong"

not my direct concern here. Heave that to the moral educators of our y. My interpretations are, however, influenced by what is "correct" define the difference of the correct of the correct and anything that prematurely causes death incorrect. The regressive effect of pornography on sexual behavior brings on the country death. Any living thing — even a simple cell—that regresses

emature death. Any living thing — even a simple cell — that regresses its primitive state dies before its time. For example, at a symposium of high blood pressure, which I attended recently at UCLA Medical venter, there was a graphic demonstration of death following such a purn to an earlier type of life.

At the symposium, it was demonstrated that, under the effects of an blood pressure, "civilized" muscle cells embedded in the walls of the eye arteries may return to the primitive cell type from which they are derived. When this happens, the regressed muscle cells go wild, ey leave the wall of the artery and migrate into the lumen, shutting the flow of blood. By stopping blood flow, they cause their own with and death of the eye

On a microscopic scale, it is as though some mature individuals, inder the millionic of pornography, in our society return to the sexual chavior of the savage, and in brutal ignorance destroy not only themselves but the society of which they are a part. This frightening analogy reflects what is happening to many of our communities as a result of the prinography and sadistic violence in our culture.

NEED TO CONTROL PRIMAL INSTINCTS

imitive man glorified the sexual instinct itself; civilized man gloriphysical sex in the relationship with a loved person. Uncivilized creties readily tolerate perversion. They consider the sex life of eviants as normal.

Only by placing restrictions on primitive instincts have civilized societies emerged from barbarian hordes. Uncontrolled aggressive and exual feelings (such as murder and indiscriminate sex) which served our re-man ancestors long ago cannot be tolerated in civilized nations.

The standards of society play vital roles in the development of a enild's social conscience. He is molded from a miniature Neanderthal

Under continued pressure from free and perverted love, the dam created by civilized man's conscience begins to break. Like a rampaging flood, all the primal instincts pour forth, wrecking and submerging the structures of civilization. And the alarming increase in sexual perversion, crimes, drug abuse and suicide attests to this fatal fact.

SEXUAL DEBASEMENT IN MOVIES AND TV

A favorite argument of pornographers for showing actual sex scenes in today's movies is that people in love engage in sex. Therefore, they say, producers have an obligation to make their pictures realistic. From a psychological standpoint, their impression of realism is incorrect.

Sex is an intimate affair. Two normal people in love seek solitude during sexual relations. Ordinarily, they cannot perform or participate in sex openly or with a group. People in love are intensely jealous of their physical expressions of love, and intrusions of pornographers arouse intense resentment.

If movie producers portrayed sex realistically, they would show lovers on the screen becoming impotent when performing sex openly before an audience. Furthermore, pornographers would realize that moviegoers identify with the feelings of the characters in the story. Sitting in a theater with one's spouse, children or neighbors while having to watch the hero and heroine fornicate is embarrassing.

Another favorite dictum of pornographers is that nudity in movies and on TV is justified because nudity is an art form. They say that modesty in regard to the naked body is oil-fashioned. In art, however, beauty of the entire nude body is the point of emphasis. On the other hand, the pornographer's emphasis on nudity focuses attention on the genitals and sexual activities related to these organs. Pornographers are not interested in promoting higher artistic values; they are selling erotics.

Concealment of the genitals in everyday life keeps sexual curiosity awake. Perhaps this is why the sexual instinct is most highly developed in man. According to anthropologists, one of the characteristics that distinguishes man from all other creatures is that a human being wears clothes.

Normally, public displays of nudity and sex cause embarrassment, they rouse feelings of diagust and shame. These feelings are natural barriers to perversion. They are fixed by heredity and occur without help from society and family. When disgust and shame fail to function, the subconacious reaction for shunning the abnormal and providing protection against contamination is lost.

Under the barrage of pornography, the natural barriers to perversion are destroyed and the individual becomes defenseless.

A CASE HISTORY

Marty, age 17, came to me for treatment of his recurrent headaches. My experience as a father and as a physician practicing psychiatry has given me a certain rapport with teen-agers; and it was not long before Marty discussed with me his real problem.

It had begun four years previously, when Marty was in junior high. The son of affluent, professional parents, he was not only a bright student but was popular as well. One afternoon another 12-year-old boy invited Marty and a group of schoolmates, boys and girls, to come to his home to view a movie which his parents showed at grownup parties. Since every young person's ambition is to prove that he can act like an adult, he had an eager audience while he played host during his parents' absence.

The movie turned out to be hard-core pornography, graphically depicting sexual intercourse along with every type of perversion. After the initial embarramment, the majority of the children were completely seduced. They attempted to outdo the adults in the movie then and there.

By the time he entered high school, Marty told me, his earlier promisculty had ceased because he no longer "got a kick out of it." His problem, he said, was that he was impotent. For sexual stimulation, he now needed drugs. At present, he is a school dropout, finding release in drug-induced sexual fantasies.

NORMAL SEXUAL DEVELOPMENT STUNTED

in there any hope for Marty to return to a normal life? It is most improbable. You cannot stretch the bones of a dwarf. A dwarf's subnormal size is due to premature closure of the bones in childhood Marty's impotence was due to his sexual growth having been stunted before mature development occurred in adolescence.

Likewise, adolescent girls engaging in premature sexual relations fail to develop their female psychology and to feel pride in femininity. For both boys and girls, chastity during adolescence is essential for developing the capacity to idealize love.

Marty's experiences with pornography sated him with sex before the process of idealization was established in his relations with guls. As a result he holds girls in contempt. His unresolved affectionate longings have built up a continuous succession of frustrations. His hitterness and disappointment with carnal sex devoid of spiritualization have created such a received of hate for females that his sadism is almost fiendish

EXHIBIT the Consmittee 7/VE1 nalege The healt peler no Seweng ju van Seweng ju van de Ohaer de Ach. of N-Ec White and experiencing a breakdown in the --in Danily & Chair Sulting Thek's ard experiencing a breakdown in the process of making human beings human. . . by softing our priorities elsewhere and putting children and families last, by . Taiding one set of values while pursuing another. We leave our children beself of standards and support and our oun lives impoverished.

The protest of me do not contour bute to the protest of me reaking human beings himm Allpurt says it it not possible to "leave the teaching of values to the home and anusch. Schools can't do much of anything. . . " It is a position that is entenable. If the abhool does not teach values it will have the effect of dunying them. Children and adolescents are in a questioning stage. If

is entenable. If the abhool does not teach values it will have the effect of denying them. Children and adolescents are in a questioning stage. If the achool never mentions honesty, modesty, charity, or reverence. . . they will be persuaded that, like many of hitheir parents ideas, they are simply old hat, and later become critical of the teaching of both parents and the church.

He will also be thrown on pear values more completely with their emphasis on the hudenism of parties, destructiveness of gangs; bemore at the mercy of the consets values paddled by movies, TV, and disk jockeys. Also some homes give the child no fundamental value training, so the school may be his only thanks or finding othical anchorage.

/ Pakers, to berrow Whitehoad's term, are "matters of importance" as distinct

Busing embrancer again points to the development of theory and research which would be respectable scientifically, but requires that we take into account these variables and those systems which do, in fact, shape the behavior and dynalogeant of a human being.

James Adams writes that adelescence is important in the determination of the individual's lifelong value system, because at that time several variables determine whether the adelescent will adopt a principled level of morality or remain at a conventional level, where judgments are made on the basis of obedience to authority and conformity to the social order. At the principled level (see attached sheet of Kohlberg's Stages of Moral Development) the individual makes judgments according to the universal ethical principles based on the rights of the individual and the value of human life. p. 195.

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SENATE BILL # 341

Mr. Chairman, my name is William L. Romine and I represent the Montana Theater Owners Association and we oppose passage of Senate Bill #341.

To begin with, it must be recognized that Senate Bill 341 does propose censorship. Call it what you may, the intent of Senate Bill 341 is to prohibit the expression of certain ideas and to prohibit adults from voluntarily seeing certain expressions of idea. This is censorship.

When we approach any piece of legislation as substantial, and as controversal as the intent of Senate Bill 341, we must first look to the basic laws of the land. In this instance, we must look to the Montana Constitution. The 1889 Constitution provided, in relevant part, that no law shall be passed impairing the freedom of speech. The present Montana Constitution also makes a declaration concerning the rights of the people of Montana, but Section 7 of Article II of the 1972 Constitution contains different language than the language of the 1889 constitution. The present Constitutional provision provides as follows:

"No law shall be passed impairing the freedom of speech of expression."

It should be noted that there are differences between the older Constitutional language and the present constitutional language. The older constitutional language only applied to freedom of speech. The present constitution includes not only freedom of speech but also freedom of expression, and provides that no law shall be passed impairing such freedom.

We also have under the new constitution a new declaration of rights, not found in the older constitution. This is Article II of Section 10 which states as follows:

"The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest."

The right to attend a theater to see a movie which has been rated R or X and which may be to some individuals objectionable, is a right of privacy and a right of individual choice. Unless there is a showing, under the constitution of a compelling state interest, I am entitled to exercise my right of privacy.

Aside from constitutional law should take a look at the existing Montana Statutes. In 1973, the Montana Criminal Code was passed as a result of the Criminal Law Study Commission which has spent many years in preparing the code. It prohibited obscenity only when it was specifically directed to a person under the age of eighteen. It was quite similiar to the Illinois Criminal Code (1976) (1976)

over still-thriving porno business Portland police, DA at loggerheads

BY LESLIE NUDELMAN Special writer, The Oregonian

attorney do not agree on whether the ty law, but the police and the district business is thriving or dying. adoption of Oregon's new anti-obscenimains alive in Portland 18 months after THE PORNOGRAPHY business re-

long dollar business here, along with confentions that projeculon by the 41st trick actorines has not been remarks whice that posnography is a making it. There have been estimates by the

pureaula special investigations diverson said insulfacioni enforcement of the law passed the law, which took effect in is "an exercise in hypocrisy" and in "complete disregard" of the voters who Capt. Howman Reduct of the police

give stiffer penalties. prosecute more cases, and for judges to control the paraography business is to He contends that the only way to

Multnomah County Dist. Atty. Harl

MISSPEAK CONFERENCE TO apologize For Self... Called THIS PRess NO MY

Hass acknowledges that his office has not committed large budget amounts for anti-purnagizably prosecution.

have the staff to assign 15 or 30 deputes the tapping the police. He declared word stabulat put salidation family, verely limited persexues budget. I don caseload since last year and with a se "With a 23 per cent increase in our

operators should make them "relatively as, however, said the level of risk to the their doors to: Ray of prosecution. Rel lems within the industry." mainly due to competition and "probcomfortable" here, and that closures are plans contracts some someraphy

office total of some 13,000 misdemeanen obscenity cases, compared with the or and 4,600 felony prosecutions. 1975, has prosecuted lewer than a doz-Haas' office, since the beginning of

one individual defendant. and a \$250 fine and 30 days in jail for fines of \$5,000 against two corporations tions. The penalties included maximum scenity cases have resulted in convic-Records show that at least four ob

sage parlors and dissemination of "obtheaters and adult shops. scene" books, magazines and films in shows, illegal sexual activity in massor, is aimed at prohibiting live sex law, of which Haas was a prime spon-Oregon's current anti-obscenity

by some 40,000 votes in November ers by petition and ultimately approved Legislature, but was referred to the vot-The bill was passed by the 1973

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ly without restrictions on pornography 1971 and 1974, as the only state virtualhad distinguished Oregon, between The new law replaced one which

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sale or distribution of observe material phase of observity investigation.

there are 11 bookstores and 12 to 15 theaters here making "hundreds of thousands of dollars a year" from for

crime controlled many of the city's op-grenity outlets and warned that Por-hand could become a haven for portuos were bassed. police seemed to agree that organized nography
When Hass was promoting passage
of the anti-obscenity bill, he and the were passed.

ever, have ever produced clearcut evidence of an organized crime connection. Neither Haas nor the police, how-

owner of the outlet. those suspected of disseminating obnot, a major problem in prosecuting scene material is to identify the true Whether the connection exists or

listed on business and corporation liships or individuals which remain "hidmay be run by corporations, partnercenses and other documents. den" through the use of other names Haas said the shops and theaters

 kid off Burnside making \$2.25 an hour" as a shop clerk. profits, rather than simply "arresting a real owner, the person who makes the He said the problem is to get at the

and the cases cannot be prosecuted. owners' identities. In some cases, they other witnesses in an effort to establish terviewing handwriting experts and time is spent checking records and insaid, the owners cannot be identified Stahancyk explained that substantial Haas and Deputy Dist. Atty. Jody

the owners is the key to successfu Haas said that although identifying ution the police have generally

Reiter said that despite the new law hancys, is the legal definition of ob-

and the Supreme Court have had years, you can imagine what the proces are up Country the said, "It lawyers of difficulty deciding what is thesend

ing to hirers and asks them to make scenity cases, including the one against the film "Deep Throat" which resulted cyk, who has prosecuted several ob censorship," according to Ms. Stanap "moral judgments." in acquittal. She said the law is confus-Jurors have an "immediate fear of

public sentiment generally falls into such activity banned; those mainly ofabout pornography outlets, and that pose any form of censorhip as an infringement on freedom of expression. the downtown area; and those who opfended by the garish yellow fronts in Hass said he receives "a lot of calls"

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CARROLL COLLEGE

HELENA, MONTANA

59601

February 8, 1977

Senator Stan Stephens, Chairman Senate Public Health Committee State Capitol Helena, Montana 59601

Dear Senator Stephens:

Just a short note to let you know, and hope you would relay to the entire committee, I wholeheartedly support Senate Bill No. 341.

As a person who has worked with young people my entire professional career, I find it extremely important that our society give young people good models so they can form sound value systems. I cannot see where obscene movies do anything but detract from that system.

It is high time the adults of this society begin to recognize that things like obscene movies and literature do have a profound effect on our young people. It is time to take action and Senate Bill No. 341 is a step in the right direction.

Sincerely,

Dean G. Roberts, Dean of Students

Jan Bhilast

DGR/f

MANNERS, MODES AND MORALS

We often hear it asserted that change is vital to progress, a proposition that only the unwary will accept at face value, yet one that nevertheless has gained widespread acceptance in recent years. Change must not be accepted uncritically, no matter who advocates it, but should be supported only if it appears reasonably likely to be for the better.

The radical changes that have occurred in contemporary life and that are continuing to occur are nowhere more evident than in our manners, our fashions and in our morals. The question is whether these changes have produced an improvement in the human condition.

It's a long way from the few-seconds time limit on kisses imposed by the Havs office on movie producers to the sex, nudity and perversion paraded across the silver screen in today's skin flicks. Change? What else, but is it good? Young and old are deluged with sex from newspapers, magazines, radio, television, movies, stage and books of the grossest vulgarity and "utterly without redceming social value." to quote one of the three criteria cited by the U.S. Supreme Court in its decision that opened the floodgates to the carrieral ergy.

There are those who primise that the pornogtages texts will cleanse our minds and souls of these horned old Puritan inhibitions that have tormented us so long, and then we will live happily ever after. Perhaps, but meanwhile, what are we going to do about the staggering increase in venereal disease and the other manifestations that either the cure isn't working out as intended or that it is going to take a lot longer than expected.

Change is all too visible in the decline of manners, in the ordinary courtesy which, because it is based on consideration for others, benefits everyone. As Emerson wrote, manners make for happiness. It's just possible that Saint Paul had the right slant when he advised the Corinthians that "evil communications corrupt good manners."

Rampant extremism is not confined to the ideological arena. It has also overwhelmed the world of fashion along with the arts and for that matter most areas of human activity. There was once a time when extreme styles were taken up by a mere handful of devotees of the entre. Today these are approaching if indeed they do not already constitute a majority, and that includes a lot of people over 30. Individualism is a wonderful thing, and we are all for it. So, too, is a little regard for the fitness of things.

It strikes us that the time is now for a charge — a change to good manners, good taste and good morals.

THE ELKS MAGAZINE APRIL 1971

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