

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By BRUCE D. CRIPPEN, CHAIRMAN, on February 8,
1995, at 10:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 83
Executive Action: SB 218, SB 167, SB 286, SJR 6, SJR 10,
SB 149

EXECUTIVE ACTION ON SJR 10

Motion/Vote: SENATOR AL BISHOP MOVED TO ADOPT THE AMENDMENTS AS
CONTAINED IN (EXHIBIT 1). The MOTION CARRIED UNANIMOUSLY on oral
vote.

Motion/Vote: SENATOR BISHOP MOVED THAT SJR DO PASS AS AMENDED.
The MOTION CARRIED in a show of hands vote with SENS. MIKE
HALLIGAN, REINY JABS AND LINDA NELSON voting "no."

EXECUTIVE ACTION ON SB 149

Motion: SENATOR BISHOP MOVED THAT SB 149 BE AMENDED BY STRIKING SUBSECTION 3, SECTION 1.

Discussion: CHAIRMAN BRUCE CRIPPEN told the committee that the sponsor had agreed to this change because the language was redundant. Also, he would change the title.

Vote: The MOTION CARRIED on oral vote, with SENATOR HALLIGAN voting "no."

Motion: SENATOR STEVE DOHERTY MOVED THAT SB 149 BE AMENDED TO DESCRIBE WHAT THE BILL DOES, USING THE WORD "ABOLISH" OR "DISALLOW."

Motion: IN A SECOND MOTION, SENATOR BISHOP MOVED THAT SB 149 BE TABLED.

Discussion: SENATOR BISHOP said that it has been revisited many times in court and he did not think they should tamper with it. He feared lawsuits.

SENATOR RIC HOLDEN asked to vote on the bill and to move on.

Vote: By a roll call vote, the MOTION FAILED on a 5-5 vote.

Motion: SENATOR DOHERTY MOVED AN AMENDMENT TO STATE, "ABOLISH THE RIGHTS OF MONTANANS TO FULL LEGAL REDRESS."

Discussion: CHAIRMAN CRIPPEN disagreed with the amendment, finding the language too strident. This compounds the issue, he said.

Motion: SENATOR HALLIGAN MADE A SUBSTITUTE MOTION TO REPLACE THE WORD, "ABOLISHING" TO "RESTRICTING".

Discussion: SENATOR RIC HOLDEN spoke against both ideas. It would sound nicer, but the effect would be as bad, he said.

Vote: By a roll call vote, the MOTION FAILED by 5 to 6.

Motion/Vote: SENATOR SUE BARTLETT MOVED TO AMEND SB 149 BY STRIKING THE WORD, "WORKMAN'S" AND INSERTING THE WORD, "WORKERS". The MOTION CARRIED unanimously on oral vote.

Discussion: CHAIRMAN CRIPPEN said that the problem is the wording. The language on Page 2 does not pertain to the language on the bill.

Valencia Lane stated that notice needed to be given to people who are voting on the bill and eventually who will be voting on the

amendment, of what they will be doing and what the effect would be if you take out the words, "this full". This would need to be stated in the title as well as in the for and against clauses, she said.

SENATOR BISHOP asked the committee to imagine what the consternation and confusion would be to the voters on something like just taking two words out of the Constitution? He agreed with **SENATOR DOHERTY** and said they should tell people exactly what they're doing.

SENATOR HALLIGAN said if they were going to tell the truth, the truth would be that they don't need the bill.

Valencia Lane suggested they use the word, "clarify" to amend the Constitution.

CHAIRMAN CRIPPEN decided to consult **SENATOR EMERSON**, the sponsor, before any further proceedings.

EXECUTIVE ACTION ON SB 218

Discussion: **CHAIRMAN CRIPPEN** asked the committee to look at Page 4. He said concern had been raised by the landlords that some of the time periods were in question. He asked **Melissa Case, who represents Montana Peoples' Action**, to speak on the bill. He said he thought they wanted to go back to the 14-day period for late payment. If the renters were late three times in one year, it would be tantamount to non-payment.

Melissa Case said that this was one of the major problems that the landlords had. She did not think they wanted to go from 90 to 30 days.

CHAIRMAN CRIPPEN said that the courts had been viewing this as 90 days, which had not been the legislature's intention two years ago. There were reasons to reduce the time limitations, and non-payment was certainly one of them. They had gone to 15 days for that, he said.

Melissa Case asked if he meant on Sub. B, she asked? He agreed. She said they would be amenable to something like 30 days. She thought 15 days was too short. On Subsection E, it talked about two or more violations in a 12-month period, and she said they would agree to have it remain as is, 90 days. If there was a proposal to decrease it, they would have a problem.

CHAIRMAN CRIPPEN asked about Sub. G., which discusses peaceful conduct. It had been 30 days, and a good argument was made for 14 days, he said. He thought they were in agreement on this subject.

SENATOR LARRY BAER said he would not agree. He asked the committee to read 70-24-422 where it provided for a five-day notice if the tenant is habitual in this type of breach. This would apply if they are renting the trailer and the land; 15 days would be provided if they're only renting the space. He saw a significant problem for the landlord having to wait 90 days to remove a habitual offender. He said it would be an overbearing hardship. He was referring to Line 9, Page 4.

CHAIRMAN CRIPPEN said they were trying to strike a balance. The problems were: 1) late payment of rent and 2) two or more violations within a 12-month period. His recommendation was to leave (e) at 90 days but on (b) to move it down from 90 days to 30 days because if they would not pay, they would be out in 14 days anyway.

SENATOR BAER said he would prefer 30 days in either situation and no more.

CHAIRMAN CRIPPEN said he would oppose that on (e). In a show of hands it was determined to change (b) to 30 days.

Greg Van Horssen said SubSection E., Line 16, regarding 90 days written notice for two or more violations of the same rule, he rearticulated conversation of the previous day and stated their concern in the lengthy period of notice for a repeated rules violator was for the well-being of the community. Peace and quiet is sometimes destroyed by a barking animal of other rules violation. Three months must pass while neighbors put up with the problem. In the interest of peace, needs and wants of the complying members, he suggested modifying this down to 14 days.

CHAIRMAN CRIPPEN said many of those rules would be covered by rules in the court. He said he thought 90 days would be sufficient.

SENATOR BAER said the issue was a contractual obligation where two parties had already agreed to the rules and one party keeps breaching the contract by violating. It would penalize the non-violating party by extending the time period. It would not be equitable, he said.

SENATOR NELSON said she would like a compromise.

It was decided to change Page 4, Line 9, Subsection (b) to 30 days.

Valencia Lane explained the marking on Page 4. Line 12. Where she had 14 days under 422(1), it should be three days, under 422 (3). On Lines 6, 12, 15, 18, 21 and 25 there are words written for clarification for applied time limits. The written-in words are amendments, she said.

Motion/Vote: SENATOR BISHOP MOVED TO ADOPT THE AMENDMENTS AS

CONTAINED IN (EXHIBIT 2), Items 10, 11, AND 12. The MOTION CARRIED unanimously on oral vote.

EXECUTIVE ACTION ON SB 167

Discussion: CHAIRMAN CRIPPEN said the problem with the bill was the listing of specific mandates in the bill. He was concerned that the legislature would interpret the list to be all-inclusive. He thought the sponsor was agreeable to amending this list out. The language on Page 5, Line 3 would read, "federal statutes as accorded in the U.S. Constitution that imposes mandates on state or local governments." The Chairman thought it was broad, but it would give all the discretion to the legislature and the Governor to reject or accept the mandates.

Valencia Lane clarified that the committee was working with the grey bill dated February 1, 1995.

Motion/Vote: SENATOR HALLIGAN MOVED THE AMENDMENTS ENCOMPASSING ALL OF SUBSECTION 3, PAGE 3, AND INCLUDING LINE 3 OF PAGE 4 TO ELIMINATE THE "LAUNDRY LIST". The MOTION CARRIED unanimously on oral vote.

Valencia Lane explained that there were two sets of amendments. One was requested by the sponsor and prepared by David Boyer dated February 2, 1995 which do everything seen in the grey bill.

Motion/Vote: SENATOR BISHOP MOVED TO ADOPT SENATOR BENEDICT'S AMENDMENTS NUMBER 016702 DATED JANUARY 31 AND TO CHANGE "OBPP" TO "GOVERNOR". The MOTION CARRIED unanimously by oral vote.

SENATOR HALLIGAN said that his understanding of the amendments were that they would drastically reduce the fiscal note of the bill because of the removal of reporting requirements.

Valencia Lane explained that on Pages 14 and 15 of the grey bill, the sponsor's amendments which they had already adopted, struck references to the Legislative Council and the Office of Legislative Fiscal Analyst. She asked permission to strike the definitions if they were not in the bill. It was determined that this would not require a motion. She further questioned Page 4, Lines 12 and 13, the language should read "future mandates" and not just mandates on the date the bill was passed.

Motion/Vote: SENATOR HOLDEN MOVED THAT THE BILL BE AMENDED ON PAGE 2, LINE 28, FOLLOWING "MANDATES" INSERT "EXISTING ON OR ADOPTED AFTER THE EFFECTIVE DATE OF THIS ACT THAT ARE IMPLEMENTED IN MONTANA." The MOTION CARRIED unanimously on oral vote.

Motion: SENATOR NELSON MOVED THAT SB 167 DO PASS AS AMENDED.

Discussion: SENATOR HALLIGAN asked Ms. Lane for her interpretation under the supremacy clause of the Constitution, were they talking about mandates that would pre-empt state law or just those not under the enumerated power. He was unclear about what federal mandates they were talking about. Pre-empted federal laws may be totally handled by the federal government, but they aren't always paid for, he said.

Ms. Lane said she would have to look at the amended bill before rendering an opinion.

SENATOR JABS said that testimony had indicated that on Page 1, Line 26, the language could be challenged in court. He wondered about the difficulty.

CHAIRMAN CRIPPEN said that anything could be challenged in court, whether or not it would prevail was something else again.

SENATOR NELSON said that this had been an exercise in frustration. She doubted that anyone really knew what was going on with this bill. She said it was not their obligation to clean bills up that were "messed up."

CHAIRMAN CRIPPEN explained that the sponsor would have preferred they pass the bill as it was, but the chairman had preferred to give everyone some input into the bill.

Valencia Lane went over the following amendments as she understood them: 1) SENATOR BENEDICT'S amendments which created his February 2 grey bill, 2) stripped the listing of mandates, 3) changed amendments to say, "Governor," instead of "Office of Budget and Program Planning", 4) given her the authority to remove the definition of Legislative Council and Legislative Fiscal Analyst if necessary, and 5) clarified that this should apply to future mandates, not mandates existing.

SENATOR BARTLETT said that some items were unclear, and she intended to vote against the bill because she wanted the opportunity to read a bill that reflects all of the changes made before reaching a final decision. She further requested that should the bill pass the committee, she would like the second reading to be held up after the second reading bill had been available to the public for one full day.

CHAIRMAN CRIPPEN said it was standard procedure. He said they could not accept a grey bill on the floor.

SENATOR BARTLETT said she would like a yellow copy of the bill available for (1) 24-hour period before the second reading debate takes place from the time the printed yellow copy bill reaches the distribution office of the Senate.

CHAIRMAN CRIPPEN said he had no problem with that.

Vote: The MOTION CARRIED by a roll call vote, with SENS. BARTLETT, DOHERTY AND HALLIGAN voting, "no".

{Tape: 1; Side: B; Approx. Counter: 00}

EXECUTIVE ACTION ON SB 286

Motion: SENATOR HALLIGAN MOVED THAT SB 286 DO PASS.

Discussion: SENATOR HOLDEN asked SENATOR HALLIGAN about a "Sassy" file and he wondered why it was significant.

SENATOR HALLIGAN said that the amendments requested were not appropriate for the case, but rather for paternity cases. The suggestions could not be included under the title, he said.

Vote: The MOTION CARRIED unanimously on oral vote.

EXECUTIVE ACTION ON SJR 6

Discussion: Valencia Lane explained that SENATOR BROWN had passed out two possible amendments, one would clarify that the adoption of this resolution does not constitute an application for a Constitutional Convention. The other was possible amendments to increase the size of the delegation from five to seven. SENATOR LORENTS GROSFIELD had asked her to prepare the first amendment. It is numbered sjr0601.avl.

Motion: SENATOR GROSFIELD MOVED THE AMENDMENT.

Motion: SENATOR DOHERTY said he intended to vote for the amendment, but the comments of Gary Marbut and Betty Babcock in this uncharted area would be wise to be remembered. This may give some degree of comfort, he said, but we may well end up with a Constitutional Convention.

SENATOR BAER said he had prepared an amendment, as well, that may be included in a substitute motion, if they wished. He would add as a Subsection 7, "in no way does this resolution express nor imply an intent or desire for its evolution into or instigation of a Constitutional Convention, the convening of which this resolution definitively opposes.

SENATOR BISHOP likes the proposed amendment a lot better, but the drafter should have some liberty to work with it.

CHAIRMAN CRIPPEN read, "the legislature of Montana opposes any possibility of the Conference of States evolving into a federal Constitutional Convention."

SENATOR HALLIGAN said that one of **Mrs. Babcock's** concerns was that the representatives that are sent might be considered as "delegates" and they should make clear participants are not considered delegates in a convention capacity.

Valencia Lane said that they could go ahead with **SENATOR BAER'S** sentence, then added, "the Montana delegation is not authorized to participate in a federal Constitutional Convention."

CHAIRMAN CRIPPEN said they would include that language into the amendments.

Motion/Vote: **SENATOR HALLIGAN MOVED TO ADOPT THE DISCUSSED AMENDMENTS.** The **MOTION CARRIED** unanimously on oral vote.

Discussion: **SENATOR DOHERTY** said the amendments would stipulate that rather than have private corporations underwrite the trips to the Council of the States to discuss changes to the Constitution, state general fund money be used. He said that no one should accept private money for meals, travel, etc.

Vote: The **MOTION CARRIED** on oral vote with **SENATOR HOLDEN** voting, "no."

SENATOR DOHERTY suggested that instead of the president and speaker appointing both members of the delegation from each party, he thought that it would be better perhaps if the president and the minority leader and the speaker and the minority leader get to make the appointments.

SENATOR BARTLETT said that in several instances where there is to be representation by both parties, there are exactly those kinds of provisions, and would support the proposal.

CHAIRMAN CRIPPEN said his suggestion was to have the Committee on Committees do it.

SENATOR HALLIGAN stated that **PRESIDENT BROWN** was going to be acquiescing to him anyway, so he thought he would not oppose the amendment.

SENATOR BAER stated that **PRESIDENT BROWN** had expressed his desire to keep the bill as uniform as possible to remain compatible with other states to eliminate mistakes. He agreed with the amendments but did not think it should be incorporated into the bill.

SENATOR BARTLETT said the amendments just adopted with **SENATOR BAER'S** language included caused this resolution to vary from the model resolution sent out. She agreed uniformity might be desirable, but said the states expressing their own individuality should not flaw the process.

Motion/Vote: SENATOR DOHERTY MOVED THAT THE APPOINTMENTS BE MADE USING THE STANDARD LANGUAGE WITH THE PRESIDENT AND SPEAKER APPOINTING ONE AND THE MINORITY LEADERS OF EACH HOUSE APPOINTING ONE AS WELL. The MOTION CARRIED unanimously on oral vote. (EXHIBIT 3)

Motion/Vote: SENATOR HALLIGAN MOVED THAT SJR 6 DO PASS. The MOTION CARRIED unanimously on oral vote.

{Tape: 1; Side: B; Approx. Counter: 13.8}

HEARING ON HB 83

Opening Statement by Sponsor:

REPRESENTATIVE JACK HERRON, House District 77, Kalispell, sponsored HB 83. He said it was a "must" bill, and in his estimation, the most important piece of legislation in the 1995 session. He said that Montana did have a current obscenity law on the books, providing that, "a person commits the offense of obscenity if he purposely or knowingly advertises or otherwise promotes the sale of obscene material, or materials' representative or held out by him to be obscene." He characterized the problem with the old law to be the "him" who is the one who distributes. He told the committee that all HB 83 would do it to bring existing law into conformity with 45 other states with federal obscenity laws and is a document for the local attorneys to use successfully in prosecuting serious sexual crimes. It is important for Montana to conform with the rest of the country because: 1) Obscene material is produced and distributed by organized crime. 2) Organized crime exploits women and children for profit. 3) Profits of obscene material diverted approximately \$10 billion into other things like the importation of drugs back into our communities. He said it was the business of government to protect the people. Obscenity and crime have a direct correlation, he said.

REPRESENTATIVE HERRON told the committee that J. Allan Bradshaw, County Attorney, Granite County, was unable to appear but sent comments. (EXHIBIT 4) He said also included in the packet he submitted are testimony from professional law enforcement officers, victims, psychologists, inmates from the Montana State Prison and others. (EXHIBIT 4). There are several other related bills in this session, he said, concerning DNA testing and lifetime supervision for sex offenders, but this bill would deal with prevention. He thought Governor Racicot would support this bill. He said there was some misinformation going around that the bill would do away with people's rights, even their Playboy and Penthouse magazines and art shows. He encouraged the panel's support.

Proponents' Testimony:

Dallas Erickson, President of Montanans Citizens for Decency

through Law, Inc., said the organization he represented was a non-profit, Montana-funded corporation. He read testimony from Page 2 of (EXHIBIT 4).

Len Munsel, Executive Director and General Counsel at National Family Legal Foundation in Phoenix, Arizona, represented hundreds of Montanans who requested that he appear to speak to the Constitutionality and the public policy basis for HB 83. He is the co-author of a 350-page manual for prosecutors on how to enforce obscenity laws. He said he had trained thousands of prosecutors around the U.S. on how to enforce the obscenity statutes in those states.

He said there could be no serious debate about the Constitutionality of the bill because it was taken word-for-word from the definitive U.S. Supreme Court decision of Miller vs. California, a decision now 22 years old. Every word of that decision has been challenged again and again by the \$10 billion a year organized crime-controlled hardcore industry. There was a substantial body of case law, he said. It is the law in 45 states today. He said the arguments that the statute was vague and overbroad were amazing. He maintained that there was no Constitutional defect in the law.

He said experience had shown that this statute could be both effective and enforceable. There is a higher conviction percentage in obscenity cases than in murder and rape cases. He said they hear of the "chilling effect" on libraries and art, but he asked the committee to examine the laws of other states, and ask themselves if there was art in Utah, California and Idaho?

He said that basically HB 83 would give state prosecutors the same tools to fight the crime industry as the federal prosecutors already have. The federal law, taken from Miller vs. California, is in effect today, in Montana. It is already a felony under the federal law to distribute obscene material. The statutes do not affect libraries or art because there is a specific provision written in by the Supreme Court to protect art. It could not possibly affect an "R"-rated movie, and prosecution would not happen by virtue of the definitions, which are a three part test. The first part is that it must depict specific sex acts defined in the law in a patently offensive manner. Mere nudity is not enough, but must include the camera focusing in on the genital activity occurring. Secondly, the material as a whole has to be intended to appeal to the prurient interest, the shameful morbid interest in sex.

Mr. Munsel spoke about freedom. In the last election, he asked if people had not spoken to legislators asking them to get government out of people's lives. He said, generally, they did, but this particular issue is a crime issue. He used the example of drugs. He said we should not repeal drug laws because they are used by consenting adults and it is not the business of government to interfere in personal freedoms. There is no

mandate for the removal of this kind of legislation, he said. He quoted a survey in which 60 per cent of the respondents said that the breakdown of the family and moral issues in nature were the primary problems facing this country today while 33 per cent said the problems were economic in nature.

Rodney K. Smith, Dean and Professor of Law, University of Montana School of Law, appeared before the committee as a Constitutional lawyer, husband and father. He asked that his views not be attributed to his employer. His testimony, which he submitted and read, supported HB 83 and deemed it enforceable. (EXHIBIT 5)

REPRESENTATIVE LOREN SOFT, House District 12, represented Yellowstone Treatment Centers as President and CEO, saying that the organization treated emotionally disturbed children and adolescents. He said he had served this cause for the past 34 years. He supported HB 83 because he believed it accurately represented the majority of the constituents in his district. It represented what he believed to be the heartbeat of citizens across America. The two primary purposes of government, he said, were: 1) to promote justice and 2) to protect its citizenry. All government legislation has moral and ethical ramifications, for example, in stealing the private property of others, murder, how people drive their cars on the highway because it poses a safety danger to other people, and environmental issues. He maintained that legislators should not interfere in matters of private ethics or morality, UNTIL the very moment an adult involves someone else whether an adult or child, that is abusive or degrading in any way, and then the issue is no longer private, rather a social issue. He said the bill would protect women and children from the emotional, physical and sexual abuse perpetrated by the distributors, producers and sellers of hardcore pornography. This is a tough-on-crime issue. 30 years ago he felt the country had experienced a societal desensitization revolution. He said he was sent to the principal's office for spitwads, chewing gum and seeds. Now, he said, it's guns and drugs and sexual assault in the library. In his work in human services as a child care worker in a residential group care facility, he said that 85 per cent of the boys in the program have been physically and sexually abused. Nearly 100 per cent of the girls have abused in the same way, and many are prostitutes. Many times the abuse was caused by members of their family, or extended family. In a number of the cases, he stated that hardcore pornography was evident in the home situation. He said that loss of social consciousness on right and wrong weakens informal social controls and unleashes criminal impulses. He asked the committee to seize the moment on HB 83.

Jim Ramsey, Missoula, spoke in support of the bill. He said he had been a therapist in Missoula for the past 25 years. He said that the bill was not a blue-nosed bill nor an issue of morality, but a bill dealing with health and safety. **Mr. Ramsey** said that he wished the committee could sit in his office or that of Dr. Scolatti, Phd., Clinical Psychologist (see EXHIBIT 4) working

with sex offenders. He thought if they could hear their clients, they would have no doubt that this bill was designed to protect people from crimes. He talked about small children "finding" hardcore pornography in homes and he said they become profoundly affected by it, contaminating their minds and rotting their souls. He said it becomes a safety issue in that deviant sexual crimes are performed in close proximity to where the perpetrator has become aroused, perhaps at an adult outlet. He urged the committee to enact the law that would outlaw illicit pornography.

Jeb Standfill, President, Helena, Montana Stake of the Church of Jesus Christ of Latter-day Saints read written testimony. (EXHIBIT 6)

Gary Randall, Senior Pastor of the Florence Baptist Church in Florence Montana, read written testimony. (EXHIBIT 7)

REPRESENTATIVE DAN MCGEE, House District 21, Laurel, said that he, too, was a victim. He quoted Ted Bundy, a convicted and executed serial rapist and murderer, "society needs to be protected from itself because there are forces at loose in this country particularly about the violent pornography, where on the one hand, well-meaning, decent people will condemn behavior of Ted Bundy, while they are walking past a magazine rack full of the various kinds of things that sent young kids down the road to become Ted Bundys. . .there are many kids playing in the street today that will be dead tomorrow and the next day, and next month because other young people are reading the kind of things and seeing the kinds of things available in the media today."

REPRESENTATIVE DUANE GRIMES, House District 39, Clancy, spoke for the passage of HB 83. He said a newspaper editorial he had written has been distributed already to the committee. (CONTAINED IN EXHIBIT 4) He told the committee that this bill was not only a crime issue, but a money issue. Video stores selling the type of material discussed could make anywhere between \$3,000 and \$4,000 a month in revenue, which could provide quite an incentive and he hoped it would be part of their decision.

Informational Testimony:

John G. Thomas, Chairman, Montana State Parole Board, gave informational testimony on HB 83. He explained procedures, facts and findings concerning the issue. He said over 400 inmates out of 1,300 were housed at the prison because they had committed a felony sex act. They knew in speaking with the prisoners that they had been very involved in pornography. They require that each sex offender does an educational phase, called Sex Offender Program 2, and then further phases, before parole is considered. The board excludes them from having any pornography in any form whatsoever and violation deems a hearing to review their prisoner status. They do not release inmates until they have a comfort

level to do so and they consider it their responsibility to protect society from the predator nature of many of these men and women. He thought HB 83 was a critical bill, but said their Board did not take a position.

Proponents' Testimony:

Arlette Randash, representing the Eagle Forum as a Family lobbyist, supported HB 83. She read from written testimony. (EXHIBIT 8)

Terry Crooks, Libby, represented himself. He presented written testimony. (EXHIBIT 9)

Sharon Hoff represented the Montana Catholic Conference and liaison for Montana's two Roman Catholic Bishops. She spoke in favor of HB 83 and read from written testimony. (EXHIBIT 10)

David Hemion, representing the Montana Association of Churches, read prepared testimony. (EXHIBIT 11)

REPRESENTATIVE PENNY ARNOTT, House District 20, Billings, testified on behalf of HB 83. She felt she was elected to stand tall and straight in favor of decency. She had toured the Montana State Prison in the past week where the director said that they are seeing an increasing number of sexual offenders which concerns the prison officials. She said HB 83 would create measures that would prevent sexual offenses which would greatly outweigh the cost of incarceration.

Betty Hubrich, Missoula, represented herself and her six children. She read from written testimony. (EXHIBIT 12)

{Tape: 2; Side: B; Approx. Counter: 00}

Kathleen Holmer, represented herself. She said that she was a volunteer with the Boy Scouts of America program, and that pornography negated everything she did as a volunteer. She presented written testimony. (EXHIBIT 13)

Barbara Henry, Great Falls, coordinator of an anti-obscenity group, rose in support of HB 83.

Linda Trout, President of the Ravalli County Citizens for Decency through Law, told the committee that she supported this bill.

Steve Taylor, Great Falls, represented himself and his family. He asked that the committee worked to get rid of the obscenity.

Don Johnson, Missoula, father of six and four foster children, represented them and himself in speaking on behalf of HB 83.

Gary Wayne, Seeley Lake, a pastor working with young people, said he was strongly in favor of HB 83.

Laurie Koutnik, Executive Director of Christian Coalition of Montana, the state's largest advocacy organization with 26,000 households, said her organization strongly supported HB 83 and the intent to crack down on violent crime and victimization of women and children.

Dewey Baker, Stevensville, representing himself, said he strongly supported HB 83.

Winfried Hubrich, husband and father of six, Postmaster of Missoula, Missoula, stood in support of HB 83 and presented written testimony. (EXHIBIT 14)

Dan Doyle, Missoula, said he supported the bill.

Danielle Smith, Missoula, mother of eight, said she strongly recommended the passage of HB 83.

Informational Testimony:

Dennis Paxinos, Yellowstone County Attorney, Billings, spoke as neither a proponent nor opponent. He believed county attorneys' function is to advise commissioners, boards and committee such as this committee. He did not wish to talk about what is obscene or of literary or artistic value. He said he was there to shed light, not heat. He said he ran the busiest law office in the State of Montana in the most populated county in Montana. In 1985, he said, they filed 484 felonies. This year they anticipate over 1,000 cases. In 1985 they had 12 professional staff, and in 1995 that remains the same. In 1975 the city of Billings had 101 police officers to police 60,000 people, and in 1993 the population had increased to over 100,000 and they still have 101 officers to police and patrol that area. There is only one city judge in Billings. HB 83 will dictate to every city and town what the standards will be, he said, and he hoped the committee would realize what impact it would have on those communities. He said he was sick of seeing women and children in his office that were the victims of verbal, sexual, mental and physical abuse. He had to explain many times what his office could and could not do because of limited resources. He asked the committee, if they elected to pass this bill, not to merely tell the state prosecutors to, "handle it, handle it," but also to figure out how to "fund it, fund it." He said the bill would be tedious, expensive and time-consuming. He implored the committee to attach a fiscal note to the bill to hire two state officers, two attorneys, a paralegal and a secretary to administer the law.

Opponents' Testimony:

Jeffrey Renz, Missoula, Constitutional lawyer, assistant professor, University of Montana Law School, representing himself, requested that the committee recognize that his remarks are not those of his employer. He presented and read from

written testimony. (EXHIBIT 15)

Wayne Hirst, Libby, representing the Alliance on Conservatives for Constitutional Principle, spoke in opposition to HB 83. He said the issue was individual rights and guaranteed the committee that all persons opposing the bill were not necessarily pro-obscenity. He asked how many of the panel were told by constituents that obscenity was the uppermost problem on their minds? He wondered if they should be wasting their time with it. He said it was a big issue for Dallas Erickson and his group and had been an issue with them for years. He said they were told that there were similar laws in 45 states and that this law would destroy pornography, but then why, he asked, WAS there such a big pornography problem everywhere if this had been a success. He said the truth had been misrepresented about the Libby case and urged greater investigation. He said the law was used to intimidate businessmen in Libby, not to eradicate filth. He said the law was used to prosecute **Rob Utah** and all Playboy magazines came off the shelf in Libby in 1988 except in his stores. He felt betrayed by the Republican Party and said he wanted government off his back.

Jacqueline Lenmark, representing the Montanans against Censorship, spoke against HB 83. She said that the organization consisted of a group of bookstore owners, theater owners, video store owners, business owners and librarians who were all concerned about the issue of censorship. She said the issue is also about economic impact. She read and presented testimony as well as a list of the business interests represented, letters from **Jerry Skillman, Deidre McNamer,** and the Billings News. The bulk of the packet, however, contain petitions and signatures of hundreds of people opposing the measure. (EXHIBIT 16)

REPRESENTATIVE SHIELL ANDERSON, House District 25, Park and Sweetgrass Counties, spoke in opposition to HB 83. He said he was disgusted by the crimes as described and felt that prosecutors had many laws that already deal with them. He said the measure was painted as a crime bill, but would not change current law. He said they would have no control over what community standards may be in the future. He said he thought it was a wrong logistical approach.

Tim Holmes, professional sculptor, Helena, represented himself in speaking in opposition to HB 83. He read from written testimony. (EXHIBIT 17)

Bob Fitzgerald, Helena, performer and artist representative, spoke on behalf of himself, and submitted written testimony. (EXHIBIT 18)

Jim Hills, representing himself, rose to oppose the measure before the committee. He said that while the proponents of the bill say it did not involve magazines or art, he could not find evidence of that in the bill, but was left to the discretion of

an average, reasonable adult. He said that could mean anybody. He said it would be a law put into effect today with the blanks left open to fill in tomorrow. He stated that censorship could get out of control, and cited people burning books, then later burning people. He urged the opposition to HB 83.

Mary Sheehey Moe, doctoral student whose specialized area of study included censorship issues, spoke for herself in opposing HB 83. She said the bill had nothing to do with protecting women and children. The real issue was censorship. The supporters said that everyone knew what obscenity was and that art and information would not be censored, yet many local people fought to keep a terribly offensive and extremely informative book out of the library three years ago, she said. She stated that if people really believed in freedom, they would have to surrender their own notions of superior judgement and insist on individual choices for others. She said to buy the argument on obscenity laws a person would have to believe that pornography renders an adult incapable of choice and excuses later reprehensible acts. She said everyone should be responsible for their own acts. She cited alcohol, gambling and guns as examples and they were not banned from adult use. She asked the committee to leave well enough alone and kill the bill.

Tom Harrison represented the Montana Cable Television Association. He said his organization was concerned about the bill and the variables that it contains, such as the "average person." They felt that the jury trial, as mentioned in the bill as, "the solution," was really the problem. Every attack of censorship has to result in a jury trial, he said. He said it was current federal law and could be enforced as it was.

Riley Johnson, spoke in opposition to the bill on behalf of the Montana Broadcasters Association. Due to the high tech levels of today's market, he said that enforceability would be in question.

Dione Smith, owner of a theater and video store in Hardin, represented the Montana Chapter of the Video-Software Dealers Association. They were very concerned about the non-specific language and censorship implications. She said the proponents said there were not going after "R" rated movies, but it does not really say that in the bill. She said if she was charged with a crime in her business, it would not make any difference if she were innocent or guilty because she would be broke anyway after going through a trial. She also presented written testimony.
(EXHIBIT 19)

Russell Lawrence, owner of a Hamilton bookstore, read and presented written testimony. He also submitted a packet of signatures. (EXHIBIT 20 and 21)

Samantha Sanchez, appeared on behalf of the Montana Civil Liberties Union. She read the following testimony: (EXHIBIT 22).

Bonnie Steel, mother of five, grandmother of five, represented herself in opposing HB 83. She said she was a molestation victim as a child and felt if the perpetrator had had access to softcore pornography it would not have happened. She thought that if sex was put under wraps, more child molestation would occur.

Ron Silvers, a licensed professional counselor in private practice and Vice President-Secretary for the Montana Sex Offender Treatment Association represented himself in the statement of opposition to HB 83. He read from written testimony. (EXHIBIT 23)

{Tape: 3; Side: A; Approx. Counter: 00}

Barbara Theroux, bookstore owner from Missoula, urged opposition to HB 83 and presented written testimony. (EXHIBIT 24)

Forrest Christian, represented the Montana Internet Cooperative, said it would be impossible for them to provide service if this bill were to pass.

Howard Pukerill, representing the Montana Association of Theater Owners, said they were strongly opposed to the passage of the bill. He also presented written testimony. (EXHIBIT 25)

Sally Garrett, Dillon, writer, with over 2 million books in print, said a woman had accused her of writing borderline filth, and under this law, that woman have grounds to make Ms. Garrett's life miserable.

Toby Johnson, representing Image Plaza Inc., a high tech communications community providing access, stood in opposition to the bill.

Jim Heckel, Director, Great Falls Public Library and Chair of the Intellectual Freedom Committee of the Montana Library Association assured the committee he was not in the business for the money. He urged opposition to the bill and presented written testimony. (EXHIBIT 26)

Michael Lahr, representing the Montana Library Association, said that his organization stands squarely in opposition to HB 83, asked that testimony by REPRESENTATIVE SHIELL ANDERSON be given careful consideration.

Ian Steel, video store owner in Helena, urged opposition to HB 83. He presented a collection of signatures. (EXHIBIT 27)

Richard Miller, Montana State Librarian, presented written testimony based on his review of the statutes of 22 different states, disputing the testimony of the proponents. (EXHIBIT 28)

Debbie Sporich, bookstore owner in Dillon, urged opposition to the bill.

Rick Deady, spoke as an average individual and issued written testimony. (EXHIBIT 29)

Verl Clark, Bozeman, represented his film-buying agency which included over 35 independent theater owners. He said they were concerned about the risks and intimidation the law could create for legitimate businesses. He also presented written testimony. (EXHIBIT 30)

Bob Campbell opposed HB 83. He said he was the author of Article 2, Section 10, the "right of expression" in the State of Montana codes. He said the first day this bill would go into effect, all adult rights would be terminated and it would allow adults to possess only what children are allowed today to read or view or think. (EXHIBIT 31)

Margaret C. Hollow, Helena, mother of three, grandmother of eight, said her family has always had the freedom to choose what they pleased to read or see and assured the committee it had not hurt any of them. (EXHIBIT 32)

James Mullan, Billings, represented himself in opposing the bill.

Arlynn Fishbaugh, Executive Director of the Montana Arts Council, said their agency is mandated to uphold artistic expression and freedom of artistic expressions. For that reason, she stood to oppose HB 83, she said.

Charles Walk, represented the 75 members of the Montana Newspaper Association, and requested that the committee read his written testimony. (EXHIBIT 33)

Chris Imhoff, representing the League of Women Voters of Montana, said that her organization is opposed to this bill and submitted written testimony. (EXHIBIT 34)

Kate Cholewa, on behalf of the Montana Womens' Lobby, said their organization felt the need for protection from this bill and repression, censorship and coercion.

Bob Hollow, Helena, magazine wholesalers, said the bill would cause great concern and submitted written testimony. (EXHIBIT 35)

Donald H. Kern, Helena, spoke against the bill and reminded the committee to get out of the private lives of citizens and get on with the business of balancing the budget. He submitted a copy of a letter he had written to a local newspaper. (EXHIBIT 36)

Mark Watson, City Administrator for the City of Billings, said they wanted to express their concern for the provisions of the bill and impacts such boards as Parks, Library and City Council.

Gloria Hermanson, representing Montana Cultural Advocacy, a

grass-
roots coalition of people statewide, stood in opposition to the
bill.

Don Jenni, Biology professor at the University of Montana and
also a teacher of human sexuality, said he believes that the best
defense against sex crime is good education. (EXHIBIT 37)

The following letters were also presented to the committee during
the hearing in opposition to HB 83

Carlotta Grandstaff, Hamilton (EXHIBIT 38)

Ruth Thorning, Hamilton, Reporter, Ravalli Republic (EXHIBIT 39)

Nicholas Bugosh, Helena (EXHIBIT 40)

A booklet entitled, "Everything you always wanted to know about
the movie rating system" (EXHIBIT 41)

Rusty Stu, Hamilton, Montana Association of Theater Owners (MATO)
(EXHIBIT 42)

Mike Blakesley, Forsyth, MATO (EXHIBIT 43)

Dan Erving, Helena, MATO and Montana Chapter of Video Software
Dealers Association (EXHIBIT 44)

Donna Kilpatrick, Laurel, MATO (EXHIBIT 45)

Stan Smith, Dillon, MATO (EXHIBIT 46)

Ayron Pickerill, Polson, Polson Theaters (EXHIBIT 47)

Dan Klusmann, President, Independent Marketing Edge, Bozeman
(EXHIBIT 48)

Lou Archambault, Helena (EXHIBIT 49)

Charles Breth, Helena (EXHIBIT 50)

Bob Worthy, Helena (EXHIBIT 51)

Brenda Brewer (EXHIBIT 52)

The following items were presented after the hearing for
inclusion into the minutes:

SENATOR DOHERTY FOR Mary Dykstra, Great Falls (EXHIBIT 53)

Jacqueline T. Lenmark, Esq., collected signatures (EXHIBIT 54)

Sally Garrett Dingley (EXHIBIT 55)

Hennessy's Department Stores (EXHIBIT 56)

Questions From Committee Members and Responses:

SENATOR BISHOP said he was disappointed because after all he had
heard, he did not know what was to be considered obscene and what
was considered to have artistic merit.

Dennis Paxinos, Yellowstone County Attorney said that the
question was really the whole point and the reason why he asked
for extra resources if the bill passed. He said the bill would
be challenged Constitutionally under the argument of what has
artistic merit and what does not. He said the quote by former
Supreme Court Justice Potter Stewart who said he "knew it when he
saw it," was not an easy standard to apply.

SENATOR DOHERTY quoted REPRESENTATIVE HERRON as saying one of the
bill's provisions was to repeal the section that certain motion

picture employees would not be liable for prosecution. He asked why he wanted to do that.

REP. HERRON said the provision was put on by amendment in the House Committee. He said there was some concern that overzealous prosecutors may find someone innocent involved in the transportation of films who had no knowledge of what was in the containers.

SENATOR DOHERTY said he had not heard any explanation of why Montana's current obscenity statute isn't working.

REP. HERRON said that the law enacted in 1972 could have a freight train driven through it. No county attorney or prosecutor could use this law, he said. He pointed to Page 1, Line 21-23 of the Montana Laws, and read, "advertised or otherwise promoted the sales of obscene materials or material represented or held out by him, to be obscene." "Him", he said, is the person proposing the bill. He said if the sponsor would not see the material as obscene, the county attorney would have no options.

SENATOR DOHERTY asked **County Attorney Paxinos** if he had testified that he already had prosecuted people under the statute.

Mr. Paxinos stated that he had prosecuted child pornographers. He said it was a much easier, more quantifiable, easily-measured type of pornography or obscenity. Once the person crosses to the age of majority, it is difficult to prosecute, he said.

SENATOR DOHERTY asked **Len Munsel** if 45 or 22 other states have adopted this language, could he provide a list of states, when they adopted the rules, and what happened to their sexual violence statistics and occurrences after the adoption? He said the claim was being made that there is a causal correlation between pornography and violence against women and children.

Mr. Munsel said he could certainly do that. He further stated that a number of states indicated that there is a direct correlation between the availability of the material and the sexual abuse rate in that state. He said he would provide a copy of a study in New Hampshire of an analysis of all fifty states. They determined the availability of pornographic materials vs. the rape rates and they statistically found a valid correlation in 43 of 50 states. The 10 states with the highest rape rates were the states with the most pornography available.

Mr. Munsel also responded to **SENATOR DOHERTY'S** inquiry about what is wrong with current statute. The existing statute is not an obscenity statute, he said, because it applies just to children. It also has a requirement with respect to the knowledge of the defendant that is impossible to prove. Under the old statute a prosecutor would have to prove that the materials were sold to a

child knowing the material was obscene. As the Supreme Court pointed out in the Hamling case, that type of requirement is impossible to prove because the defendant would be able to say he was not brushed up on the law. He said it has not been used in 22 years.

SENATOR DOHERTY further questioned **Mr. Munsel** about Constitutional muster under the federal law and the Montana Constitution. **Mr. Munsel** said one of the attorneys on the other side admitted that the bill would pass federal Constitutional muster. In Oregon and Hawaii, they Supreme Court protected obscene materials. Since that time, the pornographers have challenged every state's Constitution, he said. The states have won 25 cases in a row that have said that the state Constitution does not extend to obscene material.

Bob Campbell, said he was the drafter of the right of privacy and the right of expression. The right of expression is separate, he said. The U.S. Supreme Court has said that this material is legal in anyone's home in this nation. **Mr. Campbell** said that Montana does and can have a higher standard than the minimum found in the U.S. Constitution. The U.S. Constitution does not have the right of privacy, he said, but the Montana Constitution does with a higher standard, he argued. He said that we can protect our people more than the protection that the United States can give us. We have now the right of expression, he said.

SENATOR BARTLETT asked both **Dean Smith** and **Professor Renz** about the final Subsection on Page 3 of the bill which leaves in the current language that local governments listed may adopt ordinances and resolutions that are more restrictive as to obscenity, and she wanted to know if they would still be Constitutional.

Dean Smith said HB 83 is not as strict as it might be. This would allow for counties to expand and try to test the limits of the Constitutionality in ways that would not be necessary. He said it is clearly Constitutional but they haven't had the Supreme Court decide the precise case here in Montana.

Professor Renz answered that local governments have already adopted ordinances that are more strict than the current state law. He said that three towns in Lincoln County and Lincoln County itself have current ordinances. He said every single county and municipality could possibly adopt a counterpart of HB 83 if they desire to do so.

SENATOR BARTLETT asked if the ones that had adopted stricter ordinances had been upheld as Constitutional.

Professor Renz said that only one was challenged. The first Lincoln County ordinance which, on its face, violated the Miller test. That was not declared unconstitutional because while that

case was pending, the County amended the ordinance to remove the defect.

SENATOR GROSFIELD asked **Professor Renz** if a town could adopt a rule that is less strict than the one on the Montana books?

Professor Renz said that HB 83 would adopt a statewide standard for obscenity rather than a local standard. As a practical matter, he said some communities would probably apply their own values to the decision.

SENATOR GROSFIELD asked **Forrest Christian** about Internet and how this bill would affect them. He said he read a section that said, "delivers or otherwise makes available." He asked him to expand on that.

Forrest Christian responded that Internet provided a connection to a global network. There are any number of topics available, he said, from law to health information. There is also some explicit subject matter. The problem is that while they are aware of the content, they are making it available to the public. If this law passes, they would have to restructure their business.

SENATOR HALLIGAN asked **Professor Renz** about the effectiveness of the current law. He talked about Miller vs. California and other case law, and questioned the knowledge requirement on the part of the defendant.

Professor Renz said that as a defense attorney it would be much easier to prove his clients' innocence than under the proposed bill.

SENATOR HALLIGAN asked if a prosecutor could ever obtain a conviction without a confession?

Professor Renz said that under the old law, it would be a matter of circumstantial evidence. It would require a certain degree of knowledge and it could be proven through activities and warnings by the police or county attorney about the obscene material. That would be sufficient, he said.

CHAIRMAN CRIPPEN asked the sponsor, **REPRESENTATIVE HERRON** about the wording on Page 3, Line 3, "lacking literary or artistic value". The educational people are worried about the discretion on explicit materials, he said. He wondered why the language for "educational materials" wasn't included. He further questioned if the sponsor would object to that inclusion.

REPRESENTATIVE HERRON said he would not object, but expressed some concern about it.

Mr. Munsel answered that the reason it was not there because the language that came from the Supreme Court said, "literary,

artistic, political or scientific value." There are a minority of states, he said, perhaps three or four, that have included "educational" but the majority have not because of the potential for abuse. The hardcore distributors may start distributing the same materials under the guise of education.

CHAIRMAN CRIPPEN asked **Mr. Paxinos** about the bookstore operator who was concerned about his responsibility to know what every book contains and maybe it would be offensive enough that the county attorney would feel compelled to prosecute. He asked if there was a problem with enforcement?

Mr. Paxinos said it was the most important point of the opposition, asking, "where do you draw the line?" He said he would be concerned that the county attorney in one area would be more zealous than others. He wondered what the standard would be in the year 2000?

CHAIRMAN CRIPPEN asked about implied intent.

Mr. Munsel said that the critical element here would be pandering, which is how the material is displayed, and also sexual intent. The Supreme Court has drawn the line for them, he said, and they could go no further. The risk that the statute would be used for R-rated movies, is an unfounded risk, he said. He said there was no risk that the county could go further if they go as far as they can under federal regulations.

CHAIRMAN CRIPPEN asked about bookstore displays. He asked if he could imply intent to that?

Mr. Munsel answered, "no." There would be no pandering of the material for its intended sexual exploitive nature.

Professor Renz replied to the same question by saying there is no intent provision in this bill so it would be a "knowing" standard which is less than intent. The problem would not be that the person would not be convicted, he said, the problem is that there is nothing that will stop the prosecutor from prosecuting.

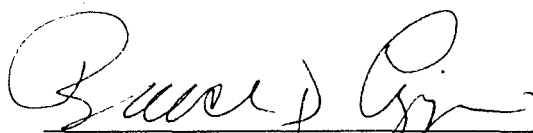
Closing by Sponsor:

REPRESENTATIVE HERRON thanked the committee for a good hearing and closed on HB 83 without further comment.

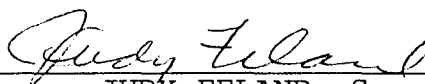
{Tape: 3 of 3; Side: A; Approx. Counter: 42.7}

ADJOURNMENT

Adjournment: CHAIRMAN BRUCE CRIPPEN adjourned the hearing at
12:45 p.m.



BRUCE D. CRIPPEN, Chairman



JUDY FELAND, Secretary

BDC/jf

STANDING COMMITTEE REPORT REQUEST

Committee Judiciary Date 2-8-95

The following committee action occurred on the above date:

Bill/ Resolution Number	Do Pass	Do Not Pass	Concur	Do Not Concur	Consent Calendar	Amend	Amendment File Name
1. <u>SJR 10</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
2. <u>SJR 6</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
3. <u>SB 167</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
4. <u>SB 218</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____
5. <u>SB 286</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Committee Secretary Judy Feland Phone 4797 Room # 369

Legislative Staff Researcher Valencia Lane Phone 4025

Amendment Coordinator _____ Date _____ Time _____

Note: Attach Consent Calendar requests, lists of Gubernatorial appointees, copies of all bill amendments or other special directions to this form.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJ 10 (first reading copy -- white), respectfully report that SJ 10 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 9.

Following: "CIRCUITS"

Insert: "; AND URGING THE PRESIDENT OF THE UNITED STATES TO PLACE
A MONTANA JUDGE ON THE FEDERAL CIRCUIT COURT FOR MONTANA"

2. Page 3, line 17.

Strike: "Congress"

Insert: "the President of the United States"

Following: "on the"

Insert: "federal circuit"

3. Page 3, lines 17 and 18.

Following: "court" on line 17

Strike: remainder of line 17 through "circuit" on line 18


Insert: "for Montana"

4. Page 3, line 22.

Following: "Representatives,"

Insert: "the President of the United States,"

-END-


SA

Amd. Coord.
Sec. of Senate

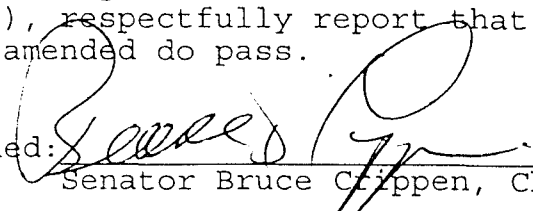
331501SC.SPV

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJR 6 (first reading copy -- white), respectfully report that SJR 6 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 25.

Following: "represent"

Insert: "and that Montana's participation in The Conference of the States is contingent on private funding not being used for The Conference of the States"

2. Page 3, line 3.

Following: first "Senate,"

Insert: "one"

Following: second "Senate"

Insert: "and one appointed by the Minority Leader of the Senate"

3. Page 3, line 4.

Following: "Representatives,"

Insert: "one"

Following: "House"

Insert: "and one appointed by the Minority Leader of the House"

4. Page 3, line 5.

Following: "President"

Strike: "and"

Insert: ", "

Following: "Speaker"

Insert: ", the Minority Leader of the Senate, and the Minority Leader of the House"

5. Page 3, lines 5 and 6.

Following: "designate" on line 5

Strike: remainder of line 5 through "legislators" on line 6

Insert: "one legislator"

Following: "as"

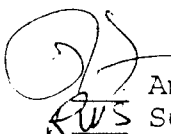
Insert: "an"

Following: "alternate"

Insert: "delegate. The alternate"

Following: "delegates"

Strike: ", not more than one from each party from each house, who"



Amd. Coord.
Sec. of Senate

341235SC.SRF

6. Page 3, line 29.

Following: line 28

Insert: "(7) Adoption of this resolution does not constitute and may not be construed to be an application by the Legislature of Montana for the calling of a federal constitutional convention within the meaning of Article V of the United States Constitution. The Legislature of Montana opposes any possibility of the Conference of the States evolving into a federal constitutional convention. The Montana delegation appointed under this resolution is not authorized to participate in a federal constitutional convention."

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 5
February 8, 1995


MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 167 (first reading copy -- white), respectfully report that SB 167 be amended as follows and as so amended do pass.

Signed: 
Senator Bruce Wippen, Chair

That such amendments read:

1. Title, line 6.
Following: "MANNER;"
Insert: "PROVIDING FOR LEGISLATIVE REVIEW AND OVERSIGHT;"
2. Page 1, lines 11 and 15.
Strike: "5"
Insert: "8"
3. Page 2, lines 23, 25, and 28.
Strike: "5"
Insert: "8"
4. Page 2, line 28.
Following: "mandates"
Insert: "existing on or adopted after [the effective date of this act] that are"
5. Page 2, line 29.
Following: "legislature"
Insert: "; (h) nothing in [sections 1 through 8] may be construed to create a private cause of action"
6. Page 3, line 1.
Strike: "5"
Insert: "8"
7. Page 3, line 4 through page 4, line 3.
Following: "governments." on line 4
Strike: remainder of line 4 through "103-227." on page 4, line 3
8. Page 4, line 5.
Strike: subsection (3) in its entirety
9. Page 4, lines 26 and 27.
Following: "5." on line 26
Strike: the remainder of line 26 through "council" on line 27
Insert: "Requirement for budget recommendation -- reporting on

 Amd. Coord.
Sec. of Senate

331707SC.SRF

federal mandates"

10. Page 4, line 27 through page 5, line 22.

Following: "**savings.**" on page 4, line 27

Strike: the remainder of line 27 through "(d)" on page 5, line 22

11. Page 5, lines 23 and 24.

Following: ", the"

Strike: the remainder of line 23 through "committee" on line 24

Insert: "governor"

12. Page 5, line 26.

Following: "intent of"

Strike: "the"

Insert: "applicable"

Following: "federal"

Strike: "statute"

Insert: "statutes"

13. Page 5, line 28.

Strike: "office of budget and program planning and the
legislative finance committee"

Insert: "governor"

14. Page 6, line 1.

Strike: "office of budget and program planning"

Insert: "governor"

15. Page 6, lines 2 and 3.

Following: "in" on line 2

Strike: the remainder of line 2 through "committee" on line 3

Insert: "the governor's budget"

16. Page 6, lines 4 through 6.

Strike: subsection (3) in its entirety

17. Page 6, line 8.

Strike: "**Requests for information**"

Insert: "**Information**"

18. Page 6, line 9 through page 7, line 5.

Strike: "(1)" on line 9 through "(3)" on page 7, line 5

Insert: "(1)"

19. Page 7, line 5.

Following: "The"

Strike: "requests for"

Following: "to"

Strike: "this section"
Insert: "[section 5]"

20. Page 7, lines 5 and 6.
Following: "must" on line 5
Strike: the remainder of line 5 through "responses" on line 6

21. Page 7, line 6.
Strike: "staff of the legislative council and the office of
legislative fiscal analyst by"
Insert: "governor"

22. Page 7, line 7.
Strike: "October 15, 1995"
Insert: "prior to the governor's preparation of the state budget
for the ensuing biennium"
Strike: "staff of the legislative council and the office of
legislative fiscal analyst"
Insert: "governor"

23. Page 7.
Following: line 9
Insert: "(2) In considering the legality or cost-effectiveness
of a federal mandate, federal statute, or state program, the
governor may request assistance from the legislative council
or its staff, but assistance is at the discretion of the
legislative council."

24. Page 7, lines 11 and 12.
Following: "The" on line 11
Strike: the remainder of line 11 through "analyst" on line 12
Insert: "governor"

25. Page 7, lines 12 and 13.
Following: "received" on line 12
Strike: the remainder of line 12 through "prepared" on line 13

26. Page 7, line 13.
Strike: "6"
Insert: "5"
Strike: "jointly"

27. Page 7, lines 14 and 15.
Strike: ", the legislative council, and the legislative finance
committee on or before December 1, 1995,"
Insert: "and the legislature meeting in its next regular session"

28. Page 7, lines 16 and 17.

Following: "regarding" on line 16
Strike: the remainder of line 16 through "(i)" on line 17

29. Page 7, line 17.
Strike: "committees"
Insert: "state"

30. Page 7, line 18.
Strike: "or"
Insert: "and"

31. Page 7, lines 19 through 22.
Strike: subsection (ii) in its entirety

32. Page 7, lines 23 and 24.
Strike: "recommended" on line 23 through "analyst" on line 24
Insert: "submitted to the governor"

33. Page 7, lines 24 through 26.
Following: "section"
Strike: the remainder of line 24 through "required" on line 26

34. Page 7, line 29.
Following: "mandate"
Insert: "and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order"

35. Page 7.
Following: line 29
Insert: NEW SECTION. **Section 8. Legislative review and oversight.** (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of [sections 1 through 8]. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with [sections 1 through 8].
(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature."

Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 218 (first reading copy -- white), respectfully report that SB 218 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 6 and 7.

Following: "TENANT;" on line 6

Strike: remainder of line 6 through "SPACE;" on line 7

2. Title, line 7.

Following: "REVISING"

Strike: "GROUNDS"

Insert: "NOTICE REQUIREMENTS"

3. Title, line 9.

Strike: "70-24-427,"

4. Page 2, lines 19 and 22.

Following: "time."

Insert: "This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home."

5. Page 3, line 1.

Following: "home,"

Strike: "if rent remains unpaid 3 days after the tenant has received"

Following: "~~period~~"

Insert: "period"

6. Page 3, line 2.

Following: "~~is~~"

Strike: ", the landlord may terminate the rental agreement"

Insert: "is"

7. Page 3, lines 2 and 3.


Following: "days" on line 2

Strike: remainder of line 2 through "notice" on line 3

8. Page 3, lines 15 through 29.

Strike: section 3 in its entirety

Renumber: subsequent sections


Amd. Coord.
87 Sec. of Senate

331502SC.SRF

9. Page 4, line 4.
Following: "70-24-422"
Insert: ", except as specifically provided in this section,"

10. Page 4, line 9.
Following: "70-24-422"
Strike: ";"
Insert: ". For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days."

11. Page 4, line 16.
Following: "rule"
Strike: ";"
Insert: ". For this subsection (1)(e), the notice period referred to in 70-24-422(1) is 60 days."

12. Page 4, line 20.
Following: "premises"
Strike: ", "
Insert: ". For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.
(h) "

13. Page 4, line 22.
Strike: "(h) "
Insert: "(i) "

14. Page 4, line 26.
Strike: "(i) "
Insert: "(j) "
Following: "met"
Strike: "; or"
Insert: ". For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days."

15. Page 4, line 27.
Strike: "(j) "
Insert: "(k) "

16. Page 4, lines 27 and 28.
Following: "~~business~~" on line 27
Strike: remainder of line 27 through "other" on line 28
Insert: "a legitimate business reason"

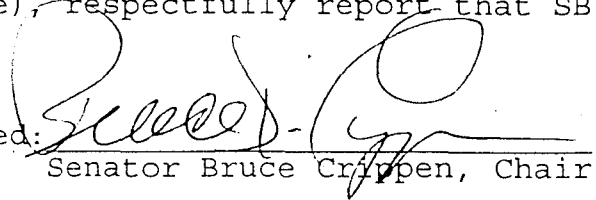
-END-


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 286 (first reading copy -- white), respectfully report that SB 286 do pass.

Signed: 
Senator Bruce Crippen, Chair

 Amd. Coord.
Sec. of Senate

331422SC.SRF

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SJ 10 (first reading copy -- white), respectfully report that SJ 10 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 9.

Following: "CIRCUITS"

Insert: "; AND URGING THE PRESIDENT OF THE UNITED STATES TO PLACE
A MONTANA JUDGE ON THE FEDERAL CIRCUIT COURT FOR MONTANA"

2. Page 3, line 17.

Strike: "Congress"

Insert: "the President of the United States"

Following: "on the"

Insert: "federal circuit"

3. Page 3, lines 17 and 18.

Following: "court" on line 17

Strike: remainder of line 17 through "circuit" on line 18

Insert: "for Montana"

4. Page 3, line 22.

Following: "Representatives,"

Insert: "the President of the United States,"

-END-



Amd. Coord.
SA Sec. of Senate

331501SC.SPv



MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 218 (first reading copy -- white), respectfully report that SB 218 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, lines 6 and 7.
Following: "TENANT;" on line 6
Strike: remainder of line 6 through "SPACE;" on line 7
2. Title, line 7.
Following: "REVISING"
Strike: "GROUNDS"
Insert: "NOTICE REQUIREMENTS"
3. Title, line 9.
Strike: "70-24-427,"
4. Page 2, lines 19 and 22.
Following: "time."
Insert: "This subsection does not apply to a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home."
5. Page 3, line 1.
Following: "home,"
Strike: "if rent remains unpaid 3 days after the tenant has received"
Following: "~~period~~"
Insert: "period"
6. Page 3, line 2.
Following: "~~is~~"
Strike: ", the landlord may terminate the rental agreement"
Insert: "is"
7. Page 3, lines 2 and 3.
Following: "days" on line 2
Strike: remainder of line 2 through "notice" on line 3
8. Page 3, lines 15 through 29.
Strike: section 3 in its entirety
Re-number: subsequent sections

 Amd. Coord.
 Sec. of Senate

9. Page 4, line 4.
Following: "70-24-422"
Insert: ", except as specifically provided in this section,"

10. Page 4, line 9.
Following: "70-24-422"
Strike: ";"
Insert: ". For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days."

11. Page 4, line 16.
Following: "rule"
Strike: ";"
Insert: ". For this subsection (1)(e), the notice period referred to in 70-24-422(1) is 60 days."

12. Page 4, line 20.
Following: "premises"
Strike: ", "
Insert: ". For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.
(h) "

13. Page 4, line 22.
Strike: "(h) "
Insert: "(i) "

14. Page 4, line 26.
Strike: "(i) "
Insert: "(j) "
Following: "met"
Strike: "; or"
Insert: ". For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days."

15. Page 4, line 27.
Strike: "(j) "
Insert: "(k) "

16. Page 4, lines 27 and 28.
Following: "~~business~~" on line 27
Strike: remainder of line 27 through "other" on line 28
Insert: "a legitimate business reason"

-END-

Amendments to Senate Joint Resolution No. 6
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
February 8, 1995

1. Page 2, line 25.

Following: "represent"

Insert: "and that Montana's participation in The Conference of
the States is contingent on private funding not being used
for The Conference of the States"

2. Page 3, line 3.

Following: first "Senate,"

Insert: "one"

Following: second "Senate"

Insert: "and one appointed by the Minority Leader of the Senate"

3. Page 3, line 4.

Following: "Representatives,"

Insert: "one"

Following: "House"

Insert: "and one appointed by the Minority Leader of the House"

4. Page 3, line 5.

Following: "President"

Strike: "and"

Insert: ", "

Following: "Speaker"

Insert: ", the Minority Leader of the Senate, and the Minority
Leader of the House"

5. Page 3, lines 5 and 6.

Following: "designate" on line 5

Strike: remainder of line 5 through "legislators" on line 6

Insert: "one legislator"

Following: "as"

Insert: "an"

Following: "alternate"

Insert: "delegate. The alternate"

Following: "delegates"

Strike: ", not more than one from each party from each house,
who"

6. Page 3, line 29.

Following: line 28

Insert: "(7) Adoption of this resolution does not constitute and
may not be construed to be an application by the Legislature
of Montana for the calling of a federal constitutional
convention within the meaning of Article V of the United
States Constitution. The Legislature of Montana opposes any
possibility of the Conference of the States evolving into a
federal constitutional convention. The Montana delegation

appointed under this resolution is not authorized to participate in a federal constitutional convention."

EXHIBIT 4
DATE 2-8-95
HB 83

Senate Judiciary Committee Hearing

House Bill 83

Obscenity

February 8, 1995

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(folder)

TESTIMONY OF RODNEY K. SMITH
BEFORE THE SENATE JUDICIARY COMMITTEE

OFFICE OF THE CLERK OF THE SENATE
ROOM NO. 5
DATE 2-8-95
BILL NO. HB 83

IN SUPPORT OF
HOUSE BILL NO. 83
February 8, 1995

Chairman Crippen and members of the Committee, my name is Rodney K. Smith. I serve as Dean and Professor of Law at The University of Montana School of Law. I am before the Committee today, however, as a constitutional lawyer, a husband and father. My views should not be attributed to my employer.

As one who cares deeply about the First Amendment of the Constitution, I want to emphasize that H.B. 83 is constitutional. It is modeled after decisions rendered by the Supreme Court. It will be upheld, if challenged. Under this legislation, Montanans serving on juries will decide whether material is obscene based on established legal doctrine. I think Montanans should be given this right.

When passed, this bill will be enforceable. Only the most violent and explicit sexual material will be illegal. Playboy will not be obscene; a film focusing on a violent rape in front of a masturbating bystander will be.

In the report of the Attorney General's Commission on Pornography, Frederick Schauer, a respected constitutional lawyer who teaches at The University of Michigan, noted that, "clinical and experimental research" is "virtually unanimous" that "exposure to sexually violent materials has indicated an increase in the

likelihood of aggression," and that there is "a causal relationship between exposure to material of this type and aggressive behavior toward women." If law enforcement focuses on this type of material, as it must, enforcement will not only be possible but will also lead to a decline in the incidence of abuse, rape and violence against women and children. If rape and abuse decline overall, as has been the case in jurisdictions in which such legislation is enforced, law enforcement will experience a net gain in terms of their resources available for dealing with crime.

The major argument raised against this legislation is that its passage would diminish liberty in Montana. This is not true.

Liberty issues arise as to the following categories of individuals: those who profit from the sale of obscene material; those who participate in producing such material; those who consume such material; and, those who are harmed as a consequence of someone else's use of such material. A careful examination of each of these categories will reveal that, on the whole, liberty will be diminished only if you fail to adopt H.B. 83.

The liberty of those who profit financially from the widespread sale of obscene material will be diminished with passage of H.B. 83, much as a drugdealer loses income when the sale of illicit drugs is limited. This loss of liberty to make a profit off of the misery of another is minimal when compared to the liberty lost when no limits are placed on the sale, distribution and use of obscene material.

The next group that may lose as a result of adoption of H.B. 83 are those who participate in the production of obscene material.

EXHIBIT 5

DATE 2-8-95

HB 83

Producers and participants will suffer financial loss, if they are not permitted to distribute obscene materials. However, given extensive evidence that many participants are coerced into participation in producing such material, often through drugs and brutalization, their liberty will ultimately be enhanced by H.B. 83. Many women who participate in such films are hardly more than children, often runaways, who fall into the grip of the purveyors of obscene material. These young people are robbed of their dignity and their capacity to become expressive -- free -- individuals.

It is not surprising, therefore, that those who argue against H.B. 83, primarily focus on the right of the consumer to entertain himself with obscene material. This freedom must, however, be evaluated in light of evidence of the addictive and harmful nature of obscene material. Research further indicates that the major consumers of such material are young men, ages 12-17. Those young men are still developing their expressive capacity or freedom. For that reason, courts have regularly held that they may be prevented from making certain choices, while a minor. Exposure to obscene material, which has addictive capacity and provides young men with a twisted view of male-female relationships, is precisely the kind of activity that is regulated. We even regulate the use of certain addictive material, or material that may do damage to another, among consenting adults, especially when that material is likely to find its way into the hands of children unless it is regulated. H.B. 83 recognizes reality -- children consume and are harmed by obscene material -- and seeks to regulate that reality in a

sensible manner. To do so increases the capacity of young people to become expressive individuals and thereby increases freedom.

The final category to be considered is that of individuals, largely women and children, harmed by widespread distribution of obscene material. There is much evidence of a strong correlation between exposure to sexually violent or obscene material and acts of violence against women and children. Those who are subjected to such violence lose their freedom in profound ways.

I have a nephew who, as a child, was sexually abused by a neighbor. He still struggles, at great cost, to regain his freedom. Many women have also been victimized, in ways that make it very difficult for them to reclaim even the most rudimentary freedom in their lives. Their freedom outweighs the right of individuals to be titillated by exposure to obscene material. Furthermore, as Canada has already determined, widespread dissemination degrades women in ways that deprive them of equality.

In closing, I plead with you to do the right thing and pass H.B. 83. Freedom will be enhanced and much harm will be avoided, with adoption of this bill.

Thank you.

John G. Galt?

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2-8-95
BILL NO. HB 83

MONTANA PORNOGRAPHY TESTIMONY

Over the years leaders of The Church of Jesus Christ of Latter-day Saints have repeatedly warned in plainest terms of the growing deluge of pornographic material that is pouring across the world with increasing momentum and devastating impact. Its pervasive, immoral, and destructive influence is felt in the media, the workplace, conversations, social activities, and homes in every land. Pornography is so insidious it is difficult to assess the negative impact it has upon each one of us, our families, and our communities.

Because of the additive nature of pornography, social scientists tell us that at first one may simply tolerate its existence, then unconsciously come to accept it until moral feelings become desensitized, no longer outraged at its content. Pornography is a poison to the mind and spirit, ruining the lives and homes of innocent men, women, and children. It is not a victimless crime. It degrades and exploits in a most ugly and corrupt fashion. Pornography is utterly without redeeming social value and it is sad that decent people are thrown into this filthy arena of mental and spiritual pollution. While pornography is a moral issue, it is also an issue of survival - survival for the individual, the family, and the nation.

The counsel and warnings from our leaders concerning these sordid elements have been clear and consistent. Members of our Church are urged to not only resist the widespread plague of pornography, but to join with others of good will to support efforts to adopt reasonable and constitutional laws and regulations to reduce and remove the corrupting influence of pornography from our society. We call upon lawmakers to be aware of the dangers posed by the production and distribution of obscene and pornographic materials, under whatever guise, and to stand in defense of those virtues which, when practiced in the past, made men and women and nations strong and free.

Senate Judiciary Committee
Honorable Senator Bruce Crippen, Chairman

SENATE JUDICIARY COMMITTEE
COMMITTEE NO. 7
DATE 2-8-98
BILL NO. HB 83

Mr. Chairman, my name is **Gary Randall**. I am the Senior Pastor of Florence Baptist Church in Florence Montana.

I would like to thank you and your committee for your time this morning concerning this very important piece of legislation, **House Bill 83**.

I stand before you this morning representing a large congregation of people who are very much concerned about the spread of obscene materials, and the harm these materials are causing.

I also stand before you this morning as a victim. When I was 7 years old I was introduced to hard core pornography by an older friend whose Father had a large and varied collection of these magazines. What began as two young boys looking at the "*girlie magazines*" led me into years of misery, desensitizing and the total distortion of what was right and wrong.

Sex was portrayed to me as just a physical relationship without love. **Vulgar language** was used to articulate every nasty idea possible. Incest and sodomy was depicted as being OK, with magazines devoted entirely to sex between family members. During this same time my Father was sexually abusing me, an abuse which lasted until I was 11 years old. I remember being paralyzed to resist him because the images that were already in my mind, somehow justifiably said to me "*this was the way it was suppose to be*" even though deep inside it didn't seem right.

As the years went on, and even after I was married my own collection of hard core porn grew. I was ashamed of it, and kept it hidden as most do, but, on a daily basis what I viewed distorted and desensitized my whole way of thinking concerning **sex and women**. I learned there was nothing criminal about **Rape**, after all in reality everyone knew that "**NO**" was really just a game of "*Hard to get*" and that what she really meant was "**YES**."

This way of thinking was a reality to me, and **came about by what I saw and read and experienced first hand!** Sadly there was nobody there for me. Now as a Father and Grandfather, I am very concerned, that even in light of my story and the stories of many others who are victims, we may still have so little regard for the protection of the minds and lives of our next generation, that we have to discuss and debate the issue of obscenity as if it really had some kind of value in our society,

As a victim, I ask the you **Mr. Chairman**: "*Will obscenity make our young people coming up better citizens?*" "*Will it make the family and home stronger?*" When it has destroyed my childhood and left me a scarred victim, I feel compelled to ask "*in what way does obscenity benefit our society?*"

Mr. Chairman, some will argue that "*You cannot legislate Morality, what's right for you may not be right for me.*"

The word "**Morality**" by Webster's definition means "**Rules of right conduct.**" Rules of right conduct are reflected in the laws of our land which are made and passed by our elected Law Makers.

Every single Law we have sets a Moral standard for judging Right and Wrong conduct for the citizens of Montana. They are there for the improvement of our State, and the protection of it's people. Everyone of us ultimately then, makes a moral decision to obey or disobey the law.

Some will argue Mr. Chairman, that State Law Enforcement Agencies and the Court System are already over-burdened, and could not possibly enforce these new laws. I appreciate this concern, because we have some officers which attend regularly at Florence Baptist Church. I must state however, that the Laws of our land are not, and should not be made on the basis of the ability to enforcement them.

If they were made on that basis, we would have to legalize Drugs, D.U.I., Speeding, Robbery and a whole host of other crimes simply because far more get away then ever get caught, and there will never be enough Law enforcement Officers to catch them all.

Lastly Mr. Chairman, some will stand before you and argue that House Bill 83 constitutes "Censorship" and a destroying of the 1st Amendment to the Constitution.

The word "*Censorship*" is defined as the "*choice of something right over something that is wrong.*" But, the question then is asked "*Who makes that Choice?*"

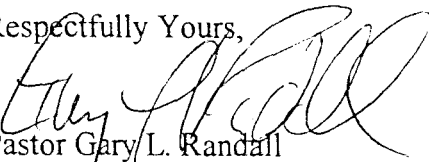
Strange that it is always the Press and TV Media or in this case Magazine & Video publishers and distributors who scream the loudest about censorship and the 1st Amendment. Is it not the Editors and Station Managers who decide what you and I will read and see in any Newspaper or magazine or what we will see on TV? Based on what they feel is right, they daily exercise their censoring powers.

Mr. Chairman, the ones who will cry to you about "*CENSORSHIP*", are not at all worried about censorship, they are not at all concerned about "Loosing their rights! The whole issue to them is about losing money!

We must remind ourselves that the Freedoms that our Constitution guarantee, come with individual and corporate responsibility. And it is the exercise of this responsibility with regard to the whole of our State, that ensures all of us that our freedoms will remain intact, and not perverted nor eliminated.

Many States have already enacted similar Legislation into law to prevent future victims. Had legislation such as H.B. 83 been in place when I was a young man, I would not stand before you this morning as a victim. It is time to do something to protect our children and grandchildren from becoming victims also.

Respectfully Yours,


Pastor Gary L. Randall
5431 Old Highway 93
Florence, MT 59833-6539

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2-8-95
BILL NO. HB 83

February 7, 1995

Senate Judiciary / HB 83
Arlette Randash
Eagle Forum

Yesterday I counted at least 7 bills this session that had to do with sex offender crimes and they were introduced from both sides of the aisles. Victims and their families have testified to the horrors they have faced and will live with for the rest of the lives. HB 83 is a bill that will give Montana's laws the teeth to remove obscenity from the market place because Senator Herron has recognized and is willing to go to the root cause. There is a link between obscenity and sexually deviant behavior. U. S. News and World Report in its November 14, 1994 edition reported that a study by Richard Drake, an assistant professor at BYU's College of Nursing, reveals that pornography consumption can be as 'mood-altering' and 'addictive' as narcotics. "For too long health care professionals have buried their heads in the sand with regard to the health risks of porn consumption," says Drake. He said that from the growing body of research, investigators have found that repeated exposure to pornography not only leads men to minimize the evil of sexually assaulting women, but influences females to trivialize rape as well. **"The consensus is that pornography desensitizes all viewers to previously held standards."**

When HB 83 came before House Judiciary I canvassed the video stores to see if I could purchase obscenity. I was shocked at how easy it was and that I found it within blocks of a local primary school. I brought it in a brown paper bag. A lobbyist for the video industry, when asked if what was in the bag by Rep. Molnar said he couldn't tell if it was obscenity or not, a lawyer would be needed. But that lobbyist told me later privately he was surprised I had found that stuff, that when he had quit selling it in his store he had walked away from \$50,000 a year clear profit. **Video store owners know exactly what is obscenity and what is not, I did when I saw it for sale.....and profit is the motive for the huge misinformation campaign waged against the passage of this bill.**

This session I have visited on several occasions with a member of the Montana Parole Board. If sex offender parolees (with at least some if not all sexual offenders) are found in the possession of pornography that is considered a violation of their parole and they are returned to prison. **The Montana Parole Board obviously sees a link between the use of obscenity and sexually deviant behavior.**

This bill is solid constitutionally, it is good public health, and good public policy. Cut through the hysteria and vote for the innocent little boy and girl who live down the street from you. Give a 'do pass' to HB 83.

SENATE JUDICIARY COMMITTEE
CASE NO. 9
DATE 2-6-95
BILL NO. HB 83

Terry Crooks
662 Cherry Creek Rd.
Libby, Montana 59923
February 8, 1995

To the Senate Judiciary Committee and Senator Bruce Crippen:

Having been a resident of Lincoln County for more than twenty-two years, I have experienced the county before and since the passing of our obscenity law.

Before the law was passed, the opposition to this law presented arguments focused on the uneducated. They used paranoia and hysteria to convince people that if our law was passed we would have some type of communist police state. Our citizens were warned that our libraries would come under attack and that classic books such as Huck Finn and The Grapes of Wrath would be removed from the shelves. We were told that the movie theaters would be shut down for showing "R" rated movies and that the swimsuit issue of Sports Illustrated would be illegal to own. Such lies are the only tool those who support the industry of commercial nudity can use to convince an unsuspecting and uneducated population that they have a legitimate case.


In Lincoln County we have the following:

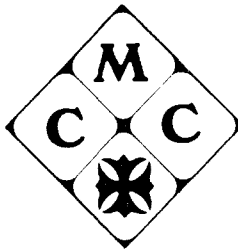
11 libraries	Not one book has been removed from these libraries.
12 video stores	Not one video has been removed from these stores. (R, PG-13, PG, G)
3 movie theaters	
1 drive-in	Not one theater has been shut down.

We do have an absence of obscene material in the form of printed material and videos in the community.

Please remember these facts in your consideration of a state obscenity law.

Sincerely,


Terry Crooks



Montana Catholic Conference

SENATE JUDICIARY COMMITTEE
SENATE NO. 10
DATE 2-6-95
FILE NO. HB 83

February 8, 1995

Chairman Crippen, members of the committee, my name is Sharon Hoff representing the Montana Catholic Conference. In that capacity, I act as liaison for Montana's two Roman Catholic Bishops on matters of public policy. The Montana Catholic Conference stands in support of HB-83.

That the Catholic Church is not puritanical, nor prudish, nor philistine is manifest from its age-old patronage of the fine arts, of music, and of literature. The paintings and sculptures of churches of Catholic Europe prove that the Church itself often displays the nude human body in its sacred shrines. Christian literature deals with adult themes in all their misery and glory. Catholic culture includes a rich appreciation of the joys of sex, wine, food, and conviviality as gifts of a good Creator; it is not dualist, Manichean, or Victorian. Therefore, it favors the freedom of artists to exercise their gifts of imagination for the enrichment of human life.

Obscene material, however, is as different from art as prostitution is from romance. Its purpose is not creativity, but profit, making money out of the loneliness and frustration of sex without love. And it is a very big business, one which today more and more permeates our whole society and gives to contemporary life a nastiness and ugliness that is at the very opposite of joy. The Catholic Church opposes obscenity not because it fears human sexuality or wants to take the joy out of life, but because it is an abuse of what is most tender and intimate in human beings.

In his January, 1992 address to the Religious Alliance Against Pornography, (an interreligious group including representatives of the Jewish, Catholic, Greek Orthodox,



Protestant and Mormon communities) Pope John Paul II states that "By reducing the body to an instrument for the gratification of the senses, pornography frustrates authentic moral growth and undermines the development of mature and healthy relationships. It leads inexorably to the exploitation of individuals, especially those who are most vulnerable, as is so tragically evident in the case of child pornography."

The young and immature are especially vulnerable and the most likely to be victimized. Obscenity and sadistic violence debase sexuality, corrode human relationships, exploit individuals--especially women and young people--undermine marriage and family life and weaken the moral fiber of society itself. We urge the committee's support of HB-83. Thank you.

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 745 • Helena, MT 59624

PHONE: (406) 442-5761



WORKING TOGETHER:

American Baptist Churches
of the Northwest

TESTIMONY OF DAVID HEMION
LEGISLATIVE LIAISON
MONTANA ASSOCIATION OF CHURCHES
HB 83
SENATE JUDICIARY COMMITTEE
FEBRUARY 8, 1995

Christian Churches
of Montana
(Disciples of Christ)

The Montana Association of Churches represents eight of
Montana's largest Christian denominations. These include:

Episcopal Church
Diocese of Montana

- American Baptist Churches of the Northwest
- Christian Churches (Disciples of Christ) in Montana
- Episcopal Church - Diocese of Montana
- Evangelical Lutheran Church in America - Montana Synod
- Presbyterian Church (U.S.A.) - Glacier and Yellowstone Presbyteries
- Roman Catholic Dioceses of Great Falls/Billings and Helena
- United Church of Christ - Montana and Northern Wyoming Conference
- United Methodist Church - Yellowstone Conference.

Evangelical Lutheran
Church in America
Montana Synod

Presbyterian Church (U. S. A.)
Glacier Presbytery

Presbyterian Church (U. S. A.)
Yellowstone Presbytery

The Montana Association of Churches believes in the dignity of human beings, recognizing that, as Christians, we revere the sacred sexual relations between men and women which we feel to be God-given. We urge the Legislature to resist any interest or influence which will cheapen, degrade or exploit that relationship for any purpose.

For that reason we endorse the enactment of HB 83.

Roman Catholic Diocese
of Great Falls - Billings

Roman Catholic Diocese
of Helena

United Church
of Christ
Mt.-N. Wyo. Cont.

United Methodist Church
Yellowstone Conference

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 2-4-95
BILL NO. HB 83

TESTIMONY OF BETTE HUBRICH
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF
HOUSE BILL NO. 83
February 8, 1995

Chairman Crippen and members of the committee, my name is Bette Hubrich. I am a homemaker in Missoula and mother of six children. I have worked extensively with children and youth in many different capacities at school, PTA, church, sports, and community activities.

I am frustrated that House Bill 83 has at times been misrepresented and therefore misunderstood. I believe that significant issues have been pushed aside by those who choose to mislead.

The purpose of the bill is to stem the creation, distribution, and consumption of destructive obscenity in Montana. At the present time Montana is one of only five states where the citizens are not protected by an enforceable anti-obscenity law. I feel we should have the same rights as the citizens of the other 45 states.

The Supreme Court has stated in the Miller v. California case, "This much has been categorically settled by the United States Supreme Court, that obscene material is unprotected by the First Amendment." And in Roth v. U.S.,

the Supreme Court said, "We hold that obscenity is not within the area of constitutionally protected speech and press." This means that passage of this bill is constitutional and is not an infringement of our First Amendment rights.

I am aware that there are many voices speaking to you and sometimes yelling at you about this issue. I believe it is critical for you to decide where these voices are coming from and what their motives are. I feel that many of those who oppose this bill have a financial interest in the success and proliferation of obscenity. The FBI estimates that the pornography industry earns eight to ten billion dollars a year. We can therefore say that there is an "obscene" amount of money to be made in this business. What do myself and others want who support this bill and are working for it's passage? We want peace and freedom from fear in our communities.

As woman and a mother, I am frightened when I learn in the 1988 Department of Justice Report that one in three females and one in seven males will be molested. I was the victim of sexual abuse as a child and know first hand how devastating it can be. The effects of being molested go on for years and years. You can forgive but you never forget. I want none of this for my own little ones or yours.

EXHIBIT 12
DATE 2-8-95
71 HB 83

Obscenity harms us all. When extreme and repeated violence against men, women, and children is termed entertainment and becomes acceptable in our communities we all are at risk. The 1986 Attorney General's Commission on Pornography reviewed a great volume of clinical evidence and concluded unanimously that "substantial exposure to sexually violent material...bears a causal relationship to anti-social acts of sexual violence...". We all need to know that 86% of rapists admit regular use of pornography with 57% admitting actual imitation of pornographic scenes in commission of sex crimes. Also, 87% of molesters of girls and 77% of the molesters of boys admitted to regular use of hard-core pornography. (Dr. William Marshall, 1988)

We have heard a lot about sexual harassment and know what a serious crime this can be. But how can we expect to eliminate sexual harassment in the "workroom" if we allow it to be openly taught by videos and magazines in the "back room"? It is incongruous for us to think we can deal seriously with sexual harassment issues when we will accept depiction of every kind of torture and abuse as a right of free speech.

There are so many aspects of this bill that can and I'm sure will be debated but I believe the bottom line is that your job as legislators is to protect the public interest of the citizens of this state and there is nothing that can be found to be redeeming or valuable about obscenity. It is

not in the best interest of the public to let it go unchecked.

I was touched recently to hear both our Governor and our President speak strongly in support of our families and the importance of caring for our children. And I admire our legislators who can follow their lead and demonstrate that they know obscenity is about violence, degradation, and abuse. These are not natural Montana traits. Please pass HB 83 and say simply "enough is enough". Thank you.

Bette Huber

SENATE HONORARY COMMITTEE
PAGE NO 13
2-8-95
SEN. NO. 4883

My name is Kathleen Holmer. I am writing this in support of House Bill 83 that you are considering in your committee today.

I am a native of Montana, born and raised in the Great Falls area. I graduated from the University of Montana with a B.A. degree and secondary school teaching certification. With the exception of the time I spent in Viet Nam working for the American Red Cross and the time my husband and I lived in other states during his military service, I have spent my entire life in Montana. I love this state and would not choose to live elsewhere. However, the Montana I grew up in was a much safer place than the one I have raised my three sons in. I plead with you to make it safer for my future grandchildren.

By choice I have chosen to be a full time wife and mother to our three sons, who range in age from 14 to 21. I have, however, also dedicated much of my life to the education of children by teaching children in The Church of Jesus Christ of Latter Day Saints and as a volunteer in many capacities for the Boy Scouts of America. For the past 85 years the Boy Scouts of America had been indisputably one of the most effective educators of our nation's youth.

It is as a result of my involvement with Boy Scouts of America that I have become aware of the issues you are dealing with today. In 1988, Boy Scouts of America established a Youth Protection Program to combat the evils of child abuse. This program involved an extensive strategy to prevent access by abusers to the youth within the Boy Scouts of America. Cub Scout Day Camp Director in the Bitterroot District it became my responsibility to implement The Youth Protection Program. One of my responsibilities was and continues to be training adult leaders who have contact with boys in the Scouting movement within the Bitterroot District and sometimes on a Council wide basis. It is as a result of this experience that I have become increasingly aware of the connection between obscenity and child abuse. I now also realize it goes much farther than child abuse, but also has a direct connection to rape and a broad spectrum of crime in our society.

I have also become aware that nine of my personal friends are victims of child abuse and that has forced me to become even more involved in the fight to stop this pervasive evil in our society. For me the victims of child abuse have names and faces and I can not turn my back on their pain. Their pain lasts a life time even with extensive counseling from trained professionals. I have seen it rip families apart. It's results are devastating!

Through the Youth Protection Training I have become aware of the connection between obscene material and pedophiles, who are individuals who prefer children as sexual partners.

One pedophile will literally victimize hundreds of children in his lifetime. (About 98% are men.) The more one studies and understands how pedophiles operate, the more one realizes that pornography is a staple in their seduction process. I will not elaborate because this process of seduction is well documented in study after study. Suffice it to say that pedophiles are master manipulators and obscenity is one of the main tools in that process of manipulation. Children are one of the main victims of pornography.

In actuality the first victims are the participants, i.e. the people used in the production of the material. They are not willing participants, but rather are forced by coercion or are drugged in order to convince them to perform as they do.

The third victims are the consumers of pornography. Because twelve to seventeen year old boys are most vulnerable to this material due to their natural curiosity about sexuality, the pornography industry targets them. If they can addict a young boy, they have a user for a lifetime. Dr. Victor Cline, and expert in this field describes a four step pattern in the addiction process.

Step 1: Addiction to the material and repeated return to it for sexual excitement.

Step 2: Escalation and the individual's need for more explicit, deviant and sexually shocking material to achieve same level of sexual stimulation.

Step 3: Desensitization towards initially gross and shocking material so that, in time, this material becomes acceptable and desirable to the viewer.

Step 4: Increased tendency to start acting out sexual activities seen in pornography, fantasy is no longer sufficient to arouse.

This group, in addition to children in general, is of special interest to me because this is the age of boys that I have dedicated much of my life to teaching the values of the Scouting movement. Obscenity would negate everything we try to teach a boy. Addiction to this material destroys character rather than building it.

Since young boys are victims of pornography, it follows that those they associate with the most will also become victims. Those associates are the young girls they date, as well as some of the boys they associate with. Statistics show that one in three girls and one in seven boys will be the victim of sexual abuse before the age of eighteen. Date rape contributes significantly to those statistics. Incest at the hands of siblings, as well as adult relatives, is another contributing factor. So far the victims of pornography include young children, the unwilling participants in the industry, teenage

boys and girls. However, that is not all.

The next victims of pornography are women over the age of eighteen. In this country a recent study showed that 683,000 rapes occur each year. That translates to one rape every 46 seconds. Again, that statistic is incorrect, because not all rapes are reported. Pornography promotes the rape myth, which teaches that women enjoy being raped. Another study conducted showed that 86% of rapists in the study admitted to regular use of pornography and 57% admitted to imitating pornographic scenes in the commission of their crimes. Women are clearly victims of pornography.

Lastly, as if these victims aren't sufficient, I would contend that we are all victims of pornography, because there is a proven connection between pornography and all forms of crime. Where these materials are available, crime rates increase. That may be due to its connection to organized crime, since it ranks third as a money producer for the mob, after drugs and gambling. When we allow pornography to exist in our communities, we invite organized crime along with it.

In this statement I have sometimes used the term pornography, rather than obscenity, but obscenity is actually the worst form of pornography. As long as the evils of pornography are allowed to exist in our society, no one is truly free from fear. I implore you to pass House Bill 83 and help Montana become a safer and freer place in which to dwell and raise future generations.

TESTIMONY OF WINFRIED H. HUBRICH

FOR THE SENATE JUDICIARY COMMITTEE

IN SUPPORT OF HB 83

FEBRUARY 8, 1995

DEAR CHAIRMAN CRIPPEN, AND MEMBERS OF THE COMMITTEE. MY NAME IS WINFRIED (WYNN) H. HUBRICH. I AM THE POSTMASTER OF MISSOULA, MT AND AM THEREFORE A PUBLIC SERVANT, EMPLOYED BY THE US POSTAL SERVICE. I COME TO YOU TODAY NOT AS THE MISSOULA POSTMASTER BUT AS A HUSBAND, FATHER AND CONCERNED CITIZEN. THE VIEWS THAT I WILL EXPRESS ARE MINE, AND SHOULD NOT BE ATTRIBUTED TO MY EMPLOYER.

AS A POSTMASTER, I GET INVOLVED IN THE FIGHT AGAINST PORNOGRAPHY AND OBSCENITY WHEN THE US MAIL IS ILLEGALLY USED. WE HAVE STRICT MAILING REGULATIONS THAT PROHIBIT THE USE OF THE US MAIL TO DISTRIBUTE OBSCENE MATERIAL. I GET COMPLAINTS FROM MY OWN CUSTOMERS WHO SOMEHOW END UP ON MAILING LISTS AND RECEIVE UNSOLICITED SEXUALLY ORIENTED MATERIALS. I HAVE PERSONALLY SEEN SOME OF THIS MATERIAL AND AM AWARE AT THE PRODUCTION AND DISTRIBUTION OF SUCH MATERIAL.

BUT IT IS NOT THE MAIL OR POSTAL REGULATIONS AGAINST OBSCENITY THAT I WANT TO DISCUSS TODAY. I ATTENDED THE HOUSE SESSION WHEN HB 83 WAS DISCUSSED, DEBATED AND VOTED UPON. OF MAJOR CONCERN IN THAT DISCUSSION WAS THAT THIS BILL WOULD VIOLATE OUR FIRST AMENDMENT

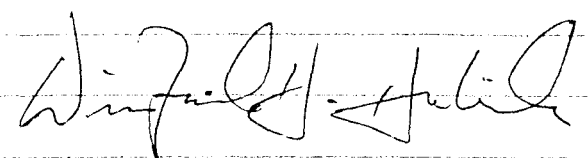
- 2 -

RIGHTS; AND THAT OUR FREEDOM OF SPEECH WILL BE TAKEN AWAY. THAT IS OF GREAT CONCERN TO ME ALSO; BECAUSE I WAS BORN IN NAZI GERMANY AND LIVED BEHIND THE IRON CURTAIN IN EAST GERMANY. BOTH OF THOSE GOVERNMENTS DID CURB THE FREEDOM OF SPEECH. COMMUNISTS RULED AND FREEDOMS WERE LIMITED. I CAME TO THIS COUNTRY WITH MY PARENTS AND HAVE ADOPTED THE CONSTITUTION AND THE BILL OF RIGHTS AS OUR WAY OF LIFE.

IN MY RESEARCH I FOUND THAT THE SUPREME COURT OF THE UNITED STATES HAS STATED IN THE MILLER VS. CALIFORNIA " THIS MUCH HAS BEEN CATEGORICALLY SETTLED BY THE US SUPREME COURT, THAT OBSCENE MATERIAL IS UNPROTECTED BY THE FIRST AMENDMENT." AND IN ROTH VS. UNITED STATES THE SUPREME COURT SAID, " WE HOLD THAT OBSCENITY IS NOT WITHIN THE AREA OF CONSTITUTIONALLY PROTECTED SPEECH AND PRESS."

THIS TO ME CLEARS UP ANY ARGUMENT THAT CONTINUES TO COME UP THAT HB 83 INFRINGES ON OUR FREEDOM OF SPEECH.

I ASK EACH OF YOU TO CONSIDER THE MOTIVES OF THOSE INDIVIDUALS WHO CONTINUE TO PRODUCE, DISTRIBUTE AND SELL OBSCENE MATERIAL. IT IS NOT FOR THE HEALTH, WELFARE OR GOOD OF THE PUBLIC. I URGE YOU TO PASS HB 83 AND BRING IT INTO LAW.

THANK YOU, 

SENATE JUDICIARY COMMITTEE
NO. 15
DATE 2-8-95
HB 83

TESTIMONY OF JEFFREY T. RENZ
IN OPPOSITION TO HB 83
Before the Senate Judiciary Committee

HOW WILL THIS AFFECT YOUR CONSTITUENTS?

1. **The Prosecution is Worse Than the Conviction.** The supporters of this bill have said that anyone who sells something that has artistic merit, etc. will not need to worry about being convicted. If convicted, they don't need to worry, because undoubtedly their conviction will be overturned. Mark Mozer has claimed that magazines showing run of the mill sex acts won't be covered by this law, but that the law only goes after the "really hard core stuff." These people are liars or they are naive.

Don't kid yourself, this bill won't be used to prosecute "hard core" porno kings. It won't be used against greasy haired mobsters. It will be used, and it has been used, to go after your next door neighbor, who runs a convenience store, or your theater manager, or your brother-in-law who runs a video store. Imagine your farm hand's reaction when he's driving your stock truck in from Williston and he's charged with a felony because his friends in Sidney asked him to pick up some Playboys. Imagine your surprise, if you knew it was going on, when you're charged, too.

What will the manager of the Alberta Bair Theater think when she has the opportunity to bring the acclaimed musicals Oh Calcutta! or Hair, both of which have nude scenes, to Billings? Will she decide not to, because of the risk of a felony trial, as theater operators in Boise did? Think about what the Alberta Bair Theater staff decided when Oh Calcutta! did come to Billings. Even though Oh Calcutta! had been found not obscene in every prosecution brought against it, the Theater's managers decided not to sell wine during intermissions to avoid the risk of prosecution under Billings' ordinance, which bans obscene performances in places that serve alcoholic beverages.

Think about Rob Uithof, who owns a gas station and convenience store in Libby. Rob faced four years in jail just for selling magazines under a Lincoln County ordinance like this one. He was acquitted by a Lincoln County jury. Not only was he acquitted, the jury broke out laughing when they reviewed the magazines that had been seized from his store. But later Rob took magazines off of his shelves. Why? Because the County Attorney swore that he would bring another prosecution and another until he found a jury that would convict Rob-for the same magazines for which the jury had freed him. Put your self in Rob's shoes. Rob has a wife and kids. What do you tell your family when they ask, "Are you a criminal? Why is your name in the paper? Are you going to jail?" What does Rob tell his customers? Can their kids keep coming to his store to buy candy as they have for the past 20 years?

Is it no wonder that Rob took those magazines, those **legal** magazines off his shelves? That's the pernicious effect of this bill. People modify their behaviour out of fear of prosecution, not out of confidence of acquittal and not out of confidence in an appeals court.

No one who says they care about people will give the government the power to do

this.

2. **You Can't Control It After It Leaves Here.** You all have in your mind's eye the kind of junk that this bill will prohibit. Forget it. The bill will prohibit whatever local cops, local prosecutors, and local censors want to prohibit. We have 56 counties in this state. Each county has one or more prosecutors. Add the city prosecutors to that list. Can you control them after this bill leaves here? Can you control the cop, who out of his religious convictions, feels that an otherwise legal magazine ought to come off the shelf? Can you prevent Dallas Erickson from doing what he did to Rob Uithof--pressuring the County Attorney to prosecute him for selling magazines deemed legal by a jury? Can you stop the guy who picketed Oh Calcutta! in Billings from doing the same thing? Can you be sure that, out of the hundreds of county and city prosecutors, there won't be one who acts on their personal view of literature, or two who have political ambitions, or another whose family was a competitor of the defendant, as in Lincoln County?

3. **You Can't Control the Jury.** I defended Rob Uithof in the Lincoln County trial. His freedom did not depend upon the kind of magazines he sold. His freedom depended upon the right mix of people on his jury. Another jury, drawn from the same pool of residents, might have convicted him. Why is this? Why is it that one jury can find something to be obscene and another jury from the same community can find that it is not? Who among you want to take that risk of selling magazines or videotapes under these circumstances? If you are a lawyer, and the manager of your local Buttreys comes to you and asks if he should continue to sell sexually explicit novels that are on the New York Times best seller list, what will you tell her? That there's "no way that a jury will convict her?" Can you guarantee her that she won't be prosecuted? My advice to her is that her only sure bet is to get rid of the books, even if they are protected by the First Amendment. That's because playing with the community standards test is playing poker without knowing if the game's been rigged.

4. **You Have Constitutional Problems.** Sure, the bill satisfies the tests established by the United States Supreme Court. But that is not the only constitution here. The Oregon Court of Appeals struck down a law like this, concluding that it violated a state right to free expression that is identical to Montana's. *State v. Henry*, The Hawaii Supreme Court struck down a law like this, holding that it violated Hawaii's right to privacy, which is based on our own. *State v. Kam*.

5. **Conclusion.** Montana's experience with pornography laws hasn't been good. This law will make it worse.

PROPOSED ORDINANCE NO. 2 REGARDING PORNOGRAPHY IN LINCOLN COUNTY

EXHIBIT 15
DATE 2-8-95
HB 83

WHEREAS, Section 45-8-201 (5), M.C.A. authorizes the adoption by Lincoln County of an ordinance regarding obscenity which is more restrictive than the existing provisions of State law, and

WHEREAS, the citizens of Lincoln County have the authority to define and regulate materials which they consider to be pornographic,

WHEREAS, the distribution of hard core pornography constitutes a public nuisance and presents a danger to the health, safety and welfare of the citizens of Lincoln County,

NOW, THEREFORE, the following ordinance shall be in full force and effect in all of Lincoln County, Montana.

Hard Core Pornography

A person commits the offense of Distribution of Hard Core Pornography when, with the knowledge of the obscene nature thereof, he purposely or knowingly:

1. Sells, delivers, provides or offers or agrees to sell, deliver or provide any obscene magazine, picture, cartoon, videotape or other representation or embodiment of the obscene.
2. A thing is obscene and designated as hard core pornography if it depicts sexual conduct or sadomasochistic sexual abuse as defined herein.

A. Sadomasochistic sexual abuse is defined as actual or simulated flagellation, rape, torture or other physical or sexual abuse by or upon a person who is nude or partially nude; or the condition of being fettered, bound or otherwise physically restrained for the actual or simulated purpose of sexual gratification or abuse as represented in the context of a sexual relationship, and when taken as a whole, the material, applying contemporary community standards, appeals to the prurient interests in sex; portrays sexually violent conduct in a patently offensive way; and lacks serious literary, artistic, political or scientific value.

B. Sexual conduct means ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons, or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, denuded genitals, pubic area, perineum, anal region, or, if such person be female, a breast, and which material, taken as a whole, applying contemporary community standards, appeals to the prurient interest in sex, portrays sexual conduct in a patently offensive way and lacks serious literary, artistic, political or scientific value.

3. Prurient means a lascivious, shameful or morbid interest in sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals. Where the material is designed for, or promoted to, a clearly defined deviant sexual group, rather than the public at large, the prurient appeal requirement is satisfied if the dominant theme of the material, taken as a whole, appeals to the prurient interest in sex of the members of that intended deviant group.

4. A person convicted of disseminating hard core pornography shall be fined at least \$500.00 but not more than \$1000.00, or be imprisoned in the County Jail for a term not to exceed 6 months, or both.

1 STATE OF MONTANA)
2 County of Lincoln) ss:

3 IN THE JUSTICE COURT OF LINCOLN COUNTY, MONTANA
4 Before Marlene A. Herreid, Justice of the Peace

5 THE STATE OF MONTANA,)
6 Plaintiff,) No. 5-90-009-001
7 vs.) COMPLAINT
8 ROBERT UITHOFF,)
9 Defendant.)

10 Scott B. Spencer, County Attorney, being duly sworn
11 deposes and says that on or about the 2nd day of November,
12 1989, in Lincoln County, Montana, the above named Defendant
13 did commit the offense of:

14 OBSCENITY, 8 Counts, in violation of County Ordinance
15 No. 2 and Section 45-8-201(5), M.C.A.

16 COUNT I

17 The facts of the offense are that Defendant, Robert
18 Uithoff is the owner of Saverite South and Saverite West, near
19 Libby. Employees of Defendant sold the magazine, Forbidden
20 Erotica. The magazine Forbidden Erotica is obscene as defined
21 in County Ordinance No. 2.

22 COUNT II

23 The facts of the offense are that Defendant, Robert
24 Uithoff is the owner of Saverite South and Saverite West, near
25 Libby. Employees of Defendant sold the magazine, Foreplay.
26 The magazine Foreplay is obscene as defined in County
Ordinance No. 2.

COUNT III

The facts of the offense are that Defendant, Robert
Uithoff is the owner of Saverite South and Saverite West, near
Libby. Employees of Defendant sold the magazine, Cinema Blue.
The magazine Cinema Blue is obscene as defined in County
Ordinance No. 2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COUNT IV

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Best of High Society. The magazine Best of High Society is obscene as defined in County Ordinance No. 2.

COUNT V

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine, Hot Twosomes. The magazine Hot Twosomes is obscene as defined in County Ordinance No. 2.

COUNT VI

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine Sex Pix. The magazine Sex Pix is obscene as defined in County Ordinance No. 2.

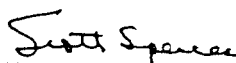
COUNT VII

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine Swank. The magazine Swank is obscene as defined in County Ordinance No. 2.

COUNT VIII

The facts of the offense are that Defendant, Robert Uithoff is the owner of Saverite South and Saverite West, near Libby. Employees of Defendant sold the magazine Film Scenes. The magazine Film Scenes is obscene as defined in County Ordinance No. 2.

Conviction of each count of OBSCENITY, is punishable by incarceration in the Lincoln County Jail for not more than 6 months, or a fine not less than \$500.00 or not more than \$1,000.00, or both.



Scott B. Spencer

JUSTICE OF THE PEACE
Department No. 1



LINCOLN COUNTY, MONTANA

418 Mineral Avenue
Libby, MT 59923
Telephone: 293-7781

EXHIBIT 15
DATE 2-8-95
~~X~~ HB 83

I, Marlene A. Herreid, a duly elected, qualified and acting Justice of the Peace in and for the County of Lincoln, State of Montana, do hereby certify that the annexed instruments are true and correct copies of: Verdicts in Robert Uithof trial (Sections I-VIII) and I further certify that I have compared said copies with the originals and that they are full, true and correct copies of case number 5-90-009-001.

IN WITNESS WHEREOF, I hereto set my hand this 4th day of May, 1990.

Justice of the Peace in and for the County of Lincoln, State of Montana

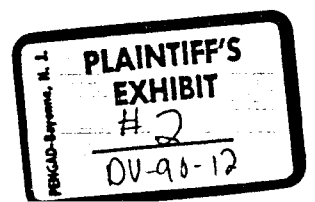
I, Janet B.F. Seigel, County Clerk and Recorder in and for the County of Lincoln, State of Montana, do hereby certify that Marlene A. Herreid, whose name is subscribed to the annexed instruments in writing is a Justice of the Peace in and for the County of Lincoln State of Montana, residing at Libby, Montana, duly elected, qualified and acting as such; that her term of office expires on the first Monday in January, A.D., 1991, as shown by the record of this office; that I am well acquainted with this handwriting and verily believe that the signature to the said instrument is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by seal of this office this _____ day of _____ 19_____.

County Clerk and Recorder of Lincoln County, Montana

(Seal)

Deputy Clerk and Recorder



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN JUSTICE COURT OF LINCOLN COUNTY, MONTANA

Before Marlene A. Herreid, Justice of the Peace

THE STATE OF MONTANA,)
)
Plaintiff,)
)
vs.) VERDICT
)
ROBERT UITHOF,)
)
Defendant.)

SECTION I

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor _____

NOT GUILTY of the offense of OBSCENITY, a
misdemeanor X

Dated this 26 day of March, 1990.

Paul Barber
Foreperson

SECTION II

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor _____

NOT GUILTY of the offense of OBSCENITY, a
misdemeanor X

Dated this 26 day of March, 1990.

Paul Barber
Foreperson

SECTION III

1 The charge of OBSCENITY, a misdemeanor:

2 We, the Jury, find the Defendant:
3 (Place an "x" behind appropriate finding)

4 GUILTY of the offense of OBSCENITY, a misdemeanor _____

5 NOT GUILTY of the offense of OBSCENITY, a
6 misdemeanor X

7 Dated this 26 day of March, 1990.

8 Paul Burke
9 Foreperson

10 SECTION IV

11 The charge of OBSCENITY, a misdemeanor:

12 We, the Jury, find the Defendant:
13 (Place an "x" behind appropriate finding)

14 GUILTY of the offense of OBSCENITY, a misdemeanor _____

15 NOT GUILTY of the offense of OBSCENITY, a
16 misdemeanor X

17 Dated this 26 day of March, 1990.

18 Paul Burke
19 Foreperson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SECTION V

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor _____

NOT GUILTY of the offense of OBSCENITY, a
misdemeanor X

Dated this 26 day of March, 1990.

Paul Burke
Foreperson

SECTION VI

The charge of OBSCENITY, a misdemeanor:

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

GUILTY of the offense of OBSCENITY, a misdemeanor _____

NOT GUILTY of the offense of OBSCENITY, a
misdemeanor X

Dated this 26 day of March, 1990.

Paul Burke
Foreperson

MONTANA

B-1

Montana Roundup.....B-3

Magazine vendors 1, porn ordinance 0

By JOHN STROMNES
of the Missoulian
and Associated Press

Lincoln County Attorney Scott Spencer said Thursday he will continue to prosecute suspected sellers of pornography in the county, despite the fact that a jury found innocent the first person prosecuted under the 1988 anti-porn ordinance.

On Monday, a five-woman, one-man jury in the Peace Marlene Herreid's court acquitted Libby convenience store owner Robert Uithof on all obscenity charges of selling eight obscene magazines at his market in November. The charges were misdemeanors.

Some of the alleged obscene magazines included Swank, Best of High Society and 1989 Porn Stars. They were confiscated by law enforcement officers in November after complaints by local residents, some of whom demonstrated at Uithof's store during Pornography Awareness Week last November.

Uithof was charged with obscenity under a county ordinance enacted by referendum after a child was killed and mutilated by a convicted sex offender in the Libby area a couple of years ago. A similar ordinance brought before voters in neighboring Sanders County was defeated in 1988.

Acquittal in first Lincoln County case won't inhibit enforcement

Billings attorney Jeffrey Renz defended Uithof on behalf of the American Civil Liberties Union.

The magazines, Renz said, were not prominently displayed in the store. They were locked behind plexiglass, and the covers were concealed, except for the title, he said, and minors were not permitted to view the magazines.

"We argued that the magazines didn't appeal to a prurient interest in sex," Renz said. "The jury agreed. Jurors did not find the magazines to be offensive."

Spencer said he talked with jurors after the trial, "and I disagree with Mr. Renz's conclusions" about the reason for the verdict.

Spencer refused to elaborate, or to specifically discuss the case.

But, he said, people who sell sexually explicit magazines or videos in Libby still will face criminal prosecution. Presumably that could mean future charges against Uithof, who authorities have said is the only store owner who sells the materials in Lincoln County.

"The issue is not over," Spencer said.

The Lincoln County ordinance says that any material that depicts sexual conduct is potentially pornographic if, by applying community standards, it is found to appeal to prurient interest, is patently offensive or lacks serious artistic, literary or scientific value.

The issue is not as clear-cut as the First Amendment right to free speech, Spencer said. Obscenity and pornography are not protected by the First Amendment.

Legal issues also involve the right to publish and the right to privacy, both of which are protected by Montana statutes or constitutional law, he said.

A civil action filed to challenge the ordinance is still pending in District Court in Libby, and may be heard by Judge Robert Keller this summer, Spencer said. A decision in that case could bring some coherence to Montana law governing obscenity, he said.

Linthead County has an ordinance, but no one has ever been prosecuted under it, and the former Lincoln County attorney criticized it as unenforceable. Missoula County has no ordinance at all governing pornography. The issue recently has been debated by Great Falls and Helena city governments concerned about allegedly obscene videos and nude dancing in casinos, respectively.

The anti-porn bill was introduced in the state Legislature in 1989, but died in committee.

SECTION VII

1 The charge of OBSCENITY, a misdemeanor:

2 We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

3 GUILTY of the offense of OBSCENITY, a misdemeanor _____

4 NOT GUILTY of the offense of OBSCENITY, a _____
5 misdemeanor X

6 Dated this 26 day of March, 1990.

7

8

Paul Beake
Foreperson

9

10

11

SECTION VIII

12

13

The charge of OBSCENITY, a misdemeanor:

14

We, the Jury, find the Defendant:
(Place an "x" behind appropriate finding)

15

GUILTY of the offense of OBSCENITY, a misdemeanor _____

16

17 NOT GUILTY of the offense of OBSCENITY, a _____
misdemeanor X

17

18

Dated this 26 day of March, 1990.

19

20

Paul Beake
Foreperson

21

22

23

24

25

26

Juries can be wrong

To the editor:

During my work as a deputy sheriff in Lincoln County I had occasion to confiscate twenty some marijuana plants and when this evidence was presented to a jury they believed the defendants claim that they thought the plants were tomato despite hearing evidence of cultivation.

Even though I believe strongly in the jury system I have on occasion seen juries come in with a mistaken verdict.

In the 1973 landmark decision concerning obscenity the U.S. Supreme Court gave communities the right to set their own standards as to what appeals to the "prurient" (negative or morbid) interest in sex using the standard of the "average person". ACLU type attorneys claim this is an unworkable standard but lawyers that use it find otherwise.

I am proud of the conservative nature of the Lincoln County residents when it comes to the issue of obscene or hard core

pornography. I can not believe that the sexually violent and ugly material that the jury examined is within Libby's community standard.

Using an example to illustrate why I feel this I would refer to smoking. Even if I knew that every adult smoked in Lincoln County, smoking would not necessarily be the community standard. The question would be do they want their children to smoke and do they recommend it to their friends?

Doctor James Dobson and many others, including several Clinical Psychologists in Montana, report that the material of the nature that the recent jury reviewed, causes some people to commit sexual violence against others. I pray that there may be an opportunity for another jury to undo the damage and in my opinion the inaccuracy of the last one. Our children, grandchildren and future generations depend on it.

Dallas D. Erickson

INVENTORY OF SEIZED PUBLICATIONS

<u>Name</u>	<u>Qty</u>	<u>Name</u>	<u>Qty</u>
Pocket Fox	3	Penthouse Hot Talk	1
Hustler	6	Letters Uncensored	2
Chic	6	Fox	7
Penthouse	3	Adult Cinema	1
Sex Guide	1	Satin Lace	5
Uncensored Letters	1	T & A	4
Hustler	2	Hot Housewives	6
Penthouse	2	Swank	2
Velvet	1	Hot Lips	6
Hot Lips	2	Erotic Stars	6
Cavalier	5	Gallery	6
Rear Action	2	Fox	3
Erotica	2	High Society	3
Adult Video	7	Nugget	8
Erotica #13	4	Leg Action	4
Gem	1	Adult Video	6
Cheri	3	Film Scenes	8
High Society	2	Wild & Willing Women	6
Fox	6	Cheri	3
Hot Twosomes	5	X Rated Stars	8
Erotic X-Film	4	OUI	8
Titillation	4	Harvey	2
Juggs	3	Club Int'l	2
Swank	3	Best of 40+	1
Celebrity Sleuth	5	Cinema Blue	6
Film Scenes	5	Velvet	3
Genesis Couple	5	High Heeled Women	5
Big Butt Bunanza	4	Live	6
Wild & Willing Women	7	Gent	5
Hot Housewives	3	Cavalier	2
High Heeled Women	3	Max 40+	6
Close Shave	4	Couples	4
Cinema Blue	6	Tit	2
X Rated Stars	1	Hot Twosomes	1
Red Hot Couples	3	Club	4
OUI	5	Bust	4
Live	6	Juggs	1
Sex Partners	4	Gem	1
Club	5	Celebrity Sleuth	1
Hustler	8	Bunanza	6
Hustler	12		
Sex Guide	3		
Deviations	8		
Penthouse Forum	5		
Pocket Fox	5		
Hustler Fantasies	8		
Chic Letters	9		
Turn Ons	8		
Adult Erotica	4		

Exhibit No. 16 includes 124 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 16

DATE 2-8-95

BILL NO. HB 83

TESTIMONY OF JACQUELINE LENMARK
ON BEHALF OF
MONTANANS AGAINST CENSORSHIP

I am Jacqueline Lenmark. I am an attorney practicing in Helena, Montana, with the firm of Keller, Reynolds, Drake, Johnson & Gillespie, P.C. I represent, Montanans Against Censorship, a group of Montana business owners who are concerned with censorship and free expression, including book and video store owners and librarians. This group of business owners **opposes HB 83**.

This bill is an attempt to rewrite Montana's obscenity statute to expand its current definitions to include many forms of art, literature, entertainment, and private conduct that are now freely enjoyed by Montana citizens and provide important revenue and business opportunities for Montana.

HB 83 attempts to redefine "obscenity" as well as expand the criminal offense and penalty. The current obscenity statute already prohibits the publication, exhibition, sale, delivery, provision or otherwise making available of "obscene" material to anyone under the age of 18. This proposed legislation removes the language regarding under the age of 18, making the statute applicable to all consenting adults. The proposed legislation also adds "renting" and "importation" to the laundry list of illegal activities and "statues" and "computer transmissions" to the list of obscene material.

HB 83 has potential serious and far-reaching implications for the small business owners in Montana. It places business owners under the threat of prosecution for the sale, rental, purchase, or importation of materials that could be viewed as obscene. The intent of the sponsor may be to target a specific form of material, but as drafted this legislation will affect all stores, television stations, cable companies, and video stores that transmit, sell or rent even PG and R rated movies. It is so far reaching that it could ban the sale, transmission, or rental of such movies as Batman, a PG-13 movie in which persons are shown being physically restrained by a person clad in a "revealing or bizarre costume."

The potential impact to state revenue is staggering. This legislation will discourage movie producers from making movies in Montana, an industry that has brought substantial revenue to Montana in the past. It will also affect television stations and cable companies that will be forced to second guess potential

prosecution under the statute in determining whether to broadcast nationally televised network programming in Montana. Bookstores will be forced to censor the types of books they will provide to their customers, because the bills will prohibit the sale of many of the current best sellers, romance novels, and poetry collections. Plainly construed, which is how a statute should be interpreted, it would even preclude the sale of the Bible. The bill will affect how the bookstore owners choose to display books covering parenting and health issues.

CONSTITUTIONAL CHALLENGE

Apart from the very real impact the bill will have on business, it is subject to constitutional challenges, under US and Montana law.

The proposed bill is unconstitutional under the 1st Amendment to the U.S. Constitution. The First Amendment to the United States Constitution states that "[c]ongress shall make no law . . . abridging the freedom of speech, or of the press" History shows that the very purpose of the First Amendment is to protect expression that fails to conform to community standards. The Framers of the Constitution believed that the Bill of Rights would protect the rights of the minority against the will of the majority. In this instance a very vocal group of people is attempting to enforce its will on the citizens of Montana through the proposed legislation.

In 1973, the U.S. Supreme Court in Miller v. California, 413 U.S. 15 (1973), set the standard under the First Amendment of the United States Constitution, whereby States could permissibly restrict obscenity. Montana's current obscenity statute reflects those guidelines verbatim. To enact legislation that departs from the enunciated test opens the legislation to serious challenge.

The proposed legislation is unconstitutional under the Montana Constitution. The State of Montana is free to extend to its citizens even greater freedom of speech, or any constitutional protection, that the U.S. Constitution, but not less. Some states have gone as far as to reject the Miller test altogether, finding that "the test constitutes censorship forbidden" by their state constitution. The Montana Supreme Court has yet to address this specific issue, but it is clear that Montana's Constitution affords to Montanans greater freedoms of expression and privacy than the U.S. Constitution.

EXHIBIT 16
DATE 2-8-95
HB 83

The Montana Constitution states that "[n]o law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty." Art. II, Sec.7, Mont. Const. Montana is free to choose to extend a greater freedom of speech to its citizens than those guaranteed under the Federal Constitution, and that is exactly what the 1972 framers envisioned.

Delegate Mansfield stated at the convention with regard to Art. II, Sec. 7: "The freedom of speech is extended . . . to cover the freedom of expression. Hopefully this extension will provide impetus to the courts in Montana to rule on various forms of expression similar to the spoken work, and the ways in which one expresses his unique personality, in an effort to rebalance the general backseat status of states in the **safeguarding of civil liberties**. The committee wishes to stress the primacy of these guarantees in the hope that their enforcement will not continue merely in the wake of the federal case law." Transcript, Mar. 7, 1972, Mont. Const. Conv., at 1649 [emphasis supplied].

The statement of Delegate Mansfield clearly shows that the framers of the Montana Constitution intended greater freedoms of speech and expression be extended to Montanans through the state constitution than are afforded by the federal constitution. The proposed legislation flies in the face of that intent.

Art. II, Sec. 10 of the Montana Constitution states that "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." Delegate Campbell in proposing the privacy section stated that: "We all recognize that the state must come into our private lives at some point, but what [the privacy article] says is, don't come into our private lives unless you have a good reason for being there. We feel that this, as a mandate to our government, would cause a complete reexamination and guarantee our individual citizens . . . this very important right--the right to be let alone: and this has been called the most important right of them all." Verbatim Trans. Mt. Const. Conv. (Mar. 7, 1972) at 1681.

To invade our individual privacy then the state must show a compelling state interest. You will be told that interest is shown in the demonstrable link between pornography and crimes against women. As the conflicting testimony to the Committee will demonstrate, however, there is no clear answer on that "link." No clear answer is not sufficient to demonstrate a "compelling state interest."

OTHER STATES' EXPERIENCE

Other states have tested similar legislation under their constitutions and have found it defective.

In 1987, the Oregon Supreme Court struck down a similar statute in State v. Henry, 302 Or. 510, 732 P.2d 9 (1987), holding that the Oregon Constitution gave greater protection to free expression than the U.S. Constitution. Similarly, in 1989, the Colorado Supreme Court struck down Colorado's obscenity statute on the same grounds. People v. Ford, ___ Colo. ___, 773 P.2d 1059 (1989).

Supporters of the obscenity law in both states then mounted initiative campaigns to reinsert the statutes into law. Both initiatives failed. In Oregon 56% of the voters rejected the intrusion that such statutes compel in private lives. In Colorado 63% of the citizens rejected such regulation.

THE PROPOSED LEGISLATION IS UNNECESSARY

Finally, the proposed legislation is unnecessary. Montana has adequate and tested statutes presently in law to protect the concerns addressed here. Statutes defining and proscribing sexual intercourse without consent, sexual assault, incest, child sexual abuse, obscenity and indecency all are effective protections to adult and child, male and female. The statutes were carefully crafted by a Commission to address Montana legal precedent. They have been amended to increase penalties and protections where warranted. Law enforcement is familiar with their provisions and experienced in their prosecution. To begin a new enactment will only usher in new legal battles over correct interpretation and application.

CONCLUSION

No one wants to live in a dangerous or immoral society and the businesses represented here are not advocating that in their opposition to this proposed measure. The trouble with the bill, however, is that in its well-intentioned effort to protect, it casts a net too wide. Law is supposed to give notice of the conduct that will be considered and punished as criminal. This bill, if enacted, will not give notice. Because there are no clear guidelines and virtually everything can be construed as "obscene," innocent conduct will be subject to arbitrary and selective prosecution. The economic impact will be substantial and sadly will constrict the free availability of literature, art, and entertainments now available to Montanans.

EXHIBIT 16
DATE 2-8-95
HB 83

MONTANA ENTERTAINMENT COMPANY

LIST OF COMPANIES REGISTERED FOR

Curtis A. Lord
Lord's Video
419 W. Main
Laurel, MT 59044
(406)628-6070

A. Rudy Autio
2322 Duncan Dr.
Missoula, MT 59802
(406) 549-2579

K's Video Korral
814 South First Street
Hamilton, MT 59840
(406)363-6099

Rebecca Reno
Video Library
Box 22209
Billings, MT 59104
(406)652-5656

Deborah A. Sporich
The Bookstore
26 North Idaho Street
Dillon, MT 59725
(406)683-6807

Maureen O'Brien
Mountain Market Place
109 N. 4th Street
Hamilton, MT 59840
(406)363-6245

Dan G. Cederberg
The Wilma Amusement Company
131 South Higgins
Missoula, MT 59802
(406)721-2100

Montana Entertainment Corporation
2611 Brooks Street
Missoula, MT 59801
(406)721-2100

Pacific Northwest Booksellers Association
1510 Mill Street
Eugene, OR 97401-4258
(503)683-4363

Daniel W. Frazee
Blockbuster Video
208 N. Montana Avenue, Suite 203
Helena, MT 59601
(406)449-4074

Fact & Fiction
216 W. Main
Missoula, MT 59801
(406)721-2881

Diana Romain
Village Book Shop
Gateway West Mall
Kalispell, MT 59901
(406)752-8041

Russell W. Lawrence
Chapter One Book Store, Inc.
252 Main Street
Hamilton, MT 59840
(406)363-5220

Gilbert A. Millikan
Gil-Mil, Inc., d/b/a Showcase Video
P.O. Box 2396
Missoula, MT 59806
(406)721-7154

FEB 7 1995

EXHIBIT 16
DATE 2-8-95
I HB 83

Dear Cynthia:

I sent the following letter to five Republican senators from the Hi-Line: Aklestad, Cole, Gage, Jenkins and Jergeson.

Best,

Dee McNamer

314 Evans
Missoula, MT 59801
Feb. 5, 1995

Dear Mr. Jergeson:

I am writing as a former fellow Hi-Liner to urge you to oppose House Bill 83: "An Act Revising the Obscenity Law."

Montana adults can and should make their own decisions about what they will read or watch. It's that simple. Laws already exist for the protection of minors.

I find it deeply ironic that so many Republicans -- who otherwise want a minimal government presence in our daily lives -- are so eager to call in the government as moral babysitter and censor.

As a writer, I worry, too, about the effect this bill would have on booksellers, particularly those running their own businesses. Operating a small business is tough enough. Owners don't have the time or manpower to comb through every book in their store for passages someone out there might deem offensive. To keep the government out of their business, they will be encouraged to eliminate anything but the most bland, inoffensive, mediocre reading fare on the market. Readers are the big losers.

When I was a kid in Cut Bank, a local zealot with a certain amount of clout used to make sure that library books he personally found offensive -- Salinger's Catcher in the Rye was one of them -- were removed from the shelves. That kind of Big Brotherism gives me the chills. This bill is a version of it. Please vote against it.

Sincerely,

Deirdre McNamer

VIDEO SOFTWARE DEALERS ASSOCIATION

*Montana Chapter
520 Euclid Avenue
Helena, MT 59601*

January 15, 1995

Re: HB 83

Dear Representative:

I am writing to you as President of the Montana Chapter of the Video Software Dealers Association. The Video Software Dealers Association is a trade association that promotes the economic interests of video retailers statewide. Most of our members are small business owners. All contribute a valuable component to the Montana economy by providing jobs in our communities and contributing taxes to the general fund of this state.

WE STRONGLY URGE YOU TO VOTE NO ON HB 83.

The effect of HB 83, if passed, will work a hardship on Montana video retailers both economically and personally, by requiring the retailer to act as the community's conscience and censor. While we do not dispute that obscenity can be a problem and the state has a right to regulate, HB 83 goes far beyond what is necessary for the adequate protection of this state's citizens.

Presently Montana obscenity law protects minors from the distribution of obscenity, defines obscenity in terms that will meet Constitutional requirements, provides appropriate exemptions for the innocent employees of distributors of obscenity, and allows exemptions for video and motion picture material rated by the motion picture industry as G, PG, PG-13, or R.

HB 83 extends the restrictions on obscenity to adults, changes its definition thereby raising questions about its constitutionality under the Montana Constitution, eliminates protection for employees, and makes no provision for material already rated by the motion picture industry. It makes possession, delivery, or distribution, even to adults, a felony, conviction of which could subject the offender up to a \$50,000 fine or 10-year prison term.

Individuals will disagree about what is obscene. HB 83's definitions do not provide good guidelines. Small video store owners cannot absorb the economic risk posed by the threat of prosecution if they do not censor in a satisfactory way for their

EXHIBIT 16
DATE 2-8-95
 HB 83

Video Software Dealers Association
January 15, 1995
Page 2

community. Defense of an alleged violation, even if successful can devastate the solvency of a small business. More importantly, it should not be the responsibility of the small business owner to protect the adult consumer from himself.

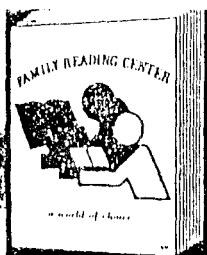
Given the risk and uncertainty that are contained in HB 83, its effect will surely be that legitimate videos, and other material, will be withdrawn from circulation. That effect will be translated in terms of jobs and revenue.

Please VOTE NO on HB 83.

Very truly yours,


Jerry Skillman

js:j



MAGAZINES

SOUVENIRS

PAGE BACKS

POST CARDS

BILLINGS NEWS, INC.

Phone (406) 245-5784 Fax (406) 245-0673 711-4th Avenue North Billings, Montana 59101

Thomas Keating
Senate Judiciary Committee
Capitol Station
Helena, Montana 59620

RE: Censorship Bills - House Bills 82 & 83
"Montanas against Censorship"

Dear Senator

You have been asked to support a bill that would result in the suppression of books and magazines that are protected by the first amendment. Please allow us to point out the following.

Housebill 83 states: Any publication, display, rental, sale or delivery of obscene materials is forbidden. Obscene items would be those the average person would find appeals to prurient interests are "patently offensive" descriptions or depictions of sexual conduct and lacking in serious literary, political or scientific value.

Proponents of Housebill 83 called it an anti-crime measure saying that a ban on obscene material would reduce sex crimes, protect women and children. Montana already has laws to protect people who sell obscenity to children, abuse children or commit sex crimes. Housebill 83 is definitely not needed, it is too vague, it goes against the constitution of the United States Of America and could be used to prevent adults from buying, watching, reading or obtaining materials that they do not consider to be obscene.

Free speech is the fulcrum upon which our entire democratic system depends. To tamper with the mainspring of that system is unthinkable, and yet, at this very moment, there are other people busy, anxious, little people marching on libraries, newsstands, bookstores, movie houses, video rentals, publishers, television stations & advertising agencies, in an effort to suppress any words, ideas or images with which they disagree with. These people are self appointed censors who firmly believe that if we had less freedom, less capacity to question and challenge the establishment, America would be a better place in which to live. They are of course wrong !!!

A prime example of "Vague and unchallenged obscenity censorship bills" in some states have caused the following books and films from the library shelves:

Huckleberry Finn : removed because of "racist"

Mother Goose's Nursery Rhymes: because they are "anti-semitic"

The Shinning : "contains violence, demonic possession and ridicules the christian religion"

Time -Life Books on Tokyo: removed because it included a photograph of the buttocks of nude Japanese businessmen at a public bath.

The Wizard Of Oz: because it promotes "witchcraft"

Snow White and The Seven Dwarfs: because of its ostensible "violence"

Other books removed from schools, libraries and in some cases, whole communities include such classics as - The Diary Of Ann Frank, The Grapes Of Wrath, Of Mice and Men, To Kill A Mockingbird and recently Romeo and Juliet.

Films that have been removed

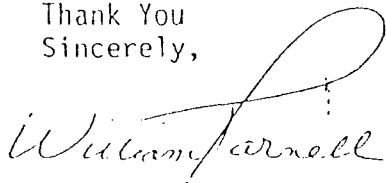
A Passage To India - Victor/Victoria, A Clockwork Orange, Star Trek IV, The Voyage Home, The National Coalition on Television Violence censored the cartoon film Lady and The Tramp, and the popular Christmas ballet The Nutcracker for its ferocious and godless "battle between toy soldiers and mice"

Free speech is prevalent to our survival as a nation and a state, we must never forget that even the most subtle restriction of free speech can lead to proliferation of tyranny and injustice on a scale of unimaginable proportions.

On September 17, 1994 the United States Of America celebrated the 207th anniversary of its constitution. The preservation of this document through two centuries of tumultuous change says a whole lot about our greatness as a nation and our dedicated and uncompromising love of freedom particularly the freedom to speak, to worship, to read, to watch and to think about anything we dare, Housebill 83 challenges all these things. It is wrong for Montanans!!!

Where censorship prevails, there can be no freedom, we feel it's that simple.

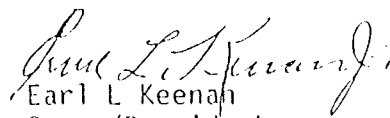
Thank You
Sincerely,



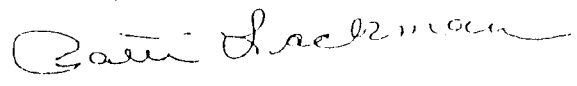
William Parnell
Director Sales/Marketing



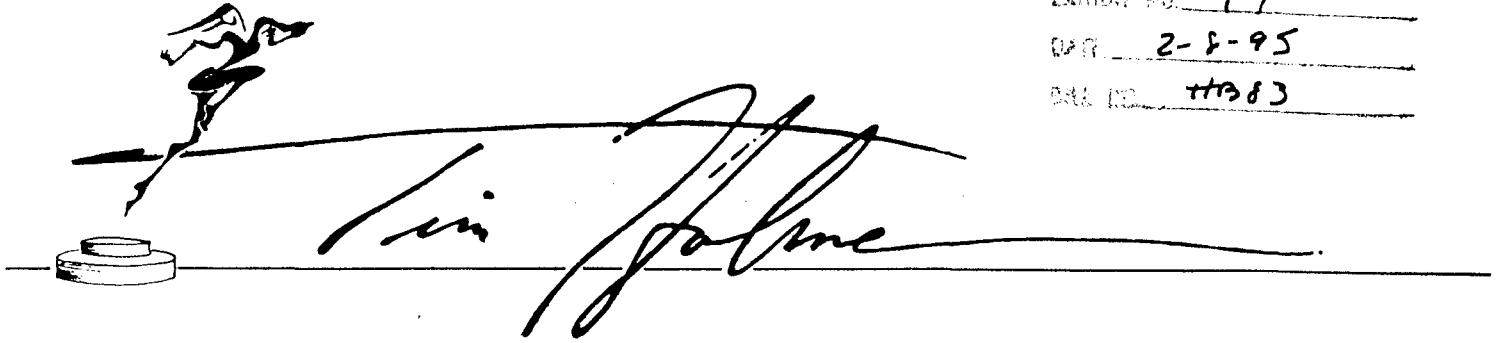
John V. Keenan
Vice President



Earl L. Keenan
Owner/President



Patti Lackman
Secretary/Treasure



Testimony against H.B. 83 before the SENATE JUDICIARY COMMITTEE

Of the many fallacies contained in this bill, I will hold my comments to only one. It is suggested that this bill would protect any expression of a sexual subject which has artistic value. I disagree that any such protection exists.

This bill doesn't outlaw prurient treatments of the subject of sex, it outlaws any treatments! It assumes that every depiction of this monumentally vital aspect of human life is nothing but prurient. It would still allow a person to say with their words that sex is a beautiful sacrament with which God has blessed humanity, but it would deny the same freedom to visual artists like myself.

In Ravalli County we can't even show a simple innocent nude. How are we to believe that in this kind of atmosphere, any depiction of even the most spiritual and transformative dimensions of sex will somehow be protected because of its esthetics? Artistic value cannot be proven, yet that is what this bill would require of artists.

In fact, I challenge the proponents of this bill to locate, among all the greatest art of history, any image of a sexually explicit subject that would have enough aesthetic quality to satisfy these requirements!

You have before you the testament to Montanans that sex is never healthy, beautiful or sacred, and any artist, like myself, who suggests that it is is a criminal. Of course you wouldn't pass a ridiculous bill like that. But that's what this bill is and I urge you, for the sake truth and art and freedom, to reject it.

Thank you.

Tim Holmes,

Senate Judiciary Committee

Testimony against H.B. #83, February 8, 1995.
Submitted by Bob FitzGerald, Helena.

Mr. Chairman and members of the committee:

Every time lawmakers debate a bill, regardless of its content, what you are really doing is struggling with the question of what kind of society we want to be. The Obscenity Bill asks this question more clearly than most bills. You will make a choice, when you vote on this bill, pivotal to what kind of community we want to be.

One choice is to become a community based on fear, on the assumption that any expression we cannot control will inevitably turn into evil and destroy us and therefore absolute control equals absolute safety. This kind of fear assumes that most people can't be trusted to make good choices so their choices should be controlled. This, of course, only protects the few at the expense of the many and is called Fascism.

The alternative is to base our community on the assumption that all people are created with equal powers to discriminate between good and bad ideas; that we would rather live with the bad decisions of the few than the diminished freedom of all. It is this basic faith in humankind that spawned such developments as democracy and the Gutenberg Bible.

Democracy is a gentle civil war, fought with ideas rather than bullets. When any idea or expression, such as the depiction of human bodies, is removed from contention, it limits the freedoms of all. It in fact violates the very freedom we were given by our wise predecessors to choose for ourselves.

If we really believe that we have arrived at the pinnacle of human judgement and look down upon the rest of the debauched society, then yes, it is our duty to create a fascist society to keep ideas and expressions under our control.

But if we truly believe in the refining process of democracy, then let's put away fear and do battle not with power but with ideas!

I respectfully urge you to kill this bill.

MONTANA

ASSOCIATION OF

THEATRE OWNERS

Sen. Bruce Crippen
Chairman Judiciary Committee

Just another note to let you know I'm still
very much against HB83, for the following
reasons.

1. We already have a bill that is adequate.
2. This is a censorship bill.
3. I resent someone thinking they know better what I should see, read or think better than I can.
4. It will be hard to enforce because it is so sweeping in its scope.

I own a theatre & video store in Gardiner and
am very concerned about this bill & any like
it. Please vote to kill this one.

Sincerely
Diane Smith
1529 Yellowstone Ave
Billings, MT 59102



TESTIMONY AGAINST HB 83
Russell W. Lawrence
512 Blodgett Camp Road
Hamilton MT 59840

My name is Russ Lawrence, and my wife and I own a small business in Hamilton, Chapter One Book Store. I have come here today to urge you to reject HB 83, a vaguely-worded attempt to legislate morality across the state.

This bill goes so far beyond existing state law in removing important safeguards that it will affect materials beyond the scope of their stated intent.

This is the only law I know of that is so vaguely worded that it is literally impossible to know if you are in violation of it until you are convicted. How is one to know what the "average person" finds "patently offensive?" Am I an average person? Is Dallas Erickson? Are you? How broad is "average" supposed to be? Does this law mean that material that is acceptable to 49% but not 51% of the population can be banned? Forty percent? Thirty-three and a third percent? Where is that line drawn? HB 83 doesn't say.

HB 83 is being pitched as a "crime" bill, but all it does is to criminalize the viewing of some ill-defined images. Neither the Reagan-era Meese commission nor the earlier Report of the President's Commission on Obscenity and Pornography (1970) found data to support a causal link between pornography and sexual assault. The earlier report stated that "Empirical research designed to clarify the question has found no reliable evidence to date that exposure to sexual materials plays a significant role in the causation of delinquent or criminal sexual behavior among youths or adults." Dr. Frederick Schauer, a member of the Meese Commission and author of the draft document that served as the basis for the commission report, states "I do not make the claim, nor does the report, that the category of sexually explicit material bears a causal relationship to acts of sexual violence."

Dr. John Money, of Johns Hopkins University and one of the world's foremost researchers on deviant sexual behavior, said in the New York Times (January 23, 1990) that "the majority of patients with paraphilias (sexual abnormalities) described a strict antisexual upbringing in which sex was either never mentioned or was actively repressed or defiled." He predicted that "current repressive attitudes toward sex will breed an ever-widening epidemic of aberrant sexual behavior." This bill could be counter-productive.

In 1985, the Institute of Criminal Science in Copenhagen reported that in European countries where restrictions on pornography have been lifted, the incidence of rape over the last 10-20 years has remained constant or declined.

A 1986 study found that Utah ranks lowest in circulation of sex-related magazines, but 25th in number of rapes. New Hampshire ranks ninth in sex-magazine circulation but 44th in rapes. (Baron & Straus, 1984, 1985, 1986).

In 1988, Dr. Joseph Scott and Loretta Schwalm (Ohio State University) could not find a valid connection between rape rates and the circulation of adult magazines (Journal of Sex Research, 1988, vol. 24, pp. 241-250). These same researchers, in another 1988 report on the presence of adult theaters and rape rates, found that other factors, such as the circulation of "outdoor-type" magazines, such as Field & Stream and Guns & Ammo, correlated more closely with rape rates.

In the Harvard Civil Rights-Civil Liberties Law Review, Barry Lynn wrote "Defendants accused of violent crimes against women have asserted that they were influenced by sources as diverse as the "golden calf" scene in Cecil B. DeMille's The Ten Commandments and an Anglican church service. For some defendants, of course, pornography has become a convenient excuse for their actions."

In 1987 a Fort Lauderdale evangelist beat his two-year-old daughter to death while "training" her, he said, according to Biblical injunction. A South Carolina Home for Boys was closed down in 1984 for similar "training" based on the Bible, specifically Proverbs 22:15.

So, what's our response? Do we ban the Bible? Cecil B. DeMille movies? The Anglican Church?

Of course not. The point is that it isn't against the law to believe in the Bible, but it is against the law to beat a child to death. It isn't against the law to believe in the so-called "rape myth," but it is against the law to act on it and to commit rape. That is a fundamental tenet of our legal system: your beliefs are your own business, so long as you commit no crime. Do you really want to start legislating people's beliefs? Banning, or trying to ban, any material that might cause someone to believe something that might cause them to commit a crime is a ludicrous proposition that I urge you to reject.

If the proponents of this bill want tougher law enforcement, they should stiffen the penalties for rape, sexual assault and child abuse. That is the solution, rather than criminalizing the viewing of a magazine or video.

Furthermore, this proposed legislation is so poorly written that its definitions go far beyond what the authors intended. For instance, on page three, section (d)(iii) it refers to "sodomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation, of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume."

EXHIBIT 20

DATE 2-8-95

HB 83

This section describes every depiction of the life of Christ, and every passion play that ends with Jesus, clad only in a loincloth, bound to a cross and being beaten and tortured by Roman Legionnaires in helmets and leather. If the bill has this unintended consequence, think what other surprises it has in store for us.

This is an example of the kind of silliness we sent our legislators to Helena to do away with. As a small businessman and bookstore owner, I order hundreds of books and receive hundreds of magazines each month. This bill requires that I discern the content of each book and magazine, and somehow weigh it against "contemporary community standards," without even defining the "community." I call that burdensome regulation.

Further, a mechanism already exists in state law for counties and communities to enact such restrictive ordinances if they choose. Ravalli County just did, but Missoula County recently rejected this proposal. Why should you legislators burden Missoula County with something it clearly doesn't want? This is an example of big government intruding on people's lives, telling them what they can and cannot view.

Mr. Erickson says this bill is just an effort to bring Montana law into line with other states, but there are eight other states that have no general obscenity law. The "Miller" language which HB 83 embraces is based on a decision originating in California. Take a look at sex crime rates in California before you go modeling our legislation on theirs. There is no general anti-obscenity law in Oregon, Hawaii, Alaska, and Vermont, and Maine, South Dakota, West Virginia and New Mexico have local option laws similar to that which we have in Montana. Would you rather be in their company, or that of California and New York?

I urge you to reject this poorly-written bill and respect the peoples' wish to keep government out of their private lives.

Thank you for your consideration.

Exhibit No. 21 includes 101 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

TIP TOP VIDEO
1705 5TH AVE.
HELENA, MT. 59601

SENATE JUDICIARY (SENATE) 21
EXHIBIT NO. 21
DATE 2-5-98
FILE NO. 4883

If you believe in the **First Amendment**, and you are old enough to decide what movies you want to watch or books you want to read; If you wish to be notified please include your phone number.

Sign here:

Name:	County:	Telephone #
KEITH SMITH	HILL	265-6685
S. J. Holman	HILL	265-8770
Brenda West	HILL	265-8770
Clarence Wehlgard	HILL	265-6361
Moniquee Nez, Peen	HILL	265-6872
Alvin L. Le	HILL	265-9658
Ly. Eissinger	HILL	265-6924
Mich. Co. Jones	HILL	265-6848
David H. Opatowicz	HILL	5-5019
Brian W. Bright	HILL	265-5128
Percy Smith	HILL	265-2164
Quel C. H.	HILL	265-9035
Chris Heggen Jr.		377-3219
Jan Hansen	HILL	265-2571
Andrea Bodovrac	HILL	265-5142
John H. Livingston	HILL	265-574
Rick Schreyvogel	HILL	265-1470
Carmie Coulter	Blaine	357-2560
Shirley Steffan	HILL	
Alv. All	HILL	
Mark Campaner	HILL	265-8367

Mr. Chairman, Members of the Committee, my name is Samantha 4583
Sanchez and I appear here today on behalf of the Montana Civil
Liberties Union, as a member of the board and as a member of the
Montana Bar.

The American Civil Liberties Union has, of course, always
opposed censorship efforts and so we oppose HB 83's ban on
obscenity.

Much has been said about the need to censor pornography to
protect women from sexual violence. Even some feminists claim that
depicting women in sexually subordinate situations promotes the
victimization of women and encourages sexual violence against
women and so they favor censorship of such pornography.

The ACLU has a long and proud history of defending women's
rights and legal equality, including defending suffragette Margaret
Sanger's right to talk about birth control, which was prosecuted as
obscene. In fact, in 75 years, the ACLU has argued more women's
rights cases before the Supreme Court than any other organization,
but the ACLU does not agree that censorship should be used in the
name of women's rights and women's safety.

First there has never been a causal connection established
between pornography and sexual violence. The comprehensive
studies start with the 1970 President's Commission, finding no causal
connection, in which two of the commissioners stated that they
would have welcomed evidence connecting erotica with crime "for if
any such evidence existed we might have a simple solution to some
of our most urgent problems. However, the research fails to establish
a meaningful causal relationship or even a significant correlation. To
assert the contrary. . . is not only to deny the facts but also to delude
the public by offering a spurious and simplistic answer to highly
complex problems."

Government commissions in other countries, Canada, New
Zealand, England, Europe, and Asia have produced volumes of
research, all reaching the same conclusion. [In fact the only
commission that did suggest a connection was the 1985 Meese
Commission, and those conclusions have been criticized as politically
motivated and not supported by the evidence gathered by the
commission and have been denied by one of the commission's
authors.] In researching a recent book, ACLU President Nadine

Strossen found no causal connection has been established in her search of social science literature. And, most recently, the National Research Council's Panel on Understanding and Preventing violence concluded, in a 1993 survey of laboratory studies, that "demonstrated empirical links between pornography and sex crimes in general are weak or absent." The topic has become a very popular one for psychiatrists and social scientists but study after study after study have failed to find any connection.

In fact, if anything, the studies suggest that the greater availability of sexually explicit material is positively correlated with greater gender equality and lower rates of violence against women, suggesting that such materials may act as a release for some troubled individuals.

Compare, for example, Singapore, which tightly restricts pornography and has one of the strongest law enforcement systems in the world as we saw in the caning of an American student in a recent case, with Sweden where pornography has been freely available for 30 years. Singapore has a much higher rape rate than does Sweden, where women also enjoy much greater legal and social equality, as well as being safer. Likewise, Germany removed restrictions on pornography in 1970 and has found their rape incidence decline relative to other crime.

Similarly, in this country, we do not find a correlation between restriction of pornography and low rates of sexual violence, though there is evidence of the opposite. Utah, for example, ranks 50th in the Sexual Magazine circulation index but 25th in rapes while New Hampshire ranks ninth in that index --indicating a high rate of sexual literature -- and 44th in rapes.

In fact researchers have found that the only geographical factor that reliably predicts the rate of rape is the number of men between 18 and 34 living in that area.

Saying that rapists are drawn to pornography does not mean it caused their violence. That is like saying that flies cause garbage.

Second, the ACLU's opposition is based on our observation that throughout history, censorship laws and dress codes have been used against women in some way or other. In fact, a model censorship law drafted by feminists Catharine MacKinnon and Andrea Dworkin,

has been adopted into the Canadian legal standard of pornography. Since that ruling, more than half of all feminists bookstores in Canada have had materials confiscated. It is important to recognize that these laws often end up punishing the very individuals and ideas they are supposed to protect.

In fact, Canadian customs officials concluded that two of Andrea Dworkin's own books were pornographic under her definition and therefore seized the books at the U.S. Canadian border. However, magazines like Playboy and Penthouse and pulp novels about brutalizing women are not being confiscated because they have powerful publishers and possibly because they are more mainstream and accepted by the customs officials. Whether its pornography or nude dancing or prostitution, it seems that whenever people want to stop men from acting immorally, somehow women get arrested.

Changing the way people think is a job for parents and educators, not bureaucrats, and we are told that the people of Montana have just voted for less government intrusion in their lives. But HB 83 would have bureaucrats deciding on appropriate reading for Montanans. In the words of Justice Harlan, "it is largely because govt officials cannot make principled decisions in this area that the Constitution leaves matters of taste and style so largely to the individual."

As for the contention that 47 other states have this law, a colleague has done some preliminary research into 15 states, and so far only two other than -- Illinois and Florida -- can be said to have statutes as all-encompassing as HB 83. Two have struck down obscenity statutes as unconstitutional. The other 11 have statutes with lesser penalties or more defenses and -- most importantly-- do not extend to the creators, the writers, artists, sculptors, etc. None had so severe a penalty as \$50,000/10 years for importation.

Ever since its founding 75 years ago, the ACLU has fought against censorship and the repressive intrusion of the government into people's private lives. We neutrally defend all rights because experience shows they are indivisible. If the government gets the power to suppress one right for one person, then no right is secure for any person and history has shown this true many times. Women, along with everyone else, are entitled to both free speech and safety. We do not agree that we must sacrifice one for the other.

We agree something should be done to stop sexual violence, but there is not a shred of evidence that this is it. Zero. We have pleaded with this legislature to invest in treatment programs that can stop this behavior as soon as it is identified, but all we have gotten is a promise that after three rapes they will be put away for life. Utah, for example, has had a very successful treatment program. None of these programs are completely successful, but the success rate is certainly better than zero.

Ron J. Silvers, M.Ed. LPC

25 S. Ewing, Suite 500
Helena, MT 59601
(406) 442-7170

SENATE MEMORIAL COMMITTEE
SENATE NO. 23
DATE 2-2-95
BILL NO. HB83

Mister Chairman, members of the Committee, I am Ron Silvers, a Licensed Professional Counselor in private practice. I am the Vice President and Secretary for the Montana Sex Offender Treatment Association. I represent only myself in this statement.

For over fourteen years I have worked with sexual assault victims of all ages, their families, and sex offenders. My professional experience includes thousands of hours in the evaluation and ongoing therapy for several hundred sex offenders. I think pornography distorts and degrades human beings and our sexuality.

I do not believe, based on my experience with sex offenders in therapy, that their use of pornography caused them to commit sex crimes. My extensive professional experience has brought me to the conclusion consistent with Dr. Judith Becker's opinion, then member of Attorney General Edwin Meese's commission on Pornography, and director of the Sexual Behavior Clinic at New York state's Psychiatric Institute when she said in 1986, "I have been working with sex offenders for ten years and have reviewed the scientific literature and I don't think a causal link exists between pornography and sex crimes."

I have found several common characteristics in sex offenders which I do believe have a causal link to sex crimes (among others).

1. Sex Offenders are often very ignorant about basic human sexuality.
2. Offenders are immature, socially underdeveloped, withdrawn, isolated, and angry.
3. Some use pornography obsessively, some not at all, none in our program will claim pornography caused them to commit a sex crime. In fact, any offender client who would say something to the effect "My use of pornography made me molest my ten year old daughter" would be laughed at in any of our sex offender therapy groups.

Sex offenders in evaluation or the early stages of therapy will frequently blame anyone or anything for their crime including the victims, alcohol and/or drugs, their marriage partners, etc. Even these individuals do not blame their use of pornography as a causal factor for their offense. How absurd to say, "If I hadn't seen last month's Hustler, I never would have done it."

As a treatment provider, I am very likely to see a wide range of materials confiscated from offenders at the time of their arrest. In addition to what many of us would agree is hard

EXHIBIT 23
DATE 2-8-95
HB 83

core pornography, offenders use other items which would be hard to define as pornographic, in order to stimulate deviant fantasies within themselves. The following items were taken from our clients at their arrest:

1. Homemade video - a television gymnastics show,
2. Homemade video - a television Mousercise show,
3. "Dance Workout With Barbie",
4. Back to School, J.C. Penney's children's clothing catalogue,
5. Barbie dolls.

Many older sex offender clients, or those brought up in poor rural homes, report the Sears catalogue and National Geographic magazine gave them lots of sexual pleasure. We have 44 clients in our program, fully a third did not use pornography prior or during their offense.

I have found that the most effective weapon against the distorted messages of pornography is accurate and explicit sexual information. Such information is the only way to confront misinformation and clarify what healthy sexuality is in reality. I am as disgusted with pornographic material as anyone in this room. However, I take my responsibility as a parent and an American citizen seriously. I have made it my life's work to help sex

offenders stop sexual violence toward women and children.

With all due respect, I do not wish to relinquish my responsibility and rights to any member of this committee to determine for me what materials and information are appropriate in my work as I teach healthy human sexuality to either my clients or my children. I do not and did not elect my representatives in government to make those professional or personal decisions for me.

Thank you for your attention.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 24
DATE 2-8-95
HRS. NO. HB 83

Testimony of Barbara Theroux

On behalf of the American Booksellers Association

Before the Montana Senate Judiciary Committee

In Opposition to House Bill 83

February 8, 1995

I am Barbara Theroux. I appear before you today in several capacities: as the owner of an independent bookstore, Fact & Fiction in Missoula, and as a director of the American Booksellers Association, which represents 4,500 booksellers who operate 7,400 stores across the country, including 32 in Montana. I am also appearing on behalf of ABA's First Amendment foundation, the American Booksellers Foundation for Free Expression, and The Media Coalition, a group that represents most of the booksellers, publishers, periodical wholesalers and distributors, recording and video game manufacturers, and recording and video retailers in Montana and the rest of the country. I am here to briefly explain why Montana booksellers oppose House Bill 83.

I have been a bookseller for over 20 years. For the last 16 years, I have lived in Missoula, working first at the university bookstore, then opening my own store nine years ago. Fact and

Fiction is a general bookstore that carries mainstream works of fiction and non-fiction and a large selection of children's books that we supply to schools and libraries. I have never knowingly sold any work of hardcore pornography. As a parent, I am against pornography and other material that is "harmful to minors."

But I am still very worried about House Bill 83. It would ban the sale of any work that appeals to "prurient" interest, is "patently offensive" to the community and lacks serious literary artistic, political or scientific "value." This "guideline" gives me little guidance: it is not a list of specific titles but a general description that I must apply using my own judgment. But how can I be sure that someday I won't make a mistake and sell a book that a jury later decides is obscene?

The realities of bookselling today make this a strong possibility. I offer more than 10,000 titles for sale in my store. New titles arrive by the dozens every day. While I do my best to know something about every book I sell, it is physically impossible for me to inspect each one. In addition, we special order books at the request of our customers. There is always a chance that we will unknowingly receive a book that might be held to be obscene.

If H.B. 83 passes, the only way I can protect myself and my store is to remove from sale all books that appear to have sexual content. Many books on art, photography, health and sex education would have to be taken off the shelves. In my mind, there is no question that this material is not obscene. However, H.B. 83 puts that decision in the hands of policemen and prosecutors. Even

though I am sure I would be acquitted in a trial, I cannot risk the bad publicity of an arrest for selling obscene material. This is what lawyers call the "chilling effect" of laws regulating free speech.

What is so odd about the House's decision to ban obscenity is that it flies in the face of recent election returns. At least part of the explanation for the Republican triumph in the fall is a desire on the part of the voters to reduce the role of government in their lives. Yet H.B. 83 extends government's reach into the most intimate decisions we make--what we want to read, see and hear.

Of course, the voters were not voting for hardcore pornography, but in at least two states they did explicitly vote against censorship. In Colorado and Oregon, voters were asked whether they wished to adopt laws very similar to H.B. 83. In both states, booksellers, librarians and others waged strong campaigns against the initiatives because of the fear of a chilling effect on non-obscene works with sexual content. Both measures were decisively defeated. In Colorado, 63 per cent of the voters rejected the obscenity amendment. Even in Oregon, which has no law against the sale of sexually explicit material to adults, 56 per cent of the voters said they didn't want government to restrict free speech.

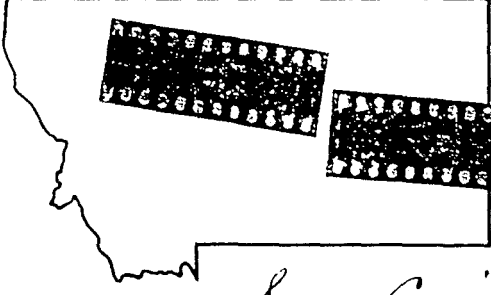
We have been having similar fights in Montana for years. Only two years ago, the Missoula City Council killed a proposed ordinance that would have banned the sale of obscene material.

Many local governments have decided they do not want these laws. House Bill 83 makes an end run around home rule and imposes restrictions on our personal freedom that we have already rejected.

Today, legislatures across the country are acting to cut the cost of government and lighten the burden of regulation on business. On behalf of my fellow booksellers and the other Montana businesses that produce and distribute books, magazines, movies, videos and recordings, I urge you to consider the economic impact of H.B. 83. But businesses will not be the only ones hurt. The enactment of H.B. 83 will cost all Montanans a large measure of their personal freedom. H.B. 83 is a piece of government regulation that none of us can afford. I urge you to defeat it.

Thank you.

MONTANA



ASSOCIATION OF

THEATRE OWNERS

Sen Crippen & Members of Committee

My Name is Howard Pukerell, I am the
 Owner of 14 ^{motion pictures} screens in 8 different towns and
 am representing the M.A.T.O. an Organ of Independent
 Theatre owners in Montana representing over 50%
 of the 125 existing screens in Montana. Myself
 as a theatre owner & the Board of M.A.T.O. Certain
~~and~~ are not in favor of Prop. as the detub
 of it however we feel that HB 83 is
 way too broad to be able to live with it. We
 realize that the Propnators have stated that
 the law would not apply to Motion picture
 theatres that currently play only MPAA Rated
 films ~~in these screens~~, but the law in its
 present form does not address this, it
 simply states "film", which in my opinion
 puts us at risk because we operate our
 theatres in violation of the Obscenity
 law ^{with every R Rated Movie} whether or not some one
 is offended by an R Rated movie we



would be constantly looking over our shoulders
and wondering when it will come, and we
haven't done anything wrong. Another sad
thing that HBB3 would accomplish if ^{the bill} passes
is it will make Obscene Material disappear
from the public eye, but it will not go away
it simply disappears in the closet ~~so to speak~~
still available to the people that really
want & need it. out of the Trunks of Cars &
sleazy Hotel rooms, and then what little
control we now have becomes gone from
the current Obscenity law on the books.
seems more than adequate and in our
opinion there is no reason to expand
upon and limit the use of the beauty of
Art, Book, Maturing film and all the
personal adult freedoms we now enjoy.

Thank you

Howard J. Smith
119 T.O. & Person theater
Palson, Mt. 59860

SENATE JUDICIARY COMMITTEE
REPORT NO. 24
DATE 2-8-95
BILL NO. HB 83

February 7, 1995

To: Members of the Senate Judiciary Committee

From: Jim Heckel, Director, Great Falls Public Library (453-9706)

Re: HB 83

Thank you for the opportunity to express, as Chair of the Intellectual Freedom Committee of the Montana Library Association, opposition to HB 83.

Libraries occupy special and very necessary positions in democratic society. Uniquely among our many institutions, libraries are charged with the unbiased collection and easy dissemination of information, without judgement or prejudice. Libraries provide neutral arenas for the average citizen to acquire and ponder information and viewpoints before reaching his or her own conclusion about issues.

Libraries are sometimes home to information or viewpoints which may be controversial or even offensive to opposing segments of society. Because some materials may be controversial or offensive, libraries have long been the target of those who would "protect" segments of the society from harm by denying access to certain materials. We call this censorship. Censorship, we feel, is detrimental to the best interests of democracy.

HB 83 prohibits the purchase and distribution of materials deemed obscene. This applies to all citizens of the state. HB 83 casts a wide net to catch a few fish. Libraries are not the "fish" that need catching.

We oppose HB 83 because:

- a. It presents a "chilling effect" in that the actual or implied threat of prosecution would be a powerful incentive for libraries to not acquire materials which would be controversial, even if not proven obscene in a court of law. The threat of a lawsuit, however unjustified, is a potent weapon.
- b. Libraries, which serve a special function in society, are not protected under HB 83. Note that there is specific protection provided in 45-8-206, MCA for libraries, museums and educational institutions. This creates the peculiar situations wherein libraries may distribute "obscene" materials to minors but not to adults.
- c. The three pronged test for obscenity depends on local standards. We feel that this type of legislation is best left to individual communities to determine what is

(over)

"obscene" in that community. Certainly Missoula County differs from Ravalli County, as does Missoula from Jordan. Let local communities pass laws which define what is locally "obscene."

d. We fear a "slippery slope" of ever increasing laws which will further define and narrow what is acceptable reading or viewing material.

e. There is no funding attached to this legislation to pursue execution.

f. There currently is adequate legislation which should be fully enforced before more legislation is enacted.

Steel

Exhibit No. 27 includes 23 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 27
DATE 2-8-95
BILL NO. HB 83

PETITION IN

OPPOSITION TO

HOUSE BILL 83

"AN ACT REVISING THE

OBSCENITY LAW"

SENATE JUDICIARY COMMITTEE
BRUCE CRIPPEN, CHAIR
February 8, 1995

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 28
DATE 2-8-95
BILL NO. HB 83

Mr. Chairman, members of the committee. For the record my name is Richard Miller. I am Montana State Librarian.

I am here today to speak in opposition to HB 83 for a number of reasons:

1. HB 83 does nothing to improve already existing Montana law, which protects minors from obscene materials.
2. HB 83 presents an overbroad approach to dealing with obscenity extending application of the law to adults, and eliminating evidentiary protections already in existing Montana law for artistic, literary, scientific, educational or other merits of the material," as well as for taking into account the "purpose of the author, creator, publisher and disseminator." [Both of these appear in 45-8-20 (3) MCA.]
3. HB 83 proponents claim that this proposed legislation is "similar to" the laws of 44 or 45 other states. They fail to mention something I have discovered in reading the statutes of 22 other states; 19 of these states have specific statutes protecting minors from obscenity, and I would imagine that this ratio holds true for the other 27 states as well. The legislation proposed here, while not specifically eliminating the language of 45-8-206 MCA, in essence does away with that specific protection for minors.
4. In their zeal to bow to the language of the U.S. Supreme Court case of Miller vs. California, the proponents have failed to consider how other states have struck a balance on such a sensitive issue. Here are some examples:
 - a. Alabama says obscenity is not prosecutable if it is for a "bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose." Furthermore Alabama indicates that criminal provisions of the law "shall not apply to bone fide public libraries, or public school or college or university libraries or their employees or agents acting on behalf of the legitimate educational purposes of such [institutions]."
 - b. Arizona excludes works of art or those of anthropological significance from the definition of obscenity, as well as "any depiction or description which, taken in context, possesses serious educational value for minors, or which possesses serious literary, artistic, political or scientific value."

- c. Arkansas protects from prosecution for dissemination of obscenity, employees, directors and trustees of public libraries; it also protects material used by any "recognized religious, scientific or educational institution."
 - d. California protects law enforcement and judicial use; medical, scientific, and educational activities; and "lawful conduct between spouses."
 - e. In fact 17 of the 22 states whose statutes I reviewed have specific protections nearly always for the categories I mentioned above, and in a number of cases also for museums, hospitals, art galleries, and historical societies. Such protections appear in the statutes of the following states, among others: ID, NV, ND, OR, SD, UT, WA and WY.
5. Montana's current law has already struck a balance by allowing evidentiary latitude under subsection (3) of 45-8-201 MCA (as mentioned above, and as allowed by many other states), and by its protection of minors with specific exemptions for bona fide public schools, colleges, universities, public libraries and museums under 45-8-206 MCA.

For those people who were here when the language was crafted for Montana's current anti-obscenity law, they will remember that it was written after a number of very long, hard-fought sessions among the Legislature, agency representatives, other interested parties (including out-of-state interests), and then Attorney General Marc Racicot. No one got everything they wanted, but it was statutory language drafted to try to accommodate all parties. On such a sensitive issue, that process was diplomacy at its best.

Now the proponents of HB 83 bring forward language which will:

- undoubtedly conform to the Miller vs. California case.
- probably make moot the legitimate protections laid out in the current law under 45-8-206 MCA.
- probably undo the delicate balance existing in current statute which takes into account the interests and concerns of all parties.

Obscenity is not a topic most of us would choose to deal with. In fact, at least to some degree, it is one price we pay for living in a free society. How we deal with obscenity is a measure of how strong our democratic ideals are.

EXHIBIT 28

DATE 2-8-95

1 HB 83

I would like to leave you with two quotations from two different U.S. Supreme Court justices:

-- Justice Felix Frankfurter said: "The safeguards of liberty have frequently been forged in cases involving not very nice people." (1962)

-- Justice Louis Brandeis in a 1927 dissent said, "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent."

I hope in our zeal to "protect" our citizens we do not lose something more precious. I do not envy you your position of responsibility. I wish you well and hope that all of us can sort through the emotion and the rhetoric so often associated with this topic and see our way clear to our ultimate purpose.

Thank you for your attention to my remarks.

MEMBERS OF THE SENATE JUDICIARY COMMITTEE, MY NAME IS RICK DEADY AND I STAND BEFORE YOU AS AN AVERAGE PERSON. HB 83 IS LEGISLATION THAT ASKS THAT AVERAGE PEOPLE SET A COMMUNITY STANDARD. I WOULD POSE TO THE COMMITTEE THAT THIS HEARING ITSELF PROVES THAT LANGUAGE IN THIS BILL IS TOTALLY UNENFORCEABLE AND IMPOSSIBLE TO INTERPRET. IN THE WEEKS PRECEDING THIS HEARING THERE HAVE BEEN MANY EDITORIALS BOTH PRO AND CON OVER THIS BILL. HOWEVER, EVEN AMONG THE PROPONENTS OF THIS BILL YOU CAN NOT FIND AN "AVERAGE" CONCLUSION.

THE SPONSOR OF THIS BILL, REPRESENTATIVE HERRON WAS QUOTED IN THE GREAT FALLS TRIBUNE AS SAYING THAT THIS BILL WILL REMOVE MOST HARD-CORE PORNOGRAPHY FROM MONTANA. YOU ALSO HAVE A SUPPORTER IN REPRESENTATIVE GRIMES WHO SAYS THAT IT IS NOT A BILL ABOUT PORNOGRAPHY, BUT A BILL ABOUT OBSCENITY. YOU ALSO HAVE OTHER REPRESENTATIVES CLAIMING THAT IT IS A "GET TOUGH ON CRIME" BILL NOT A FIRST AMENDMENT ISSUE. I FOR ONE, AS AN AVERAGE INDIVIDUAL, HAVE SOME DIRE CONCERNS ABOUT THIS LEGISLATION.

I FIND MANY THINGS IN THIS SOCIETY TO BE OBSCENE. OBSCENE IS DEFINED BY WEBSTER'S NEW WORLD DICTIONARY AS: OBJECTIONABLE OR REPUGNANT TO ACCEPTABLE STANDARDS OF DECENCY OR MORALITY; INDECENT; PORNOGRAPHIC; OFFENSIVE IN LANGUAGE OR ACTION; TENDING TO INCITE LUST OR DEPRAVITY. I FOR ONE FIND THE MAGAZINE SOLDIER OF FORTUNE TO

BE REPUGNANT AND OBJECTIONABLE, I FIND LETTING PEOPLE GO HUNGRY, HOMELESS AND WITH OUT ADEQUATE MEDICAL TREATMENT OBJECTIONABLE AND REPUGNANT, I FIND FREDDIE KRUGGER MOVIES OBJECTIONABLE AND REPUGNANT. SO WHY IS IT THAT THIS PIECE OF LEGISLATION CHOOSES TO ONLY LOOK AT CERTAIN CLAUSES OF THE DEFINITION AND NARROWLY CONFINE THE ACTS IT FINDS AS OBSCENE.

DO I WANT TO IMPOSE MY PARTICULAR BELIEF IN WHAT I DEFINE AS OBSCENE: NO, I MAY FIND THE CONTENT OF SOLIDER OF FORTUNE MAGAZINE OR A FREDDIE KRUGGER MOVIE TO BE OBSCENE, BUT I AM NOT IN A POSITION TO TELL EVERYONE ELSE THAT THEY CAN NOT READ OR VIEW THAT MATERIAL. U.S. SUPREME COURT JUSTICE POTTER STEWART SAID THAT HE WOULD NOT ATTEMPT TO DEFINE "HARD-CORE" PORNOGRAPHY, "BUT I KNOW IT WHEN I SEE IT."(1) REGARDLESS OF WHICH SIDE OF THE ARGUMENT YOU ARE ON, YOU CAN SEE THAT JUSTICE STEWART SET THE PARAMETER OF ACCEPTANCE IN THE FIRST PERSON, I, NOT THE COLLECTIVE WE. D.H. LAWRENCE, WHOSE BOOK LADY CHATTERLEY'S LOVER WAS BANNED IN THE US FROM 1928 UNTIL 1959, ONCE SAID: "WHAT IS PORNOGRAPHY TO ONE MAN IS THE LAUGHTER OF GENIUS TO ANOTHER." (2)

WHAT THIS BILL IS INTENDING TO DO IS TO TAKE A PERSONAL, INDIVIDUAL CHOICE AND TURN IT INTO A LEGISLATED ONE. SO WE ESTABLISH A SYSTEM THAT AT ANY GIVEN TIME, INDIVIDUALS OR GROUPS CAN INITIATE LEGAL

EXHIBIT 29
DATE 2-8-95
HB 83

ACTION AGAINST ANOTHER INDIVIDUAL OR GROUP OVER WHAT THEY ARE WATCHING, READING OR POSSESSING. THE LOGIC OF THIS BILL AND SOME OF THE SUPPORTERS ARE UNIQUE TO SAY THE LEAST.

IN A TIME WHEN A VAST NUMBER OF AMERICANS ARE SAYING THAT THE GOVERNMENT IS TOO INTRUSIVE INTO OUR LIVES, ALONG COMES A BILL THAT INTRUDES ON AN INDIVIDUALS BASIC RIGHTS. HOW CAN YOU HAVE IT BOTH WAYS. IF I WERE TO TAKE THE LOGIC OF READING PORNOGRAPHY OR FREQUENTING STRIP CLUBS AS A BASIS FOR COMMITTING RAPE. THEN I WOULD ARGUE THAT THE LEGISLATURE SHOULD SERIOUSLY CONSIDER BANNING ALL CURRENCY AND BANKS. WHY? BECAUSE AN INDIVIDUAL CHOOSES TO ROB A BANK, CONVENIENCE STORE OR AN INDIVIDUAL BY THE FACT THAT THEY MAY HAVE IN THEIR POSSESSION, MONEY. SO THEREFORE MONEY IS EVERYWHERE ENTICING THESE INDIVIDUAL TO COMMIT A CRIME. SO THE ONLY WAY TO STOP THE CRIME IS TO REMOVE THE SOURCE, MONEY.

NOW DOESN'T THAT SOUND A LITTLE RIDICULOUS. OF COURSE, BUT THE ONLY DIFFERENCE IS THAT I SUBSTITUTED MONEY IN THE PLACE OF PORNOGRAPHY, STRIPPERS, OR SEX.

THE SUPPORTERS OF THIS BILL CONTEND THAT SO-CALLED "SOFT-CORE" PORNOGRAPHY SUCH AS PLAYBOY, PENTHOUSE OR PLAYGIRL MAGAZINES OR R-RATED MOVIES WOULD NOT BE EFFECTED BY THIS LAW. I READING THE LAW

I COULD NOT FIND ANY SECTION, CLAUSE, SUB-SECTION, ETC., THAT READS: THE FOLLOWING PUBLICATIONS, TYPE OF MOVIES, VIDEOS, ETC., ARE EXEMPT FROM THIS BILL. IT DOESN'T EXIST. A CASE IN POINT: LINCOLN COUNTY MONTANA, ENACTED LOCAL LEGISLATION SIMILAR TO THIS BILL. SHORTLY AFTER ENACTMENT, A SMALL BUSINESSMAN IS ARRESTED FOR SELLING OBSCENE MATERIAL: PLAYBOY, PENTHOUSE, ETC. SUBSEQUENTLY, THE BUSINESS OWNER WAS TRIED AND ACQUITTED OF THE CHARGE. THE POINT IS, HOW MUCH TIME, MONEY AND EFFORTS WERE PUT INTO A TRIAL THAT SHOULD HAVE NEVER BEEN NEEDED. THIS BILL WILL ONLY SERVE TO BRING TO THE ALREADY OVERBURDEN JUDICIAL SYSTEM MORE FRIVOLOUS AND UNNECESSARY LITIGATION.

THE PREMISE OF THE AMERICAN ECONOMY IS SUPPLY AND DEMAND. I WOULD ARGUE THAT THIS UNTO ITS SELF SHOULD BE ENOUGH TO GAGE THE "COMMUNITY STANDARD" AS DEFINED IN "MILLER VS CALIFORNIA." IF A COMMUNITY FINDS THAT CERTAIN MATERIAL IS UNACCEPTABLE AND INDIVIDUALS IN THE COMMUNITY DO NOT BUY, RENT OR OTHERWISE USE THE MATERIAL, OR THE NUMBER OF INDIVIDUALS BUYING, RENTING OR USING THE MATERIAL IS NOT SUFFICIENT TO MAKE THE ITEMS COST EFFECTIVE, THE BUSINESS OWNER WILL SOON DISCONTINUE CARRYING THE PRODUCT. I ALSO BELIEVE THAT EACH INDIVIDUAL OWNER OF A BUSINESS HAS THE RIGHT TO CHOOSE WHAT TYPE OF PRODUCTS THEY CARRY. I DO NOT KNOW MANY INDIVIDUALS WHO GO INTO A STORE A FORCE AN OWNER TO CARRY ITEMS

EXHIBIT 29
DATE 2-8-95
HB 83

THAT THE OWNER DOES NOT WISH TO CARRY. AS FAR AS I CAN SEE, NO ONE IS FORCING ANYONE TO PATRONIZE AN ADULT BOOK STORE, A MAGAZINE SHOP OR A BAR WHICH FEATURES EXOTIC DANCING.

HAS ANYONE EVER ASKED AN INDIVIDUAL EMPLOYED IN THE ADULT ENTERTAINMENT INDUSTRY IF THEY CHOSE THE OCCUPATION OR WERE COERCED INTO IT? I HAVE AND TO A PERSON, THEY HAVE ALWAYS INDICATED THAT THEY CHOOSE THE OCCUPATION OUT OF THEIR OWN FREE WILL. I AM NOT SAYING THAT COERCION DOES NOT EXIST, BUT CONVERSELY NOT EVERYONE IN AN ADULT VIDEO, INCLUDING SADMASOCHISM OR BONDAGE VIDEOS, ARE THERE AGAINST THEIR WILL. PEOPLE MAY NOT FIND THIS TYPE OF SEXUALITY APPEALING TO THEM, BUT STATISTICS DO INDICATE THAT "AVERAGE" PEOPLE IN THIS COUNTRY DO ENGAGE IN THIS FORM OF SEXUAL EXPRESSION. WE ALREADY HAVE LAWS ON THE BOOKS THAT COVER THE ISSUES OF CHILD PORNOGRAPHY, KIDNAPPING AND OTHER RELATED OFFENSES. PEOPLE CHOOSING TO PURCHASE PUBLICATIONS, VIDEOS, ETC., OF CONSENTING ADULTS ENGAGING IN VARIOUS ACTS FOR ENTERTAINMENT OR EDUCATIONAL PURPOSES SHOULD BE ENTITLED TO HAVE THOSE ITEMS AVAILABLE. AN INDIVIDUAL OR EVEN A GROUP OF INDIVIDUALS MAY FIND THE SUBJECT MATTER OFFENSIVE TO THEM, BUT THAT GROUP SHOULD NOT BE ABLE TO IMPOSE THEIR SET OF BELIEFS ON ANOTHER.

IF AS SOME OF THE BACKERS OF THIS BILL CONTEND THAT THIS IS A "GET TOUGH ON CRIME" BILL, I WOULD POSE THE FOLLOWING QUESTION. HAVE WE, AS A SOCIETY, NOT LEARNED FROM OUR OWN HISTORY? A QUICK LOOK BACK TO THE EARLY 1900'S IS A PRIME EXAMPLE OF AN ATTEMPT TO LEGISLATE MORALITY UNDER THE GUISE OF PROTECTING THE INNOCENT PEOPLE OF THIS COUNTRY. I SPEAK OF THE ERA KNOWN AS PROHIBITION. THE PROPONENTS OF THIS LEGISLATION SPOKE OF MANY OF THE SAME CONCERNS THAT PROPONENTS OF HB 83 HAVE EXPOUNDED UPON. A GREAT ILL IS PRESENT IN OUR SOCIETY, IT IS DESTROYING THE FAMILY, UNDERMINING THE GOOD OF THE COUNTRY AND PREYING ON INNOCENT VICTIMS. IF WE LEGISLATE THIS GREAT ILL FROM SOCIETY, THE COUNTRY WILL PROSPER AND EVERYONE WILL BE SAFE. THIS DESCRIPTION MAY BE VERY BROAD AND POSSIBLY OVER-SIMPLISTIC, BUT ONE UNDERLYING OUT-GROWTH OF THE PROHIBITION ERA WAS ENTRENCHMENT OF ORGANIZED CRIME IN THIS COUNTRY. I USE THIS CORRELATION AS AN ATTEMPT TO INDICATE THAT WHILE I HAVE NO PROOF EITHER SUPPORTING OR CONTRADICTING ORGANIZED CRIME'S INVOLVEMENT IN THE ADULT ENTERTAINMENT INDUSTRY IN THIS COUNTRY, I DO BELIEVE THAT WHEN YOU BEGIN TO BAN A COMMODITY THAT HAS A SUBSTANTIAL SUPPLY AND DEMAND FACTOR, THE ESTABLISHMENT OF A BLACK MARKET LOOMS AS DEFINITE POSSIBILITY. AND WITH A BLACK MARKET COMES ORGANIZED CRIME. I FIRMLY DISAGREE WITH THE CONTENTION THAT THIS BILL IS A GET TOUGH ON CRIME BILL. THIS IS AN ISSUE OF MORALITY. TO ME MORALITY IS TO A GREAT DEGREE AN INDIVIDUAL CHOICE. HISTORY HAS

EXHIBIT 29
DATE 2-8-95
HB 83

SHOWN TIME AND TIME AGAIN WHAT PEOPLE ARE CAPABLE OF IN THE NAME OF RELIGION, MORALITY AND THE LIKE.

IN CLOSING, I WOULD LIKE THE MEMBERS OF THE SENATE JUDICIARY COMMITTEE TO CONSIDER THE FOLLOWING:

- 1): ALL THE INDIVIDUALS PRESENT AT TODAY'S HEARING SHOULD BE CONSIDERED "AVERAGE" PEOPLE.
- 2): AMONG THESE AVERAGE INDIVIDUALS PRESENT HAVE YOU HEARD CONCLUSIVELY THAT THERE IS ONLY ONE INTERPRETATION OF WHAT IS OBSCENE?
- 3): IF EVERYONE PRESENT TODAY WOULD BE HONEST, WHAT PERCENTAGE OF THE PEOPLE HERE WOULD SAY THAT THEY HAVE EITHER ON A REGULAR, SEMI-REGULAR, RARELY OR NEVER HAVE LOOKED AT AN ADULT MAGAZINE, VIDEO, MOVIE OR VISITED AN CLUB? THE ANSWER MAY SURPRISE THE COMMITTEE.
- 4): IF THIS BILL IS PASSED INTO LAW, WHAT WILL THE NEXT STEP BE? WILL YOU BE ASKED TO DETERMINE IF J.D. SALINGER'S "A CATCHER IN THE RYE", MARK TWAIN'S "HUCKLEBERRY FINN", OR JOHN STEINBECK'S "GRAPES OF

WRATH" ARE OBSCENE OR QUESTIONABLE AND SHOULD BE BANNED FROM PUBLIC AND SCHOOL LIBRARIES? ALL OF THE ABOVE BOOKS, WITHIN THE LAST TEN-YEARS HAVE BEEN BANNED FROM LIBRARIES IN VARIOUS PARTS OF THIS COUNTRY. DON'T ASSUME THAT IT CAN NOT HAPPEN IN MONTANA.

I CLOSE BY SAYING THIS IS JUST ONE "AVERAGE" PERSON'S OPINION. THANK YOU FOR YOUR TIME AND CONSIDERATION.

(1) JACOBELLIS V. OHIO, 378 U.S. 184 (1964)

(2) D.H. LAWRENCE, "PORNOGRAPHY AND OBSCENITY," IN DIANA TRILLING, ed., "THE PORTABLE D.H. LAWERENCE" (NEW YORK: VIKING, 1947), p. 646.

Clark

2/8/95

RE: HB 83 (Obscenity Bill)

Thank you for the opportunity to share my thought and concerns with you today.

My name is Veri Clark. I live in Bozeman. I own a Film Buying Agency there that represents 35 different independent theatre owners through Montana and the western states. I have been in the theatre business since 1973 and have been a film buyer since 1978.

I am married and have 2 kids ages 7 + 9. I am very concerned about their welfare and the affects today's society has on them. I also realize that their welfare depends on me and the environment I create in my home.

There are many reasons to vote against HB 83. Please consider this.

Most theatre owners in Montana have been running their theatres for a long time. These "mom + pop" operations are involved in and concerned about their communities. This is a self-governing industry, through the MPAA that goes out of its way to provide information about movies and their ratings so concerned and responsible parents and adults can make intelligent choices.

HB 53 places these theatre owners in fear of operating their legitimate businesses because of the whims of a few so-called "average people". HB 53 creates an opportunity for anyone to challenge any movie exhibited in a theatre.

The fear is not that these owners will go to jail or that they will be fined, because we don't even know if the law will be constitutional. The fear is the economic burden they will face defending themselves against legal action brought by some misguided "average person".

EXHIBIT 30
DATE 2-8-95
1 HB 83

The fear is that some members of a community may want certain artistic films, while other members of the community ~~are~~ will bring legal action against the owners for exhibiting them.

You may think that this is impossible and that the intention of the law is not to bring hardship to legitimate theatre owners. The reality is you can't control the negative impacts caused by HB 83.

The current obscenity law in Montana is more than adequate and there is no need to expand it and limit personal adult freedom. Please, we do not need more ~~laws~~ unnecessary laws.

Sincerely,

Vac Black

Clark Film Buying
President

SENATE JUDICIARY COMMITTEE
RECEIVED 31
FEB 2-8-95
HB 83



MONTANA CONSTITUTIONAL CONVENTION
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

FEBRUARY 8, 1995

SENATE JUDICIARY COMMITTEE

TESTIMONY OPPOSING HOUSE BILL 83

**REVISING THE CRIME OF OBSCENITY
BY REDUCING THE RIGHTS OF ADULTS TO RIGHTS OF CHILDREN**

I am Bob Campbell, a 1972 Constitutional Convention Delegate and the author of the Freedom of Expression provision in Article II, Section 7 and the Right of Privacy in the Montana Constitution.

Freedom of Expression is a separate and distinct right in Montana and it is the cornerstone of our Freedom of Speech and Freedom of the Press also guaranteed in that section.

HB 83 is the most serious violation of our Right of Expression ever introduced and seriously considered by this or any previous legislature. In addition to its unconstitutionality, it must be given a Do Not Pass for the following reasons:

1. Our present crime of Obscenity forbids the public display or transfer to minors of any obscene material. Its final form was approved by then Attorney General Marc Racicot. It protects the public from being subjected to offensive material while respecting the Expression and Privacy rights of others.
2. HB 83 is asking you to abolish the rights of adults by only allowing them to read, view, or transmit on their computer only that which is now lawfully possessed by children. They want you to commit the criminal justice system to accomplish their agenda, allowing in Montana only what is compatible with their religious beliefs.
3. Law enforcement has limited resources and cannot respond to every complaint that would arising under the wording of HB 83. It is unenforceable for the officer and the County Attorney who must devote their efforts to their first priority, protecting public safety.
4. There is no scientific studies proving that reducing the availability of pornography will reduce the number of men sent to prison. If HB 83 is already the Federal law in Montana, we should ask that it be vigorously enforced rather than make all Montana adults criminal under this law and selectively prosecute a few in each community.

HB is unconstitutional, unenforceable, unnecessary, and would generate years of expensive litigation for counties as well as adults who will lose their rights under this bill.

PLEASE VOTE DO NOT PASS ON HB 83.

Bob Campbell

HB 83

Margaret C. Hollow
428 Washington Drive
Helena, Montana 59601

2/7/95

I just think you should know that HB83 is not the cure for readers of pornography which Rep. Jack Heron seems to think it will be. Dallas Erickson says it is a crime bill. It isn't either one of those 2 things.

Crime is committed by degenerates, sexual perverts, psychopaths, ignorance, desperate folks, etc. Not by your run-of-the-mill citizen who would be most affected by this bill.

Criminals have no trouble getting dope, firearms, pornographic materials, you name it! They can get it! We need cures for these folks, not restrictions on the majority of the population.

Please don't penalize honest businesses and individuals - we don't deserve it. Margaret C. Hollow

HB 83
Senate Judiciary Committee
Testimony of Charles W. Walk
Montana Newspaper Association

Mr. Chairman, members of the committee, for the record my name is Charles Walk. I am executive director of the Montana Newspaper Association which represents 75 Montana newspapers, including all 11 dailies and 64 weeklies.

I am here today in opposition to HB 83.

I would like to assure members of the committee that Montana's newspapers never have been, are not now and do not plan to be in the future, purveyors of obscenity or pornography.

But we HB 83 as an all-encompassing and over-broad attempt at legislation which strikes at the heart of free expression and could result in unwarranted censorship in nearly every form of expression.

I am not here today to hide behind the First Amendment. I understand that the U.S. Supreme Court has said that obscenity falls outside the pure protection of the First. But I would remind the committee that the court also has constantly required that regulations on the sale and distribution of obscene materials must be narrowly defined by contemporary community standards.

I believe HB 83 goes far beyond what is needed and preferable in a free society.

I think existing Montana legislation — which some of you may recall has been hammered out in long and difficult sessions in this very chamber six and two years ago — is adequate and reasonable protection for Montanans.

I would suggest that there is great risk of errors of excess in both prosecution and jury results involving HB 83. I am also concerned that the harsh penalties are excessive and unreasonable.

I am not here to bash the bill sponsor or the bill's supporters. They are heading in a direction they believe is right and important. I do, however, respectfully disagree with the thrust of the legislation on the basis that it is unnecessary.

I urge you to give this legislation a "do not pass" from this committee.

League of Women Voters
of Montana



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 34

DATE 2-8-95

BILL NO. HB 83

WRITTEN TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS

Senate Judiciary Committee
10:00 a.m., Wednesday, February 8, 1995
House Bill 83 by Herron

The League of Women Voters has always been a strong supporter of individual rights, and opposed to government intrusion into private affairs. Although the State of Montana has infrequently had problems regarding pornography and obscene material comparatively speaking, when such problems arise, individual citizens are quite capable of making their own decisions on such material without government interference. House Bill 83 if enacted would take away individual citizen's rights to read and view what they deem appropriate for their own taste. In short, this is what has been considered an unnecessary intrusion on and "taking" of one's freedom to make personal choices. We suspect that members of this committee would object to the idea of being told what they could or could not read or see. We urge you to think very carefully about any legislation that impinges on the rights of citizens to determine for themselves what they do or do not wish to read or observe. The League of Women Voters believes that the judgement of Montana citizens is sufficiently sound to allow them to make their own decisions. So we hope you will oppose legislation that restricts Montanans' freedom with regard to what they read or chose to observe.

In addition, the League of Women Voters of Montana is also concerned that the cost of administering and enforcing this unnecessary legislation, will be a major fiscal burden; one the tax payers should not be asked to bear. Furthermore, it appears that the regulations imposed by House Bill 83 would create unfunded mandates for lower levels of jurisdiction.

Censureship and government control of private, individual choices are serious matters, and we believe you should weigh very carefully, the full impact, before embarking on the path of censureship and restriction contained in House Bill 83.

The League of Women Voters of Montana opposes House Bill 83 and urges a do not pass recommendation by the committee on this measure. Thankyou.

Chris Imhoff
Legislative Chair LWVMT

HELENA NEWS INC.

Periodicals/Paperbacks

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 85
DATE 2-8-95
FILE NO. HB 83
1515 Carter Dr.
P.O. Box 6017
Helena, Mt. 59604

February 8, 1995

Senate Judiciary Comm.

Dear Senators,

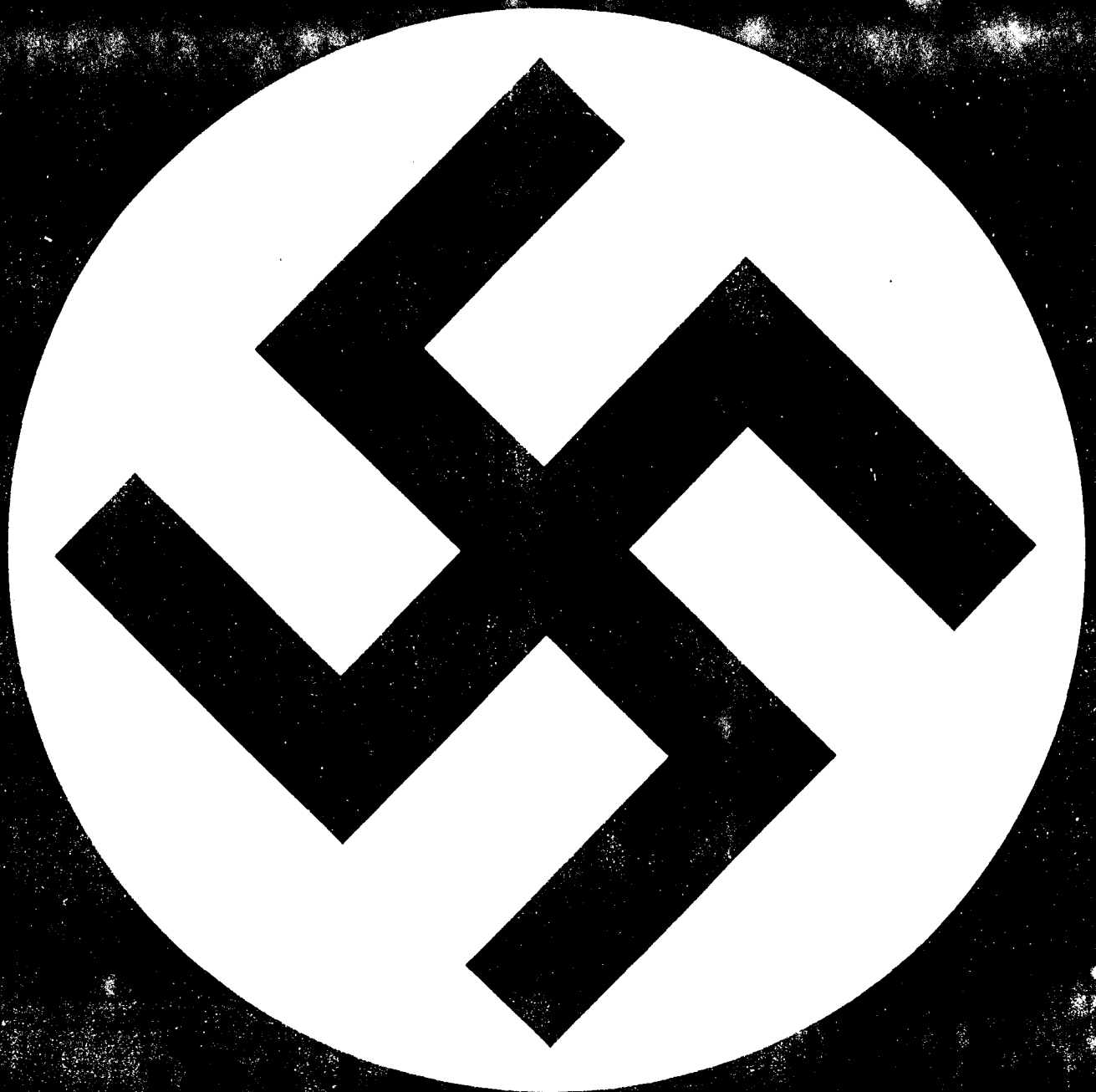
My Name Is Bob Hollow, I am here to voice my objection to HB 83. My wife and I own Helena News, Inc., a local periodical and paperback distributor. This a business that I purchased from my father who began distributing magazines in Helena in 1939. We are not a crime family nor do we have any connection to organized crime.

HB 83 would seriously impact our ability to distribute the magazines we now offer our customers. Cosmopolitan, Playboy, Rolling Stone, Vanity Fair, Outdoor Life and even Sports Illustrated have been found by some in our community to be obscene. We are a small business that cannot afford legal costs for distributing publications that may offend a few who are not required to buy them. Our customers are free to make their own choices, and their standards determine our sales.

I commend those infavor of HB 83 for exercising your freedom to voice your opinion. I must also support the right of our customers to choose magazines they buy and read. Helena News, Inc. would like to continue to provide our customers with publications concerning lifestyles and sexuality as well as politics and religion.

Sincerely,

Bob Hollow



Why not let somebody else think for you?

You don't have to leave America to find people who are willing to do your thinking for you. Right now, some Americans are making important decisions about what you should be allowed to read and see and hear. That means you don't have to think as much.

These Americans want to make rules about what television programs you may watch, and what books and magazines you may read. Rules just like the ones they had in Nazi Germany and have today in Cuba, Iran and the Soviet Union.

If these Americans succeed in their efforts to censor television programs like *Mash* and *The Day After*, magazines like *Cosmopolitan*, *Penthouse* and *Playboy*, and books like *Ulysses*, *Catcher in the Rye* and *Huckleberry Finn*, our lives will be a little less complicated. And a lot less free.

As an American, you have the freedom to think for yourself and say **No** to censorship. Say it today—tomorrow may be too late.

Freedom is everybody's business.

HB 82 a new low

I thought I had heard it all, but the introduction of House Bill 82 by Jack Herron and the religious right stoops to new lows in an attempt to undermine First Amendment and freedom of expression rights in this state. I am aware there is a growing movement to return to older value systems, but when the voters rebelled in November, they did not give Mr. Herron and his supporters carte blanche to take us back to the Victorian age of chastity belts and public lynchings.

It is particularly ironic that the politicians who support this bill would go so far as to wear white ribbons as a symbol of "purity." What is this? Some kind of joke? Such tomfoolery is tantamount to giving Heidi Fleiss a white wedding dress. I would like to see a poll conducted in which any reasonable person would equate "purity" with politicians. On the contrary, they should be donning black ribbons to symbolize the death of our free society as we know it. This is the same bunch of hypocrites who decry abortion rights and then go out and shoot people in the name of their cause.

It is one thing to try to impose one's value system on others through dissertation and protest, but it is quite another to attempt to legislate the most basic rights of our constitution away from us. Our elected officials have only been in office a short time and they have already shown us that they still didn't get the message. Get out of our private lives and get on with the work of balancing the budget and reforming government. Quit wasting our time and money tinkering with that which is none of your business.

Donald H. Kern
1805 Joslyn Street No. 89

1R 1-20-95

The Potential for H.B. 83's Effects on Sex Education in Montana

Jan June 2/8 95
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 37

DATE 2-8-98
#B13

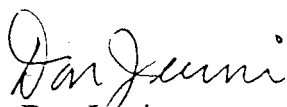
We are faculty who teach *Human Sexuality*, a lower division, undergraduate class at the University of Montana. This course is not a degree requirement for most students, though it does meet general education requirements for some. The class is enormously popular: every term it has a waiting list. It is capped at 230 students, the capacity of the lecture hall. Individuals who take the course range in age from 18 to 65, though the class is predominantly under age 25. All topics relating to sexuality are covered in the course: sexual anatomy and physiology, gender roles, sexuality research, lifespan sexual development, heterosexuality and homosexuality, pregnancy and prenatal development, birth and lactation, birth control, love and relationships, sexually transmitted diseases, the sexual response cycle, pornography, sexual deviancy, sexual assault, incest and related family-systems issues. We frequently see former students in Missoula and elsewhere in Montana. Years later, they report enthusiastically that *Human Sexuality* was one of the best and most useful courses they took during their college years.

We are deeply concerned about the implications of House Bill 83 for sex education in Montana. Repeated surveys of our students at the onset of the course and over the past 15 years (approximately 3,500 individuals) reveal that it is rare for students to learn about sexuality other than through conversations with friends (who are likely to be as ignorant as they) or through magazines and books (likely to have a biased and not always informed perspective). It may interest readers to know that among females in our course, 20% report that they learned sexuality information from parents, while an even more abysmal 8% of males learned about sexuality from parents. Information about sexuality from religious sources is basically non-existent, in the range of one to three percent reporting having received sex education from their churches. Thus, for the majority of our students, accurate information is difficult to come by outside of educational institutions and groups; that is, K-12 and higher education, as well as community organizations offering sexuality education.

What might be the effects of H.B. 83 on sex education in Montana? Potential effects are many. First, there are difficulties with the vague definition of obscenity. Obscenity occurs in a context and is also in the eye of the beholder. For example, a photograph of male genitalia on the front page of the *Missoulian* would offend many. The same photograph used in a college course for the purpose of discussing male sexual anatomy may have another effect. According to H.B. 83, Section 2bi/ii, obscenity is defined according to the "average person, applying community standards." Just who is this "average person?" There may be more than an occasional student enrolled in our course for whom photographs or drawings of genitalia are initially offensive, yet it is impossible to teach responsibly without reference to such visual aids. What about the student who, without permission, brings a friend to class or the individual who simply stops in without enrolling? These "average" persons may not be desensitized to public, open discussion of the sexual response cycle or the appearance of genitalia, for example, and be deeply offended. Under section 1a, such discussions or visuals would fall in the category of "presenting" or "exhibiting" obscene material. As the bill is written, the offended individual(s) need only file a complaint with legal authorities. Presumably the county district attorney would then make a judgment about bases for prosecution. It would be up to the educator charged to prove a lack of prurient intent and that the material was not obscene--very costly, demoralizing, and time-consuming. A human

sexuality textbook that has sexually-explicit diagrams or photographs that are offensive to some and was "imported" into the state, could condemn the course instructor to prosecution under this bill (with a maximum fine of \$50,000, ten years imprisonment, or both). In fact, according to this bill (Section 4) if material exists that is "alleged to be obscene if there was no trial," (*what* material and *who* alleges that it is obscene and *who adjudicates* without a trial?), such material may be mandated into the possession of law enforcement officials for destruction. The implications of this kind of seizure are appalling. It smacks of book-burning and gives unusual power to an individual or group of individuals who make the allegation of being offended. Because sexuality is a difficult and volatile topic today, it is impossible to teach it without offense to some individuals and groups. It leaves the sex educator very much at the whim of local law enforcement, judiciary, and particular interest groups. While participation in our course and other avenues of sex education is voluntary, the bill makes no provision for same. Simple exposure of a consenting adult to obscenity (as defined by the values of the "average" beholder) is sufficient for prosecution and intimidation.

H.B. 83 has the potential to muzzle sexuality education in Montana. Repeated surveys reveal that citizens overwhelmingly support its inclusion in publicly-funded educational curricula. The topics raised in sex education curricula are of vital importance to society. It cannot be taught without reference to material that some will find offensive. It casts a wide net, capturing not the perpetrators of "crime" it intends, but average citizens and educators. It asks that the judicial system be used to arbitrate the qualities of material made available to consenting adults in any setting. It enlarges the definition of criminality to those whose intent is otherwise. It provides a means to the demise of sex education. With the resultant ignorance, we will have more difficulty insuring that all pregnancies are planned and wanted, with confronting the horrible toll of sexually-transmitted diseases, sexual assault and incest, with modifying everyday poor choices and difficult relationships, and with human suffering and its profound expense to society.



Don Jenni
Professor, Biological Sciences
University of Montana



Cathy Jenni
Associate Professor, Educational Leadership & Counseling
University of Montana

I understand I can fax my testimony regarding HB 83, so here it is EXHIBIT NO. 3F

DATE 2-8-95

I oppose HB 83. I believe the decision to read and view various materials is mine to make and mine only; government has no right to make these decisions for me. FILE NO. HB 83

The most obvious question regarding a ban on obscenity, of course, is: who decides? The police? The county attorney? A ban on pornographic material is nothing less than an enforcement nightmare. In Canada, which has a similar law banning obscene and pornographic materials, the enforcement problems are numerous. For example, American cartoonist Matt Groening, creator of "The Simpsons," has had his material seized at the border. A health guide written for people with AIDS also failed to make it past the Canadian censors. And ironically, even works by Andrea Dworkin, a strident anti-pornography activist, were confiscated by the Canadians.

I think this clearly shows the inherent problems in enforcing this type of law.

Further, there are no legitimate studies that prove a causal link between pornography and violence towards women. People who sexually assault women or children after reading or viewing pornography are NOT normal, well adjusted people who simply exercised a moment of bad judgment. They are criminals who will continue to rape and assault regardless of whether pornography is available. The belief that a ban on pornography will reduce the rate of sexual assaults is naive at best and dangerous at worst.

If there did exist a link between certain materials and violent behavior, then the Legislature would do well to consider banning the annual broadcast of the Superbowl in Montana, since there are informal studies that do show a link between the Superbowl and violent attacks on women.

Finally, I take offense at the notion that women need protection from men who might -- might, mind you -- be compelled to attack after viewing pornography. This assumption contradicts all the gains made on behalf of women's rights in the past generation.

I don't need or want the state Legislature deciding what I may read or view, and I don't believe Montana needs it or wants it either. Please vote no on HB 83.

Respectfully submitted,

Carlotta Grandstaff
844 Sleeping Child Rd.
Hamilton, MT 59840
406-363-4054

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 39DATE 2-8-95

A Hn: Ke: 110 000
 Senator
 Terry Klump

Testimony for the Senate Judiciary Committee ~~and state senators~~ ^{HB 83}

In what must be the ultimate act of censorship, Rep. Jack Herron of Kalispell recently stated the backers of HB 83 (the anti-pornography bill) have asked him not to talk to the media about the bill.

Herron, who sponsored the bill, should be able to tell Montana citizens why he believes it is necessary to regulate the lives of Montana citizens to the degree this bill attempts.

But in an interview, Herron said, although he sponsored the bill, he is "doing it for others. and added "This was not my choice."

Whose choice was it then?

Perhaps that of Montana Citizens for Decency through Law, a private, non-membership, contribution-seeking lobbying group headed by Dallas Erickson of Stevensville. Erickson claims the title of president of the MCDL and has a vice-president and secretary/treasurer listed on papers he files with the state each year but he has stated, in print, his group has no members.

According to newspaper interviews with Erickson, he claims his proposed law deals only with obscenity, which is illegal, but not pornography.

However, the MCDL articles of incorporation state very different purposes, specifically to:

"Create public awareness of the nature and scope of the problem of obscene or pornographic literature;

"To encourage the reading of decent literature;

"To expect enforcement of laws pertaining to obscene or pornographic literature;

"To encourage and promote publication and dissemination of constructive and positive literature, movies, plays, books, magazines, etc., which are possessed of social value and which constitute a step toward ultimate TRUTH; and to encourage the efforts of law enforcement and prosecuting agencies and others interested in preventing the sale of literature which contravenes the manners and mores of the average person in a given community. "

In newsletters and flyers put out by the MCDL are frequent requests for contributions and the following statement, "All donations are tax deductible to the extent allowed by law." Of course, the deduction allowed is zero, but that is not the impression left with the person who contributes and then may try to take the donation off his or her income tax.

The question has to be asked, who does Erickson represent and what are his motives? What are the next steps in his agenda? What will be the next series of laws the legislature will be asked to pass in the name of morality and "protection of women and children"?

In testimony about the bill before the house judiciary committee and on the house floor, Herron deferred questions to Erickson and the experts Erickson brought in to testify about the bill.

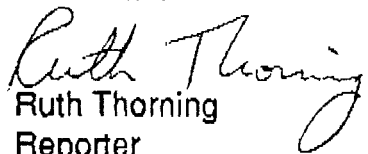
Herron also said he was "alarmed" at the number of women who protested his support of the bill, which he feels would protect them.

Perhaps those women who alarm Rep. Herron feel they are able to protect themselves and their families from the "danger" of obscenity. Perhaps those women feel less government interference in their lives is the choice they want to make. Perhaps those women feel morality and decency are values best taught in homes and churches not passed into state law by legislatures.

Erickson speaks of rampant pornography causing dramatic increases in sex crimes which leads to the need for this legislation. Statistics from the Montana Board of Crime Control over the last five-year reporting period do not bear out his contentions. The number has remained stable at between 1,400 and 1,500 reported crimes per year, while Montana's population has grown by 7.1 percent. Ravalli County's population has grown by 25 percent in the past decade but sex crimes have remained at eight and nine cases per year for the past three years following a drop from 10 and 13 crimes in the two years before that. Statistically, based on a growing population, that's a decrease in crime, not an increase— statewide and countywide.

The bill is too broad and vague for any possible enforcement without challenges. It can only cost the state — or local — governments more tax dollars defending it in courts of law. It interjects government into private homes where it has no place to go. It says government has the right to make moral decisions and judgments for adult citizens.

If the bill's sponsor cannot speak for it, no one else should. It deserves to be defeated. The agenda of a few self-styled keepers of the public morals should not lead the legislature into the mistake of attempting to legislate the morals and choices of adult Montanans.


Ruth Thorning
Reporter
Ravalli Republic
232 West Main Street
Hamilton, Montana 59840

NAME NICHOLAS BUGOSH
ADDRESS 1561 COLORADO GULCH DR., HERZOGVA
HOME PHONE (406) 442-7646 WORK PHONE 444-3827
REPRESENTING SELF
APPEARING ON WHICH PROPOSAL? HB 83
DO YOU: SUPPORT OPPOSE X AMEND

COMMENTS:

THIS IS NOT WHAT I WANT GOVERNMENT
TO SPEND ITS TIME ON. HOW WILL IT
BE ENFORCED? WHO WILL DETERMINE
WHAT IS OBSCENE? THIS BILL HAS POTENTIAL
FOR EXCESSIVE ABUSES. THIS BILL HAS
GREAT POTENTIAL FOR ABUSE OF OUR FREEDOMS.
I DO NOT SUPPORT PORNOGRAPHY, CHILD MOLESTING,
ETC., ETC., BUT IF I JUDGE SOMETHING OBSCENE
I SIMPLY DO NOT PURCHASE OR USE IT. PLEASE
DO NOT VOTE FOR THIS ODIIOUS LEGISLATION.
PROponents SAY THAT THIS WILL NOT EFFECT
X, Y, OR Z; WHY NOT?? IT IS OPEN ENDED
AND COULD BE APPLIED TO ANYTHING SOME PERSON

WITNESS STATEMENT

DECIDES TO DEFINE AS OBSCENE.
PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

What else can parents do?

Parents are urged to learn as much about a film as possible *before* they permit their children to attend. Reading reviews and feature articles or speaking with your theatre manager and friends are good ways to gather information in addition to the ratings.

We are interested in *your* views. Please let your theatre manager know if you attend a movie theatre and have any questions with regard to how the rating system is being implemented.

If you want further information about the rating system please write:

The National Association of
Theatre Owners
4605 Lankershim Blvd., Suite 340
North Hollywood, CA 91602

or

The Classification and
Rating Administration
14144 Ventura Blvd., Suite 210
Sherman Oaks, CA 91423.

This brochure is brought to you by
the National Association of Theatre Owners
in association with your local theatre.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 41

DATE 2-8-58

BY HB 83

Everything You Always Wanted To Know About The Movie Rating System

What is the purpose of the rating system?

The movie rating system is a voluntary system sponsored by the Motion Picture Association of America and the National Association of Theatre Owners to provide parents with advance information on films, enabling the parent to make judgments on movies they want or don't want their children to see.

Do the ratings indicate if a movie is good or bad?

No, the system is not designed to serve the function of "critic." The ratings do not determine or reflect whether a film is "good" or "bad." The system is not intended to approve, disapprove or censor any film; it merely assigns a rating for guidance -- leaving the decision-making responsibilities to the parents.

Who gives the movies their ratings?

Parents give the movies their ratings -- men and women just like you. They are part of a specially designed committee called the film rating board of the Classification and Rating Administration. As a group they view each film and, after a group discussion, vote on its rating, making an educated estimate as to which rating most American parents will consider the most appropriate.

What criteria do they use?

The rating board uses the criteria you as a parent use when deciding what is suitable viewing for your child. Theme, language, violence, nudity, sex, and drug use are among those content areas considered in the decision-making process. Also assessed is how each of these elements is employed in the context of each individual film. The rating board places no special emphasis on any of these elements; all are considered and examined before a rating is given.

Is the rating system a law?

No, the rating system is strictly voluntary and carries no force of law. (However, some locations may be subject to state or local laws regulating the content of motion pictures.)

What do the rating symbols mean?

G General Audiences -- All ages admitted. Signifies that the film rated contains nothing most parents will consider offensive for even their youngest children to see or hear. Nudity, sex scenes, and scenes of drug use are absent; violence is minimal; snippets of dialogue may go beyond polite conversation but do not go beyond common every-day expressions.

PG Parental Guidance Suggested -- Some material may not be suitable for children. Signifies that the film rated may contain some material parents might not like to expose to their young children -- material that will clearly need to be examined or inquired about before children are allowed to attend the film. Explicit sex scenes and scenes of drug use are absent; nudity, if present, is seen only briefly; horror and violence do not exceed moderate levels.

PG-13 Parents Strongly Cautioned -- Some material may be inappropriate for children under 13. Signifies that the film rated may be inappropriate for pre-teens. Parents should be especially careful about letting their younger children attend. Rough or persistent violence is absent; sexually-oriented nudity is generally absent; some scenes of drug use may be seen; some use of one of the harsher sexually-derived words may be heard.

R Restricted -- Under 17 requires accompanying parent or adult guardian (age varies in some jurisdictions). Signifies that the rating board has concluded that the film rated may contain some adult material. Parents are urged to learn more about the film before taking their children to see it. An R may be assigned due to, among other things, a film's use of language, theme, violence, sensuality or its portrayal of drug use. Theatre owners and film critics are advised as to why the R rating was assigned; parents are therefore urged to contact their local theatres to learn why the rating board chose the R rating.

NC-17 No Children Under 17 Admitted (age varies in some jurisdictions). Signifies that the

rating board believes that most American parents would feel that the film rated is patently adult and that children under the age of 17 should not be admitted to it. The film may contain explicit sex scenes, an accumulation of sexually-oriented language, and/or scenes of excessive violence. The NC-17 designation does *not*, however, signify that the rated film is obscene or pornographic in terms of sex, language or violence.

Is the NC-17 rating the same as an X?

Not exactly. NC-17 is CARA's new name for the old X rating -- but unlike the X, NC-17 is a registered trademark and cannot be self-applied.

Can a rating be changed?

Yes, the rules permit movie producers to re-edit their films and re-submit them in hopes of receiving another rating. Producers may also appeal a rating decision to the Rating Appeals Board, which is composed of men and women from the industry organizations that govern the rating system. A two-thirds secret ballot vote of those present on the appeals board may overturn a rating board decision.

Do all movies have to be rated?

No. Submitting a film is purely a voluntary decision made by the filmmakers. However, the overwhelming majority of the producers creating entertaining, responsible films do in fact submit their films for ratings. All five Classification and Rating Administration rating symbols have been trademarked and may not be self-applied.

Who enforces the ratings?

While the decision to enforce the rating system is purely voluntary, the overwhelming majority of theatres follow the Classification and Rating Administration's guidelines and diligently enforce its provisions.

2-8-95

11383

MONTANA

ASSOCIATION OF

THEATRE OWNERS

TO SENATE CHAIRMEN & VICE CHAIRMEN AND
OTHER MEMBERS.

I WOULD FIRST LIKE TO SAY THAT I DO NOT
RUN ANY MOVIES THAT ARNT G, PG, OR R. RATED.
WE DO CONTROL WHO GOES TO WHAT MOVIES BY
THEIR AGE.

I AM AGAINST THIS BILL BECAUSE WE ALREADS
HAVE A CURRENT MONTANA LAW THAT COVERS THIS
ISSUE. I DO NOT FEEL THAT THE LAW SHOULD BE
EXPANDED TO LIMIT ADULTS TO SEE WHAT THEY WANT

SINCERELY
FROM

Roxy St

Roxy Twin
HAMILTON MT

MATO

MONTANA

ASSOCIATION OF

THEATRE

OWNERS

SENATE JUDICIARY COMMITTEE

SENATE NO.

43

2-8-85

H583

2/8/85

Sen. Bruce Crippen
Senate Judiciary Committee

Dear Sen. Crippen:

As a theatre owner, and a member of MATO,
I oppose H583 due to the fact that it
is unenforceable and unnecessary, along with
being too vague in its definition of "obscenity"
and the "average person." This bill could
cause undue legal ~~complications~~ complications
for Montana's entertainment industry.

Mike Blakesley

Roxy Theatre

Forsyth MT



DANIEL R. ERVING AGENCY
311 9TH AVENUE, #2
HELENA, MONTANA 59601
(406) 449-4737

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 44
DATE 2-8-95
FILE NO. HB 83

Professional Business Services

FEBRUARY 8, 1995

Senator BRUCE CRIPPEN
CHAIRMAN, Senate Judiciary Committee
State Capitol Building
Helena, MONTANA

RE: House Bill # 83

Dear Senator CRIPPEN,

I represent the Montana Association of
THEATRE OWNERS and the MONTANA CHAPTER
VIDEO SOFTWARE DEALERS ASSOCIATION.

Both ASSOCIATIONS oppose House Bill 83.

Sincerely,

Don Erving

Lobbyist

MONTANA

ASSOCIATION OF

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 48

2-8-95

HB 83

THEATRE OWNERS

2-7-95

Sen. Bruce Crippen
Chairman
Senate Judiciary Committee

Sen. Crippen,

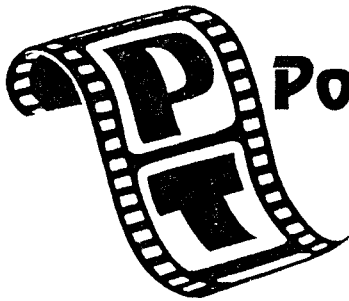
I am opposed to House Bill 83 because I am concerned the current bill is a quote and does not limit adult reading, seeing, & hearing freedoms.

Thank you for your consideration

Donna Kelpatuck
814 First Ave
Laurel MT 59044



I am a manager
of a theatre, I two kids
17 + 10 I pay my taxes
and I do my community
service. I do not feel
I should have to defend
myself in the courts while
real criminals wait their
turn. The current law
works. This one does not.
STAN SMITH
Big Sky Cinema Dillon, MT



Polson Theatres

Phone (406) 883-5844
364 Shoreline Drive
Polson, Montana 59860

February 6, 1995

SENATE JUDICIARY COMMITTEE
SENATE NO. 47
DATE 2-8-95
BILL NO. HB 83

Senate Committee
Bill #83

As a citizen of Montana and an owner and operator of theatres in seven towns in Montana, I would like to register my opposition to House Bill #83.

First I am as opposed to hard core pornography as most citizens, and I would like to see it controlled, but I believe #83 is too broad and will have an effect on many morally concerned institutions and business: book stores, libraries, theatres, and video stores.

We are careful to choose movies, we consider appropriate as I am sure the legitimate business mentioned above select their product. Our customers may choose the type of movie of interest to them: family to adult fare, same as other business.

If this law goes into effect, we will further limit the choice of our patrons movies, for fear of prosecution, as will libraries, book dealers, and video stores. This is the beginning of removing freedom of expression from Montana.

There is also the threat of a very concerned citizen bringing a suit against our theatre, I am certain with our present choice of general release movies, we would never be convicted of breaking this obscenity, but the cost economically and publicly to our business is something we should not have to fear.

I believe the person committing the sex crime should be punished severely to discourage these crimes, not the general public by having their freedom of choice taken away. If every town in Montana was filled with hard core pornography shops then I might consider giving up my freedom of expression to fight such a problem, but that is not the case in Montana.

The most questionable item of this new law is the right of the individual areas of the state to choose to impose even stricter obscenity laws, this is truly unfair.

Please consider how unnecessary this law is when we already have many ways of punishing those whose obscene offences concern children, who the proponents of this law continually say they are trying to protect.

Sincerely,

Ayron Pickerill

Feb 6, 1995

Members of the Senate Judiciary Committee
Montana State Senate
Helena, MT

RE: HB 83 (the Obscenity Bill)

Ladies and Gentlemen,

As a theatre owner a number of years ago I spoke against the passage of an obscenity bill. The senate, at that time, had the good sense to kill the bill. I was greatly dismayed and embarrassed at the ignorance the House showed in passing HB 83. I trust the Senate has a longer memory.


The issues and facts are the same now as they were back then. It is extremely difficult to define what is *obscene* because it is in the eye of the beholder. In the hearings last time around, a member of the house told the committee that he had no trouble defining it. In fact he had gone to the Circus Theatre and viewed pornography the previous night - the movie he saw was *The Towering Inferno* with an all star cast including Paul Newman. Others at the hearing laughed at the representative but the point was that, to him, the film was obscene! It didn't matter whether 'local community standards' dictated that the film was or was not obscene, to him it was and, as an adult, he had the right to attend the film, stay away from the theatre, write a letter to the company and the editor of the newspaper, or exert his rights in a number of appropriate ways.


Every state has laws against child pornography. Those laws have teeth. Prosecutors get convictions with them. Almost everyone agrees that these laws are necessary and good. *Obscenity* laws that try and protect adults from viewing what certain members in the community define as obscene, end up wasting your time, tax payers money, and the time of local law enforcement and county attorneys. Whenever a book store, theatre, video store, art gallery, night club, etc. is charged with obscenity the case goes to court. Occasionally they are found guilty and then they take it to a higher court and on and on until the case is thrown out or they are found not guilty. Convictions are practically nonexistent. Most obscenity laws (including HB 83) are found to be unconstitutional. The press surrounding an arrest and subsequent trials usually results in additional business for those that are charged - the opposite of what the bill was intended to do.

Montana's theatre owners do not have to ever worry about an MPAA rated film being declared obscene. Yet recent major films like *Disclosure* are obscene to some people. As an adult I have the freedom and right to attend or not attend. I, even as a member of a local obscenity board, do not have the right to determine what my adult neighbors decide to view.

Thank you for your consideration. I know you will make an intelligent choice.

Regards,


Dan Klusmann
President



Independent Marketing Edge
827 Blackmore Place
Bozeman, MT 59715
(406) 587-1251 Fax (406) 586-1571

The world's best theatre managers have an 'edge!'

SENATE JUDICIARY COMMITTEE

SENATE NO. 48

DATE 2-8-95

FILE NO. HB 83

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 49

DATE 2-8-95

BILL NO. HB 83

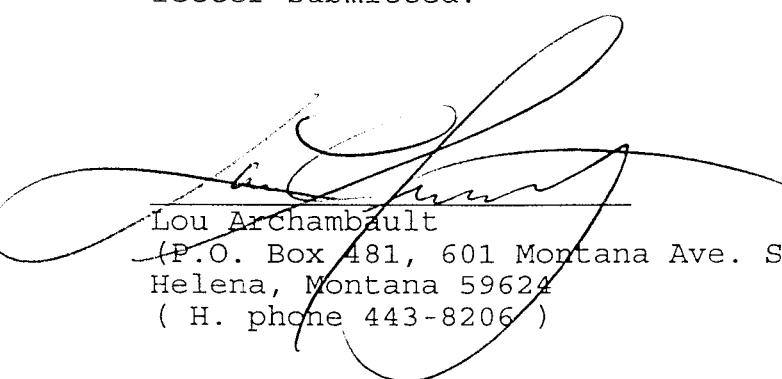
8 February 1995

Letter submitted in opposition to HB (#82 and) #83.

Forever Young!

There are innumerable points that can and are being made about the contents of House Bills 82 & 83, which deal with Indecency and Obscenity. I am an artist who chooses to paint the nude figure as one of many varied subjects. After studying these two bills and attending the House committee hearing, I am convinced that both bills would negatively impact my artistic pursuits. The proponents at that hearing glossed over the effect these bills would have on the general populace as well as artists. HB #82 expands the definition of indecency making it applicable to private as well as public places. HB# 83 expands the definition of obscene then obligates the authorities to apply these standards to all adults as well as those under 18. HB #82 has been tabled because "it would likely be found unconstitutional." Since HB #83 contains the same stance as #82 regarding infringement of our personal freedom, it should not be passed either. As you give further consideration to this bill, ask yourselves whether the majority of your constituency wants their representatives to assume this paternalistic function.

I am enclosing copies of a portion of the newspaper articles which have appeared, and which are against passage of HB #83. They are submitted as testimony, and therefore should be reviewed as any letter submitted.



Lou Archambault
(P.O. Box 481, 601 Montana Ave. So.)
Helena, Montana 59624
(H. phone 443-8206)

MONTANA

Art Council, Robert

Anti-smut crusader

Legislature to be asked to curb sales

HAMILTON (AP) — The man who led a successful push for obscenity laws in Ravalli County says he will take his crusade to the Montana Legislature.

Two county ordinances approved by voters this week make it illegal to distribute obscene material and to display material that would be harmful to minors. A third bans public nudity and public performances of actual or simulated sex acts.

Dallas Erickson, who heads Montana Citizens for Decency Through Law and who led the Ravalli County effort, said the Legislative Council has been researching bill requests from Rep. Jack Herron, R-Kalispell, for three laws that will essentially be

the same as the county ordinances.

Erickson singled out two video rental businesses that offer films which he believes would be illegal under the new county laws, but said he was willing to wait and see whether they will voluntarily conform to the law.

"It's not like we're going to mount an all-out effort to enforce" the new rules, he said.

But if the merchants in question fail to comply, complaints will be filed and Erickson's anti-obscenity group may call for a boycott of the stores, he said.

Sheriff Jay Printz said the new laws will further burden his thinly stretched force. Offenses under the ordinances would be misdemeanors and they

to go statewide

will get "low-priority status" in enforcement, the sheriff said.

If a complaint is made, Printz said, he will decide whether the material or action in question appears to violate the law and would then refer the matter to the county attorney for prosecution.

"We think that these are overbroad," Scott Crichton, state executive director of the American Civil Liberties Union, said about the Ravalli County ordinances.

"You've got anti-pornography ordinances already in place (at the state level) that seem to be working just fine," Crichton said. "What they're doing is asking government to become further involved in what citizens can and cannot be exposed to."

The rule banning distribution of obscene material requires judging material against "contemporary community standards" that likely would be contest-

ed in court in response to any prosecution.

Crichton said he doubts that Erickson would welcome any such court action while trying to get similar laws passed by the Legislature.

Larry Hale, whose Woodside Country Store was singled out by Erickson as a possible violator of the Ravalli County laws, said he is not happy about the fact that he has 10 adult videos available for rent at his store.

"Some of our regular customers asked us to put them in, so we did so in a very discreet manner," Hale told the *Missoulian* newspaper.

Hale said his decision to offer the movies was in large part prompted by competition, but added that he is uncomfortable with making judgments about his customers.

"I am not qualified to be a judge of whether they are right or wrong," Hale said.

Reasons to kill

Jan 10 '95

The House on Monday tentatively approved House Bill 83, a measure designed to toughen Montana obscenity laws, by a narrow 53-47 vote.

The bill would make it a crime to provide or display obscene material to anyone, not just youths under 18. It would make it a felony to bring such material into the state, and it expands the list of misdemeanor offenses.

Many different arguments serve to explain why the House should kill the bill on final reading. Here are a few:

■ The constitutional issue. More than 20 years ago Montana adopted one of the most progressive constitutions in the nation. "No law shall be passed impairing the freedom of speech or expression," the document says. "Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty."

Much is made of the fact that some 45 states have obscenity laws similar to HB 83, but Montana's constitution simply precludes

AN IR VIEW

BILL SKIDMORE

the strict sanctions the bill would place on adults in this state. Passing it may infuse some with a fuzzy, feel-good sense of sanctimoniousness, but does such a quixotic, sure-to-be-overturned law merit the Legislature's valuable time?

■ Effectiveness. One look at the size of the pornography industry in this country — a \$10 billion industry by one estimate — should convince anyone that those obscenity laws boasted by 45 states are about as effective as the government's war on drugs.

■ Local options. State law already allows local governments to ask voters if they want anti-obscenity laws that are more stringent than state law. If community standards are the key to "what is obscene," than such decisions are best made on the local level.

■ Is HB 83 anti-crime? Many legislators appear to view the measure as an anti-

DATE 2-8-95
HB 83

crime bill. This view is not supported by the facts, unless inventing new crimes is somehow anti-crime.

Advocates contend pornography can lead a person to commit sex crimes, victimizing women and children. This fairy tale, long the province of the prim and proper religious right but recently championed by some feminists as well, contradicts reality.

Rapists are motivated by rage and hatred of women, not by passion. There's no evidence pornography has anything to do with their crimes. Likewise, child molesters are people unable to control their own sick needs, not weak-willed victims of dirty pictures.

Montana already has laws against such criminals, as well as stalkers, domestic abusers, and so on. Enforcement of those laws has a place on our anti-crime agenda; censorship does not.

As for the feminist view that pornography demeans women, we tend to agree. If asked, we'd advise women (and men) not to act in pornographic movies, or pose for explicit photographs. But we'd never dream

of actually imposing our views on another person's freedom, just as we wouldn't want anyone to impose their views on ours.

■ Freedom of expression. If HB 83 fails to be an anti-crime bill, it certainly would succeed in stifling free expression and creativity. The bill is so broad as to include many legitimate forms of art, including most movies rated R. Would the bill mean porn police swooping down on a family at a video rental store picking up a movie for the kids and a little spicier one for after the kids are in bed?

At any rate, good, cutting-edge art of any genre is quite likely to offend somebody. Under HB 83, by golly, that somebody gets to protect us all from whatever sets his/her sensitive heart aflutter. We hope the Legislature protects us from such protection.

■ Finally, there is the issue of irony. The spectacle of a Legislature dominated by people who ran for office on a pledge to get government off our backs seriously considering HB 83 would, if not for the delicious irony, look a lot like a dirty picture.

IR - Jan 23 '95

EDITOR
ASSOCIATE EDITOR
EDITORIAL PAGE EDITOR

OPINIONS

What is obscenity?

We're all trying to balance our budgets these days, and the Montana Legislature is no exception. That's why I'm surprised the House of Representatives just passed a new obscenity bill which, despite good intentions, would cost us all a great deal and would not do its job.

Proponents of HB 83, "A Bill to Expand Montana's Obscenity Law," hope to nip sex crimes in the bud by outlawing the smut that leads to rape and pedophilia. According to the IR, Jan. 13, supporters pushed this bill to "protect society, especially women and children" from "obscene material (that) can lead to sex crimes."

I'M ALL FOR being protected from sex crimes, and I am among the majority who are deeply offended by smut. But how do we define obscenity in a way that doesn't rob us of an important part of our humanity? How can we separate what's dangerous from what's simply disturbing? Unfortunately, you can't outlaw disturbing pictures, not in a democracy.

And would you want to? Censors like to say that by applying "contemporary community standards," great art like Michelangelo's "David" would be acceptable. But how would you feel about that lovely, lively nude if you knew Michelangelo was a homosexual? Most of what we think of as great art today started out as a horror to contemporary community standards. In the 18th Century Vienna, avant-garde symphonies caused riots.

Art has power; words, performances, pictures, sculptures, magazines, films have power. They titillate. I can't read Donne or O'Connor or Steinbeck without feeling little rustlings in body parts I'm not supposed to name. You can't outlaw that power. You can legislate what people do with it.



YOUR TURN

THERE IS NO WAY to outlaw perverted smut without also robbing our culture of its liveliness, its honesty, its art. The Montana Legislature (not known experts on the meaning of art in society) has not succeeded in this subtle and difficult task.

I wish there were a way to outlaw everything that drives a pervert to assault another person. But perversion is in the eye of the beholder, and you can't outlaw the eye of the beholder. Criminologists who specialize in sex crimes know it isn't the smut-readers who attack; it's the frighteningly almost-normal, the psychotic who reads something abominable in the stuff of our everyday lives — children's clothes, women's shoes.

SO WHAT WOULD an expanded anti-obscenity law protect us from? Not from stalkers, not from domestic abusers, not from gun-toters or knife-wielders. Its definition of obscenity covers only nude bodies and sex; it doesn't even mention vio-

lence! Yet cops and criminologists all know that sex crimes are acts of violence, not sex. The law would protect us women and children from having to go see "Pulp Fiction" (shows excretory functions) or view Correggio's "Leda and the Swan" (beastiality). It would make Weiss's play, "Marat-/Sade" quite illegal (bondage in bizarre costumes); I'd be fined for screening the "Last Tango in Paris," thrown in jail for writing erotic literature. Woops, I thought I was being protected?

What is this bill about, anyway?

I WAS ONCE SEXUALLY assaulted by a man who later, the cops told me, gave a remarkably honest confession. He did not learn to do what he did by reading girlie magazines or watching strip shows; he learned it in Vietnam, he said, blowing gooks' heads off. He only knew one strong thing about himself, and that was it. If I could have whipped out Goya's "The Disasters of War" it might not have gentled him but it might at least have let him know he was still human. Art has that power, which is partly why we sometimes want to be protected from it, too.

If this Legislature wants to protect women and children from harm, strengthen the anti-stalking law. Protect us from abusive relatives. Stiffen the consequences for sexual harrassment. Protect kids from getting beat up by people they trust. Address the violence committed with weapons in this state. HB 83 doesn't protect anyone from anything. It makes honest artists, writers, publishers, video store owners and gallery operators vulnerable to interference by the government for their values. That does violence to our democracy, and I think that's obscene.

KRYS HOLMES of Helena is a free-lance writer.

Jan 23 '95

(FOR PASSAGE)

HR- JAN 25 1995

Arguments against the obscenity bill are refuted

I take strong exception to your recent editorial, "Reasons to kill the obscenity bill." I am on the judiciary committee which heard this bill and am a supporter. The rationale behind most of your arguments was thoroughly refuted in both committee and house floor testimony.

This bill makes Montana's obscenity law enforceable and makes it consistent with 45 other states. This improved language will allow local communities to enforce this statute if they so desire. Application of this bill in other states has been very successful in eliminating obscenity (por-

nography is not mentioned in the bill) from being so readily available. In fact torture videos are available in Montana but not in other states that enforce this law.

MONTANA BADLY NEEDS this bill to crack down on organized crime and other crimes against society. Innocent women and children used in these photos and videos are victims. Unsuspecting members of society who are the most vulnerable are victims. This material is almost always prevalent in the lives of rapists, pedophiles, and others committing heinous crimes against society. Proof of the correlation between obscenity and crime is extensive and unrefutable. How can you not call this a crime issue?

"OBSCENE" AS USED in House Bill 83, is material that depicts sex in a patently offensive manner and appeals only to the "prurient" (obsessive, shameful) interest in sex. This means violent and sadomasochistic material that involves pain and abuse would clearly apply. This is not about people making love, or Penthouse-type magazines. And no R-rated movies could be nor ever have been prosecuted under this bill's definition.

The constitutionality of this issue is settled beyond question. The United States Supreme Court ruled that "obscene material is unprotected by the First Amendment." It is absurd to call this "censorship" or an issue of free speech. Supreme Court

DATE 2-8-95 HB 83



DUANE GRIMES, a Republican from Clancy, represents Jefferson County in the state House.

YOUR TURN

Chief Justice Warren Burger wrote, "to equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historical struggle for freedom."

BESIDES, MONTANA'S constitution states that our free speech is limited by our "being responsible for all abuse of that liberty." Obscenity has always been considered an abuse of the liberty of free speech. The Montana Supreme Court holds

that "the State Constitution's freedom of speech' or 'expression' clause does not provide greater protections than those afforded by the First Amendment's 'freedom of speech' clause" (for those that think it does).

Art censorship? Nobody in the committee hearing on this bill could tell us what an artist in Idaho (that has this same statute) can't do, that an artist in Montana can? This concern is simply unfounded. Even hard-core pornography which has minimal artistic value is protected under this statute.

MOST OF THE ARGUMENTS against the obscenity bill are really arguments against our current law anyway. We have a chance here to do something preventative about crime. That's why a majority of us in the House passed the bill. In a recent Gallup poll 80 percent supported a crack-down on hardcore porn. President Clinton has endorsed hard-core obscenity laws as well.

Don't let Montana be one of five "magnet" states for this stuff. Let's do what's right for the liberty of everyone in Montana society, not just those that condone criminal activity and profit from it by "demeaning" the First Amendment.

1R - Jan 25 2003

Turning the rights of adults into those of kids

During the first day of the Legislature the Republican leadership promised less government and more individual freedom.

This commitment was tested by two bills introduced by the religious right of the Republican Party seeking to create a new crime of public indecency, HB 82, and an Alice In Wonderland rewrite of the crime of obscenity, HB 83.

THE HOUSE JUDICIARY Committee killed HB 82, which would have made nudity a crime and was clearly an embarrassment to the Legislature. However, on an 11-8 vote the committee sent the obscenity bill to the floor of the house where it passed by a narrow 53-47 majority. Twelve Republicans voted against it. It now goes to the Senate for a Judiciary Committee hearing then a Senate vote.

There is no question that HB 83 would bring a significant increase in government intrusion into the private lives of adults in Montana. The question is whether it is necessary.

WE ALREADY HAVE an obscenity law which prohibits public display of obscene materials and forbids providing them to minors. An adult in Montana is free to decide what to read or view as guaranteed by our Montana constitution's freedom of expression, speech, press and privacy.

The censorship proposal in HB 83 would transform the rights of adults into the rights of children by using the criminal law to prohibit adults from viewing what is now only restricted from children.

To appreciate the extent of the proposed control over your life, law enforcement would be expected

to monitor all publications, exhibits, theatrical productions, video rentals, sales, photographs, motion picture film, videotapes, sound recordings, and representations on computer transmissions.

SUPPORTERS CLAIM that this censorship is necessary to reduce crime. Their logic is this: Because a high percent of men in prison have previously viewed pornography, a ban on pornography

will reduce the number of men in prison. However, the percent of men in prison who have viewed pornography is probably the same as men not in prison. Causation has simply not been proven.

A censorship statute like this would be more at home in Utah. In fact, the out-of-state lawyer who wrote HB 83 said it has been enacted in Utah. If you ever wanted to live in a state where the legislature imposes religious beliefs on its citizens, you should move to Utah. But for me, I would rather breathe the fresh air of freedom in Montana than the stifling atmosphere of church domination in Utah. That's the same legislature that tried to censor cable TV before the federal courts had to remind them of the rights of others.

IF YOU ARE CONCERNED about this unprecedented censorship bill, HB 83, write your senator at the State Capitol, Helena, MT 59620 or leave a message at 444-4800.

More rights are lost by apathy than force of arms.



BOB CAMPBELL, a delegate to the 1972 Constitutional Convention, has been a state employee living in Helena for the past 15 years.

YOUR TURN

Notes on the importance of being (oh, so) earnest

What do you wear to an obscenity hearing? An earnest expression. That's what the Purity Posse wears as they speak of unspeakable things. And so do the free-speech firebrands appealing for the future of Art, Information, and the Constitution. Even the setting — the old Supreme Court Chambers — hushes. You're not supposed to laugh there.

But it's hard not to. When a slip of the tongue in the testimony against the nude dancing bill conjured up the vision of a woman clothed only in a thong and "pasties" — you had to snicker. Although everyone agrees that Butte's famous meat-filled pastries go great with milk and better with catsup, hardly anyone serves them with a G-string.

AND THE BROWN BAG testimony! One lady approached the committee holding a paper sack as if it were a soiled diaper. She had scoured Helena for obscenity, she announced (a dirty job, but *someone* had to do it), and she had found filth, revolting filth, the filth that was now in the bag.

I leaned forward eagerly — I mean, earnestly — to get a gander at the goods. But Pandora had scruples. Because of her earnest wish not to offend, because of the unsavory nature of the bag's contents, she could not compel the committee to view them. Instead, she would leave the bag on the table, and if at some break in the action, a committee member felt sufficiently fortified, sufficiently above the pull of prurient interest, then he or she could open the bag.

Ah, for the good old days when you could count on some loutish-looking representative from Anaconda to bring down the house by immediately requesting a 20-minute break. But no. Earnest, remember? The bag remained on the table, untouched.

THE OPPOSITION ALSO had a bag person, a counselor for sexual deviates, but his brown bag had more palatable filth. He pulled out the materials his clients used for their fantasies: a Mouser-size video, a Sears catalog, and a variety of Barbi doll stuff.

There is much to be said for banning Barbi. I hadn't known that she appealed to perverts, but I've long suspected that she's trouble. Children who acquired their first notion of the feminine ideal from Barbi must find reality a shattering dis-



MARY SHEEHY MOE

appointment. And if you've ever stepped on a Barbi in the middle of the night in your bare feet, you know that the correlation between that experience and obscene expression is significant. Perhaps the Senate will amend HB 83 to address the Barbi menace.

THE MOST EARNEST talk at the house hearings, though, concerned protecting the vulnerable from the pernicious porn-addict. This bill isn't about censorship, the Purity Posse insisted; it's about the safety of women and children. After a full hour of this patronizing blather, you begin to believe you're on the Titanic II and expect at any moment to be herded into a lifeboat with white-ribbed women and their clean, blond children who will hate you to death out there in the filthy ocean because you should be paddling earnestly away from that ship sinking from the weight of a big brown bag that must not be opened ... but all you can do is laugh.

It's funny that in an era in which not an hour goes by without a child getting shot, we want to ban ... guns? No, magazines. It's amusing that a society that can't abide images of women in chains lives tolerably well with the prisons of poverty, discrimination and abuse that far more women occupy. It's a screamer that men who dismiss these complex women's issues are some of the Galahads behind this simplistic bill. And the real rib-splitter is that in the name of protecting "defenseless" women and children, we must all take on that powerless status, dependent on Big Daddy to determine what we can see and say.

NEXT SESSION, PERHAPS, we'll go equal opportunity and get earnest about protecting men ... from country music. After all, as the Posse would say, it "degrades them in every imaginable way." And that's just the lyrics! Add the nasal twang of hokey okies forcing their eyes to well with tears, and you have flat-out masochism. The correlation between country-western bars and parking lot violence is every bit as strong as the correlation between pornography and rape. Yes, banning country music is an idea whose time has come. Like the obscenity bill, it's the very least you can do for the ones you love.

MARY SHEEHY MOE is a teacher at the Helena College of Technology who writes occasional columns for the IR.

112- JAN. 25, 95

Obscenity too broad

For those of you who have enemies who are artists or art collectors, here's your chance to put them away.

With passage of the revised obscenity law, HB 83, any person who exhibits images with human bodies is endangered. The law's in-

tended target is pornographic abuses, but tragically it tries to attack a problem of violence and harassment with prohibitions against body imagery instead of abusive behavior. Are we to believe in this state that it's a God-given right to carry an assault rifle, but an image of a nude is too dangerous to allow citizens to handle?!

As a sculptor of the human form I'm under threat from the part of the law that prohibits exhibition of any obscene "statue." I've been a ravenous appreciator of beautiful images of the body all my life, and I know about pornographic magazines, films, videos and photographs. But I had honestly never heard of an "obscene statue" until I read this bill.

Our legislators would never have let that reference slip through unless they had something in mind. Unless I'm so naive that I'm missing the Rent-a-Lewd-Statue outlet, that reference refers to body imagery in sculpture, which I am totally guilty of producing and exhibiting all over this country and beyond! Of course my intent is far from prurient, but that doesn't matter under this law, the artwork needs only be "offensive" to "the average person" to make me a criminal. But that person is precisely who I intend to confront, and hopefully enlighten, with my artwork. Simple confrontation can easily be felt to be offensive by anyone who doesn't feel like challenging their cherished beliefs, and now they can have me, or even someone who exhibits similar artwork in their home arrested for it!

Please tell your senators to nix this misguided bill!

Tim Holmes
446 N. Hoback

EXHIBIT 49
DATE 2-8-95
HB 83

16 January 1995

Letter submitted in opposition to HB #82 and HB #83.
This same letter is currently being submitted to "Letters to the Editor", to all of Montana's major newspapers for publishing as soon as possible.

Forever Young!

There are innumerable points that can and are being made about the contents of House Bills 82 & 83, which deal with Indecency and

Obscenity. I am an artist who chooses to paint the nude figure as one of many varied subjects. After studying these two bills and

attending the committee hearing, I am convinced that both bills would negatively impact my artistic pursuits. The proponents at the

hearing mentioned nothing of the effect on artists; nor has anyone addressed the predominate effect these bills will have on all of

us, not just artists. HB #82 expands the definition of indecency then makes it applicable to private, non-public places as well as

public places. That's Big Brother intruding into our private lives and domiciles! HB #83 expands the definition of what is

obscene then applies these standards to all adults as well as those under 18. Adults would not be allowed to make their own free

choices. If you do not believe this legislation would effect you as a law abiding citizen read the new and "improved" definition of

obscenity. HB #82 has been tabled because it would likely be found unconstitutional." HB #83 contains the same attitudes as #82, yet

was passed by committee and is now before the House. I appeal to the concerned readership of Montana to voice this issue with your

representative- Adults are capable of making their own choices. Please give HB #83 a quick and total defeat.

Lou Archambault
(P.O. Box 481, 601 Montana Ave. So.)
Helena, Montana 59624
(H. phone 443-8206)

SENATE JUDICIARY COMMITTEE
SUBJECT NO. 50
DATE 2-8-95
BILL NO. #1983

8½ Washington Place
Helena, Montana 59601
February 8, 1995

Chairman
Senate Judiciary Committee
The Senate
Montana State Legislature
Helena Montana

Mr. Chairman and Committee Members,

I urge you to oppose passage of House Bill 83. Proponents of this bill want to censor free expression only they find offensive. Supporters of this bill are guilty of misinformation and faulty reasoning.

1. It is not true that pornography is rampant. Pornography, the depiction of sex acts, has been a normal part of human expression since the beginning of culture. Those who think it is rampant are those whose obsession, fed from guilt about bodily functions, makes them see "filth" everywhere.

2. It is not true that pornography causes rape and abuse. There is no correlation between the consumption of sexual descriptions and the urge to violate others.

A close correlation has been demonstrated, however, between militarization and rape. Sex crimes rose markedly during Desert Storm. Fascist Spain and the Ayatollah's Iran employed severe sanctions against pornographers, yet there is no indication that sexual assault decreased. Do we want Montana to be a police state controlling every common desire?

3. The committee should be aware that legislation such as this has its origin in an unholy alliance between radical feminists, such as Andrea Dworkin and Catherine McKinnon, and certain radical right religious groups.

Dworkin has publically advocated murdering men. She, McKinnon, and their supporters consider marriage a form of prostitution. Advocates of absolute rights to abortion, they made common cause with christian fundamentalists solely on the basis that any depiction of the body unclothed is a crime to be punished.

Save us from the prudes who would make their shame the law of the land.

Sincerely,



Charles Breth

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 51
DATE 2-5-95
BILL NO. HB83

January 23, 1995

To: Montana House and Senate

Re: HB83

Closing the Information Superhighway


I have read HB0083_3.doc, the text from the state bulletin board system.

Do you understand the impact this will have on electronic information servers in the state of Montana?

Do you know that it will be illegal to bring the 'Information Superhighway' into the state?

We ***KNOW*** there is pornography on the Internet, and indeed on virtually any electronic information server. It does not automatically present itself to the user, but it's there. Everyone ***KNOWS*** it's there. To provide access to the Internet, for instance, would be to violate HB83. Even State Agencies would be unable to provide this access to employees of the state, other than uses so restrictive as to be useless. Access by schools, including the universities, would be out of the question.

Many of us are trying to make Montanans competitive in the world at large. This bill would slam the door on a very important resource.


Bob Worthy
1132 Breckenridge
Helena MT 59601

443 5219
bulletin board system 443 7508
Internet: bworthy@mt.net

325

My name is Granda Brewer and I'm here today as a small business owner who could be effected by the passage of house bill 83.

The magazines that Rep. Neuron refers to as obscene made up

12.6% or about 35,000 last year.

I also carry a line of greeting cards that with the broad language of this bill might be declared

obscene, these card were 3.1% or about 8500 of the gross. Although

this is a small part of my business I would still suffer

a loss of about 43,000 a year if this bill were passed. May

I remind you this is money

I pay taxes on so everyone would
less false

As a woman I feel no threat of any sex crimes being committed against me or any other person by the people

who purchase these magazines

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 52
DATE 2-8-95
FILE NO. 4383

I do feel however that a crime will be committed if you ignore the people you today and our first amendment rights by passing this bill.

If this truly were a get tough on crime bill as quoted by one Rep we'd be talking about drug, theft + murder not something that's been around since Adam + Eve.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 53

DATE 2-8-95

NO. OF HB 83

HB 83



*Submitted by
Sen. Sherry
for Mary
DeKaria
of Great Falls*

My throbbing [REDACTED] your hot, seething
[REDACTED] Later, we'll [REDACTED] whips and chains
[REDACTED] pulsating [REDACTED]
in the blender. Soft, pink flesh [REDACTED]
[REDACTED] like a Mac Truck.

The sensuous folds of your [REDACTED] in the
backseat, while we [REDACTED] frontal lobotomy.
Our tongues [REDACTED] your lips [REDACTED]
my foot [REDACTED] Wayne Newton's Greatest
Hits. Licking [REDACTED] Tarzan [REDACTED]
[REDACTED] totally spent.

You make me [REDACTED] on Valentine's Day.

LAW OFFICES

**Keller, Reynolds, Drake,
Johnson and Gillespie, P.C.**

P. KEITH KELLER
THOMAS O. JOHNSON
RICHARD E. GILLESPIE
G. CURTIS DRAKE
JACQUELINE TERRELL LENMARK
ROBERT R. THROSSELL
JOE SEIFERT

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 24

DATE 2-8-95

BILL NO. HB 83

38 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59601
TELEPHONE (406) 442-0230
FAX (406) 449-2256

OF COUNSEL
PAUL T. KELLER
PAUL F. REYNOLDS
GLEN L. DRAKE

**Exhibit No. 54 includes 106 pages of
signatures. The original is stored at
the Historical Society at 225 North
Roberts Street, Helena, MT 59620-
1201. The phone number is 444-2694**

February 14, 1995

Senate Judiciary Committee
State Capitol
Helena MT 59620

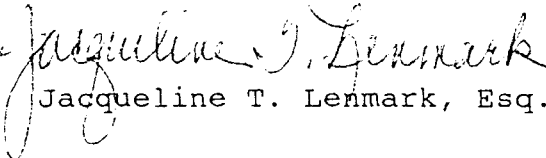
Re: HB 83

Mr. Chairman and Members of the Committee:

As you deliberate on your executive action on HB 83, please consider these constituents who have written their opposition to HB 83 since the hearing on February 8. These Montanans join the hundreds others that submitted their names to you at the hearing in opposition to this bill and in favor of adult choice.

Montanans Against Censorship strongly urge you to vote "do not concur."

Very truly yours,


Jacqueline T. Lenmark, Esq.

jtl:j
Enclosure

cc: Dan Cederberg, Esq.

Sally Garrett Dingley

Senator Bruce Crippen, Judiciary Committee Chairman
Capitol Station
Helena MT 59620

Dear Senator Crippen:

I attended the Wednesday hearing on HB 83 censorship bill, but was one of the last dozen in line to speak in opposition to the bill. I could only give my name and mention problems I had with a woman from Hot Springs who accused me of writing "border-line filth." Now I'm writing the rest of my thoughts about the proposed bill.

If this bill is intended to be an anti-child porn/adult porn or an anti-crime bill, it should have contained words that addressed those issues. After reading it several times, it's hard to overlook the reality that it is a deliberately vague piece of legislation that would enable groups such as the religious right to intimidate the rest of a community and therein lies its danger. I've lived in Dillon MT since 1982 and I've seen members of these groups try to take control of the schools and community meetings here.

I'll apply this proposed bill only to myself: a serious, sincere and ethical published writer and now trying to start up a small press operating out of my home office. Ironically, I can't get a small business administration loan because that law prohibits writers from getting loans to help with the cost of publishing his or her own writings (shades of the Joe McCarthy era!)

The bill reads, "A person commits the offense of obscenity if the person, with knowledge of the character of the item involved, knowingly: ...**publishes**..... or otherwise makes available obscene material....., **creates**.....obscene material for dissemination....." I write fiction and non-fiction. I've written sixteen novels. Twelve of them (85,000 and 95,000 word contemporary novels with six of them set in southwestern Montana) have been published since 1983. More than two million copies have been sold around the world. They are stories of relationships and commitment and they all contain at least one consummating love scene told in context to the characters and the unfolding story.

Only one woman ever accused me of writing filth, and she was part of the religious right in Hot Springs, but her threat left a lasting concern because it threatens my freedom to write what I want. She took a fade-away scene from my third book and turned it into a smut scene in her own mind. She saw things happening that I never put there.

If this bill should pass, before these zealot supporters head to Dillon to get me, they would have to bring charges against the Holy Bible. I'm Southern Baptist and a mother of four grown sons. The local Baptist churches I've belonged to encourage their members to investigate a subject under discussion and make their own decisions and choices based on their beliefs and personal sense of ethics. The Bible contains many sexually explicit scenes and subjects given in context but taken out of context become obscene and pornographic. Consider the Songs of Solomon in the Old Testament. It's beautifully written book but very steamy and more than suggestive.

Does the religious right plan to bring charges against Bible readers, religious book sellers and publishers, authors of the various books or their descendants, or the Idea Man behind the Bible in order to clean it up or get it out of the hands of the reader who can draw his or her own conclusions about its message?

I would think that by now the conservatives and/or Republicans would see the religious right as more than a voting block. It's a group or collection of groups of people hiding behind the term "Christian" and determined to get power over others in a community or country and control what they see, read, write or produce. Their actions do a disservice to Jesus Christ and his teachings. Shame on them for using his name in vain. They have a great fear of creative people or free thinkers who for them is anyone who doesn't think "their way." Creative people are represented in most of the categories mentioned in the bill.

The emotions and acts of love, sex and creativity are three areas of our private lives that the religious right can never control, and why should they want to? The Puritans of New England made a mockery of laws and justice 350 years ago and did great harm to the citizens who found themselves caught up in the unwarranted charges. Do we never learn from our past mistakes? Aren't their lives and families satisfying enough? Why do they work themselves into a frenzy about what their neighbors might be doing? Their own conduct is prurient in my opinion.

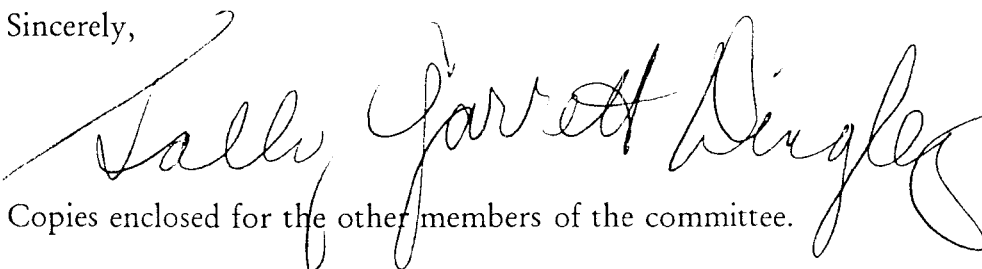
How dare they state in line 18-20 on page 3 of the third edition of the bill that they can destroy my books and materials. The books and research materials in my private library are mine, not theirs. That's the height of government interference and is contrary to all the dogma they spout about the government getting out of our lives.

My characters always create their children the old fashioned way; they make love. These fanatics have such revulsion toward the human body, the subject of love and/or sex in all its aspects that they've rejected one of God's most precious gifts. Do religious right couples undress in the closet and have sex in the dark? Do they create their offspring by immaculate conception or osmosis? I doubt it.

These people would use this bill, if passed, to begin a Puritanical witch hunt to purge the world of all actions they decree to be obscene. They should concentrate on cleaning their own minds. Since I moved to Montana, I've watched every other year as this group or groups find some politician to be a front-man for them and try to ram through a bill to censor the rest of us. They disguise it as anti-crime or anti-porn and what legislator would DARE oppose such an act? I, for one, would. I reserve the right to write what I want, sell what I can, and read what I choose, and no narrow-minded hypocrite wearing a mask of piousness will stop me.

I recommend the judiciary committee reject this bill because the supporters have misrepresented its purpose. If they are an honest and sincere group of people who really want to target the child porn/adult porn market, write a bill that speaks to that problem.

Sincerely,

A handwritten signature in cursive script that reads "Sally Garrett Dingley". The signature is written in black ink and is positioned below the word "Sincerely,".

Copies enclosed for the other members of the committee.

Hennesys

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 56
DATE 2-8-95
CASA FILE 14883

Montana Senate
Montana State Capital
Helena, Montana 59601

Dear Senator,


We are writing this letter in concern over House Bill 83, to revise the Obscenity Law. We have discussed the bill with people involved with both the legislature and business and we do feel that we understand the purpose for which it was filed but we are genuinely concerned that the language is too vague and therefore would be cause for considerable confusion in its implementation.

Many retailers sell, advertise, and display garments such as lingerie and swimwear. If an "average person, applying contemporary community standards" decides that our visual display, or advertising of these garments were in some way obscene, it is our interpretation that we would be open for penalty under this law.

I have collected a number of ads from various retailers. These have been inserted in the area papers over the past few weeks. I doubt that you would see these ads as offensive but again, what will the interpretation be from the "average person, applying contemporary community standards"?

We do believe that this bill is not aimed at businesses like us, but we also believe that it could be interpreted that way. We ask that the wording of the bill be changed to better define its "target".

Thank You for your consideration,



Terry Myhre, Manager, Hennesys, Helena, Montana



Keith Wright, Manager, Hennesys, Missoula, Montana



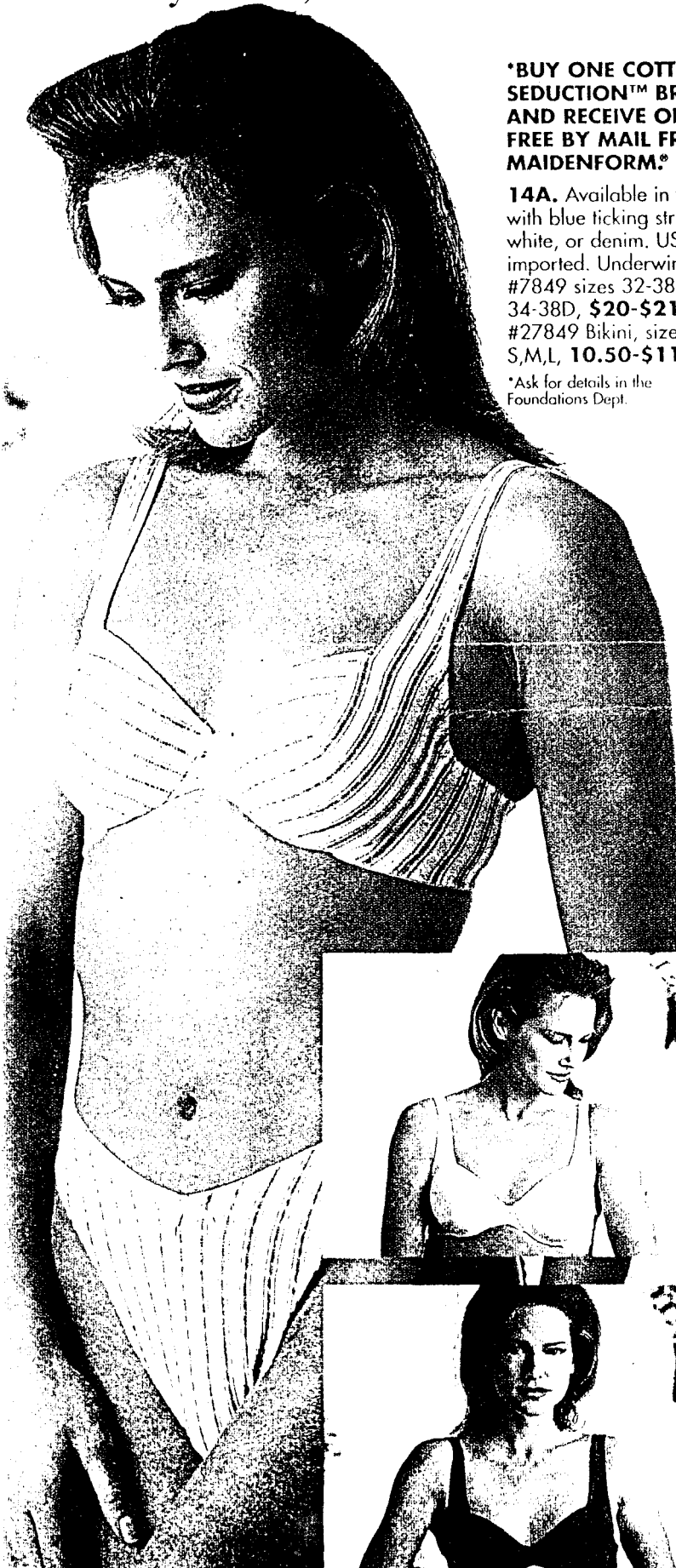
Rhonda Roberts, Manager, Hennesys, Billings, Montana

Introducing Maidenform®
Cotton Seduction™
Buy One, Get One Free*

***BUY ONE COTTON
SEDUCTION™ BRA
AND RECEIVE ONE
FREE BY MAIL FROM
MAIDENFORM.®**

14A. Available in white
with blue ticking stripe,
white, or denim. USA/
imported. Underwire bra
#7849 sizes 32-38B,C;
34-38D, \$20-\$21.
#27849 Bikini, sizes
S,M,L, 10.50-\$11

*Ask for details in the
Foundations Dept.



Maidenform® Bras
Satin Seduction™, Sweet Nothings™,
Chantilly™, Rendezvous™ & Heavenly™



14C. Maidenform™
Sweet Nothings™ lined
underwire demi bra. In
white or ivory. USA/
imported. #6887
Sizes 32-36A,B,C;
reg. 21.50, sale 14.99

14D. Maidenform™
Rendezvous™ padded
push-up underwire bra.
In ginger, white and
champagne. USA/
imported. #8322
Sizes 32-36A,B,C.
Reg. 23.50, sale 14.99
Foundations

EXHIBIT 56
DATE 2-8-95
HB 83

February 6, 1995
Hennessys
Southgate Mall
Missoula, Montana 59801

Dear Sir,

According to the revised obscenity law, HB 83, your advertisement in the Sunday paper could be "offensive" to "the average person".

With the passage of HB 83, your "nearly nude" models of body imagery could be considered exhibition of obscenity by some "average citizen" and you could end up in court, according to the law.

Please let the legislators know this would not be a good bill for Montana.

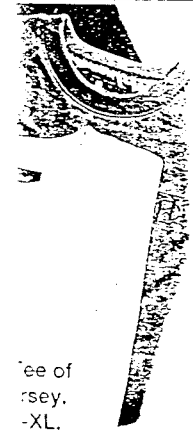
A concerned citizen and customer.

tee.
sey.
XL.

o
nts.
le

XL.

b



tee of
sey.
XL.



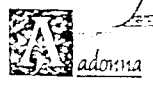
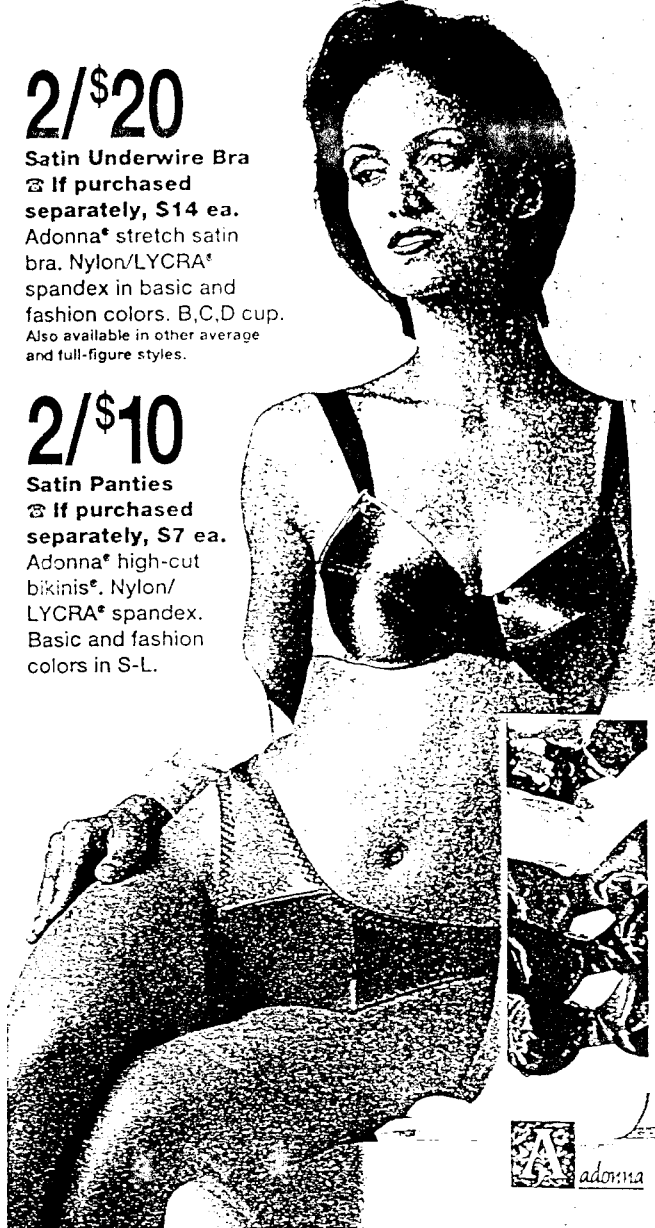
25% OFF
ALL HUNT CLUB®
ULTIMATE BASICS
Coordinated Knit Separates

2/\$20

Satin Underwire Bra
☒ If purchased separately, \$14 ea.
Adonna® stretch satin bra. Nylon/LYCRA® spandex in basic and fashion colors. B,C,D cup. Also available in other average and full-figure styles.

2/\$10

Satin Panties
☒ If purchased separately, \$7 ea.
Adonna® high-cut bikinis®. Nylon/LYCRA® spandex. Basic and fashion colors in S-L.



25% Off Casual Hosiery



SALE
4.31
3/Pkg.

SALE
5.81
3/Pkg.

Sale 4.31 Reg. 5.75; 3/pkg. Rib-knit anklets of cotton/nylon.
Sale 5.81 Reg. 7.75; 3/pkg. Lightweight slouch socks. Solid colors in cotton/nylon.

EXHIBIT 56
DATE 2-8-95
HB 83

FIND THE PERFECT GIFT FOR YOUR VALENTINE!



25
Ladies' sleep
prints or sets
luxurious sat
Reg. 9.99-2

25
of
Men's fash
gift for h
styles. Se
Sale 5.24

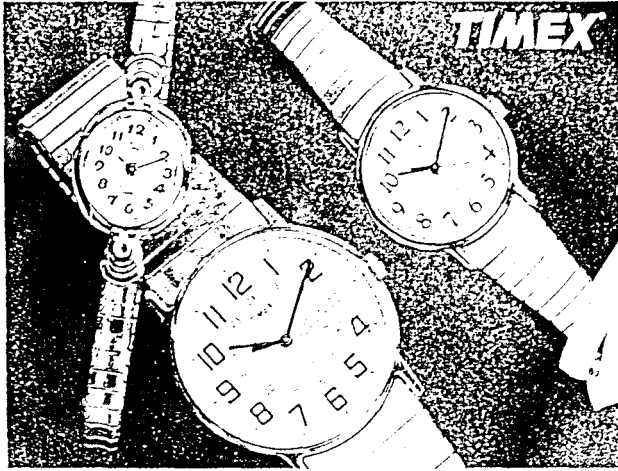


2 \$4

30% off

30% off

1.4



20.99

Ladies' or men's Timex watches
Time to save on these featured styles!
Quartz-accurate movement; comfortable
expansion band. Reg. 24.49-26.59 Ea.
Sale excludes other Timex and Timex with Indiglo® night-light styles

tops, pants
stripes or solids;
string or elastic
-12.99 Ea.
6W, fit 32-40 avg. or petite

e tra

1.99
Ladies' fleece
slim jackets
in these com-
pact polyester/
cotton jackets,
generously cut to
allow for layers.
Your choice; S-L.
Reg. 15.88
Styles vary by store

SEPARATE
ISSUE™



8.88

Ladies' Separate Issue™ rayon shirts
Novelty buttons add a touch of fun to this
fashionable short-sleeved rayon shirt. Choice
of colors. S-M-L. Reg. 12.99-16.99 Ea.
Styles may vary by store



30% off

All ladies' and girls' bodywear on sale.
Choose from tees, leotards and bike shorts.
Ladies' bra tops and leggings also available.
Reg. 5.99-19.99, **Sale 4.19-13.99**
Ladies' S-XL Girls' S-L



\$8 **Infants' Tots'**
\$12 **Girls' 4-14**
Children's pants sets. Infants' 12-24 Mos.,
Toddlers' 2-4, Reg. 9.99-12.99; Girls' 4-6X,
Reg. 14.99; Girls' 7-14, Reg. 15.99-16.99
Girls' Pant Sets; 7-14, Reg. 17.99-19.99, Sale \$15
Styles may vary by store

pants
casual
tops or pull-
-99-9.99 Ea.
sizes 8-14



Whisper Soft

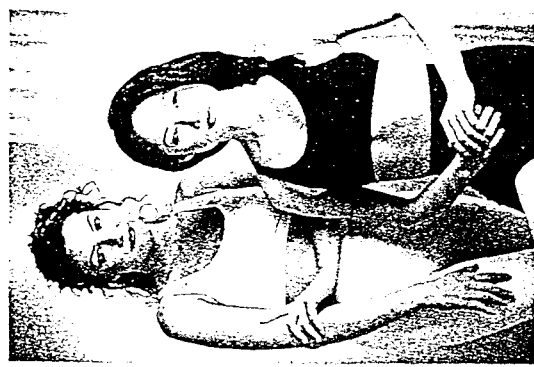
2.88 **Your Choice**
Whisper Soft bras or control briefs
A variety of styles. Reg. 3.99-4.99 Ea.
Other Whisper Soft: Bras, Reg. 7.99, Sale
5.88; Control Briefs, Reg. 5.99, Sale 3.88
Bras in 32-38, 34B-38C; briefs in M-3X

33% off everything on this page!

EXHIBIT 56
DATE 2-8-95
HB 83



Willow Bay ladies' single socks. Choose from ladies' turn cuffs & natural socks in boot-cut styles. Sizes 9-11. Reg. 1.99, Sale 1.33



Chic® sport bra. Cotton/Lycra. Asst. colors. Reg. 7.99, Sale 5.35 Full figure or lace back sport bra. Reg. 9.99, Sale 6.69

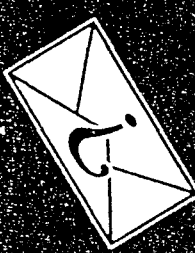
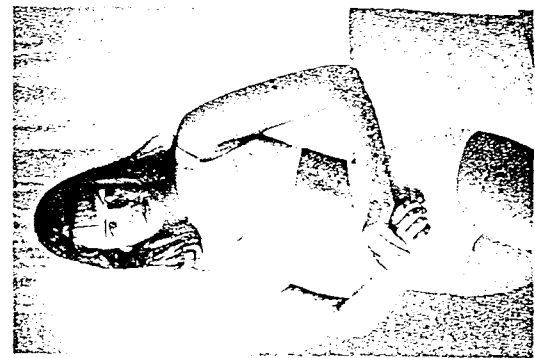


Vassarett bras. Soft cup, contour or underwire in white & asst. colors. Reg. 4.49-7.99, Sale 3.00-5.35

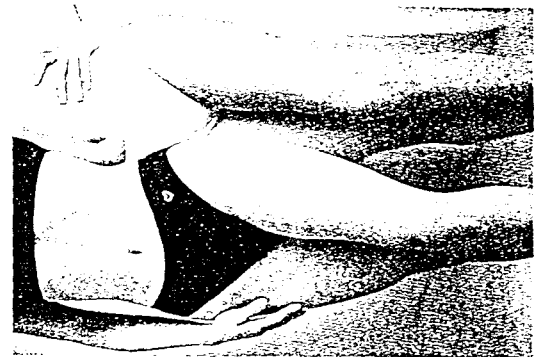


Bestform bras. Silver Saver, Body Cotton, or full figure styles. Reg. 5.99-9.99, Sale 4.01-6.69

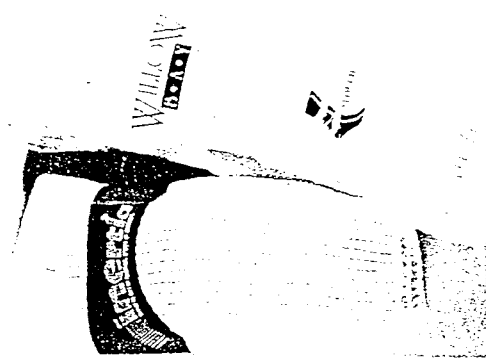
Customer Appreciation SALE
 Tuesday, Jan. 17
 6 p.m. to 10 p.m.
 We're giving you four extra hours of savings because we appreciate your business. Don't miss this opportunity to save at ShopKo.

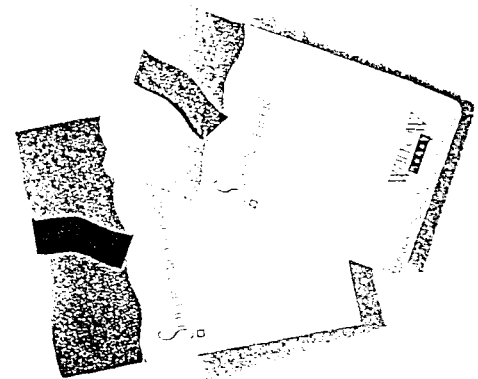
Just My Size bras and panties. Choose from cotton soft cup, leisure and underwire bras, or cotton briefs and control briefs. Reg. 6.39-12.99, Sale 4.28-8.70



Ladies' panties. Choose from bikinis, briefs or high-cuts in assorted colors and prints. Reg. 1.99-2.49, Sale 1.33-1.66



Ladies' 3-pack socks. Choose from inertia sport, Willow Bay or Hanes Her Way. Casual socks in white and fashion colors. Sizes 9-11. Reg. 3.99-4.99, Sale 2.67-3.34



Willow Bay sheers. Choose from control top, queen, support, thigh-hi's, silken sheer and micro-fiber. Reg. 1.29-4.49, Sale 86¢-3.00

Not at Stevens Point, South or Fort Atkinson

Not at Stevens Point, South or Fort Atkinson

DATE 2-8-95

SENATE COMMITTEE ON H.B. 83

BILLS BEING HEARD TODAY: Judiciary

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
JOE AMATO	HOMETOWN VIVE	HB 95		X
Barb Henry	Great Falls	HB 83	✓	
Robert Brown	Robert Brown	HB 83	✓	
Chris Imhoff	League of Women Voters of Montana	H.B. 83		X
Laure Koutik	Christian Coalition of MT	HB 83	✓	
Tobe Johnson	Image Plaza	HB 83		X
NICHOLAS BIGOFF	SELF	HB 83		X
Lonie Stimac	self	HB 83		X
Betty Robinson	self	HB 83	X	
Joan Self-Rep HD 17		HB 83	X	
Brad Griffin	MT Retail Assoc	HB 83		X
PEGGY ARNOTT	HD # 20 SELF	HB 83	X	
Lois Halsey	Eagle Forum Building	HB 83	X	
DAN McEneaney, Rep.	HD 21		✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Diane Smith</i>	MATO & USDA	HB 83		X
DAN ERVING	MT ASSOC Theatre Owners MT Chapter Video Software Dealers	HB 83		X
AL TROUTT		HB 83	X	
LEN MUNSIL	NATIONAL FAMILY LEGAL FOUNDATION	HB 83		
Gary Wayne	Pastor	HB 83	✓	
Jocely Widholm	Montana Theatres	HB 83		X
Dallas Erickson	MC DL	HB 83	X	
Steve TAYLOR	Myself	HB 83	X	
Pat Blade	Myself	HB 83		X
Sally Garrett	Writers in MT	HB 83		X
Kelly P. Bates	Self	HB 83		X
Jay R. Seale	Self	HB 83	X	
Naomi C. Perry	Self	HB 83	X	
Thomas C. Perry	Self	HB 83	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
SAMANTHA SANCHEZ	ACLU	HB83		X
Wayne Hirst	All of Cons. for Const. Am.	HB83		X
Greg Loweth	self	HB 83	X	
Brenda Brewer	Small Business	HB83		X
John Y Thom	BOP	HB83	X	
Richard Miller	state library	HB83		X
John Stanfill	LDS Church	HB83	X	
Buffy Ouel	self	HB83	X	
Ann Hills	Self	HB83		X
Forrest Christian	MONTANA Internet Corp	HB83		X
Bob Hollow	Nelema News, Inc	HB83		X
JERRY W JOHNSON	BANKRUPTCY VICTIM			X
DONALD KEEN	Self	HB83		X
Dewey Baker	SELF - STEVENSVILLE	HB83	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Russell</i>	MATO	H.B. 83		X
<i>Leo G. Huber</i>	<i>Donic Mentore for B.B. by Minut</i>			X
<i>Genevieve S. Baumann</i>	<i>SPLS</i>	<i>HB</i>	X	
MARIE BURTSFIELD	SELF.	H.B.	X	
<i>Chassidy Johnson</i>	<i>MCDL</i>		X	
<i>Bonnie G. Jones Bonnie Jones</i>	<i>MCDL</i>	<i>H.B. 83</i>	X	
<i>Kristy Coleman</i>	<i>MCDL</i>	<i>H.B. 83</i>	X	
<i>Lela Mitchell</i>	<i>MCDL</i>	<i>H.B. 83</i>	X	
<i>Norman Mitchell</i>	<i>MCDL</i>	<i>H.B. 83</i>	X	
<i>Arcy Doreen</i>	<i>SUF</i>			X
<i>AL T Hoap Sui</i>	<i>SELF</i>	<i>H.B. 83</i>		X
<i>Law Steel</i>	<i>USDA</i>	<i>H.B. 83</i>		X
<i>Bonnie Steel</i>	<i>USDA</i>	<i>H.B. 83</i>		X
SHARON HOFF	MTCATH CONF	HB 83	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 9-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>John Smith</i>	<i>self</i>	<i>83</i>		<input checked="" type="checkbox"/>
<i>Donald A. Kern</i>	<i>self</i>	<i>83</i>		<input checked="" type="checkbox"/>
<i>Kay Hickman</i>	<i>self</i>	<i>83</i>		<input checked="" type="checkbox"/>
<i>Susan Nissen</i>	<i>self</i>	<i>83</i>		
<i>Richard Smith</i>	<i>self</i>	<i>83</i>		<input checked="" type="checkbox"/>
<i>Pat Maxwell</i>	<i>self</i>	<i>83</i>		<input checked="" type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Lynn James	MT City School	83	Student observation	
DANIEL SEATI DOYLE	Missoula Citizen	83	X	
Theresa W. Doyle	Missoula Homeowner	83	X	
Tawnee Lambert	Helena Citizen	83	X	
Denise M. Brunett	Helena citizen/parent	83	X	
CONNIE DEARDY	HELENA CITIZEN	83		X
Cheryl White	Helena Citizen	83		X
Suzanne Rice	Helena Citizen			X
Corinne Erdahl	Helena Citizen	83	X	
Marquitta Jacques	Calverton MT	83	X	
Paul Jacques	" "	83	X	
Christine Kaufman	self	83		X
Kurt Winsor	Self	83		X
Janett Meeker	self	83		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Karen Sorenson	self	HB 83	X	
BOB FITZGERALD	Self	HB 83		✓
Kamala Webb	self	HB 83	X	
JEFFREY RENZ	Self	HB 83		✓
Jacqueline J. Denmark	Montgomery Against the State Bar	HB 83		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON HR 83 Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Leslie Trapp	MT City for Beyond the Law	83	✓	
Don Johns	Foster Parent	83	✓	
Jim Heddel	MT Lib Assn	83		✓
Scott Crichton	ACLU/MT			✓
Leon Edyris	Mont Theatres	83		✓
Step Smith	Big Sky Cinema	83		✓
Terry Crooks	myself	83	✓	
Theresa Crooks	myself	83		
Pauli DICKTER	" "	83		✓
Brenda DICKTER	" "	83		✓
Joe Amato	" "	83		✓
Lyla Amato	" "	83		✓
ELMER A. SEARLE	'	83	✓	
Howard Pickert III	Polson Wheaton	83		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Verl Clark	Theatre Owners (MATU)	HB83		X
Ayran Pickemill	Polson Theatres	HB83		X
Michelle Fox	Self	HB83	X	
CHARLES BRETH	X RT	HB83		X
Kevin S Fox	Self	HB83	X	
Kevin R. Nolan	Self	HB83	X	
Margaret C. Hollow	Self	HB83		X
Barbara La Rue	Self	HB83	X	
Bette Hubrich	Self	HB83	X	
JAMES RAMSEY	SELF	HB83	X	
Carol Novak	MAC.	HB83		X
Rodney K. Smith	SELF	HB83	X	
JAMES L. MULLIN	SELF	HB83		X
Louis Archambault	ARTISTS OF HELENA	HB83		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/8/95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jenny Erickson	Myself	HB 83	X	
Bill Stevens	MT Food Dist Assn	HB 83		X
Dave Johnson	Discount Video	HB 83		X
WYNN HUBRICH	SELF	HB 83	✓	
Kate Cholewa	MT Women's Lobby	HB 83		X
Bob Campbell	WPA Arts 2 ser 7	HB 83		X
Clyde Frazier	Self	HB 83		X
Tim Holmes	Artist	HB 83		X
Riley Johnson	Montana Broadcasters	HB 83		X
Arlynn Johnson	MT. Arts Cncl	HB 83		X
Mike Blakesley	MT. Assoc of Theat ^{Owner}	HB 83		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
David Hemman	MT Assoc. Attorneys	HB 83	✓	
Shirley Fleet	Mont. Newspaper Assoc	HB 83		✓
Donna Repatriak	Mont Assoc ^{of} Theatre	HB 83	✓	
RICK ALAN DEADY	MYSELF	HB 83		✓
CLARENCE HOUENAND	"	HB 83		
PASTER GARY L. RANDALL	Florence Bapt. Church	HB 83	✓	
Paster Timothy P. Johnson	Florence Bapt. Church	HB 83	✓	
ROBERT NOEL CLARKSON	Am Soc Media PHOTOGRAPHERS	HB 83		X
RUSS LAWRENCE	CHAPTER ONE BOOK STORE	HB 83		✓
Barbara Theroux	Fact + Fiction	HB 83		✓
Debbie Spornick	The Book Store	HB 83		✓
Don Jenni	Sexuality Education	HB 83		✓
Gloria Hemman	MT Cultural Ministry	HB 83		✓
MARY SHEENY MOSE	—	HB 83		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY