

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 9, 1995, at
8:08 AM

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 82, HB 83
Executive Action: NONE

HEARING ON HB 82

CHAIRMAN BOB CLARK opened the hearing on HB 82 by limiting testimony for both proponents and opponents to 30 minutes. He said that all testimony and questions would be directed to the Chair. No executive action would be taken on these two bills today.

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Counter: 6.2}

REP. JACK HERRON, HD 77, presented HB 82. He stated that the intent of HB 82 is content neutral and is not against free speech, but designed to prevent illegal conduct. It also addresses the secondary effects on communities and neighborhoods by nude dancing establishments such as increased crime and depreciation of personal property rights. It also is designed to address the primary function of government to protect from criminal acts.

Proponents' Testimony:

Dallas Erickson, President of Montana Citizens for Decency Through Law, Stevensville, stated that there are approximately seven nude dancing establishments in Montana. According to police reports, these establishments are surrounded by crime, mostly of a sexual nature. He referred to a packet of information which is **EXHIBIT 1**. He cited **Dr. Michael J. Scolatti**, who developed the Montana State Prison sexual offender treatment program. **EXHIBIT 1A**. **EXHIBIT 1B** is a letter from **Undersheriff Larry Weatherman** of the Missoula County Sheriff's Department. A letter from **Walter E. Hill**, Professor at the University of Montana was presented as **EXHIBIT 1C**. **Mr. Erickson** also cited a letter from **Robert H. Macy** from Oklahoma County, **EXHIBIT 1D**.

Informational Testimony:

Len Munsil, Attorney with National Family Legal Foundation, based in Phoenix, Arizona, appearing on behalf of the Montana Citizens for Decency Through Law, stated that he is not an advocate for passage of the law, but as an expert on the constitutionality of this type of bill. He has six and a half years as a first amendment lawyer exclusively in this particular area of the law. He referred to written testimony, **EXHIBIT 1E**. In his testimony, he referred to the packet and its contents labeled **EXHIBIT 1A-1N**. He summarized that the intent of HB 82 is not to suppress free speech; it is to end public nude conduct. The definition of nudity in this legislation is word for word from the Indiana statute which the Supreme Court upheld in Barnes vs. Glen Theatre. **EXHIBIT 1E(a)**

{Tape: 1; Side: A; Approx. Counter: 19.5}

Proponents' Testimony:

Dr. Mark Moser, Clinical Psychologist, Helena, who has worked for 17 years as a consultant at the Montana State Prison read his testimony in favor of HB 82. **EXHIBIT 2**

REP. PEGGY ARNOTT, BILLINGS, stated that she stands in favor of this bill. She summarized the findings of a group of legislators who toured the Montana State Women's Prison indicating a growing number of sexual offenders creating a need for separate housing for these offenders.

Wilma Wortman, "Enough Is Enough" campaign. Her written testimony in favor of HB 82 is submitted as **EXHIBIT 3**.

REP. SCOTT ORR, HD 82, Libby, urged favorable consent.

Arlette Randash, Eagle's Forum, testified in favor of passage of HB 82.

REP. DICK GREEN, HD 61, strongly urged support of HB 82.

Thesia Crooks, Libby, Lincoln County testified in support of this bill.

Patrice Wilson, RN, submitted written testimony requesting that breast-feeding be excluded from this bill.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, gave testimony in support of HB 82.

Gladys Anderson, Stevensville, stated she supports this bill.

Carolyn McGady, appeared in support of HB 82.

Linda Troutt, Ravalli County Chapter of Montana Citizens for Decency, supports this bill.

Dale Anderson, strongly urged the committee to support this bill.

Lynn Cordero, RN, said that while she agrees with the general idea presented, these kinds of laws have been used to arrest or force breast-feeding mothers to leave public places. She suggested that this exclusion be considered. **EXHIBIT 5**

Lela Mitchell, Stevensville, as a former employee for the FBI, she saw first-hand what happens with pornography and strongly supports HB 82 and 83.

Norman Mitchell, Ravalli County, strongly supports HB 82.

Diane Baker, Stevensville, submitted written testimony in support of HB 82. **EXHIBIT 6**

{Tape: 1; Side: A; Approx. Counter: 32.7}

Opponents' Testimony:

Robert Dunlop, believes the issue is not pornography, but freedom. He urged the committee to look beyond the issues as presented to the consequences of the bill.

Bob Campbell, delegate to the Constitutional Convention, submitted written testimony and urged a Do Not Pass. He suggested there is not a compelling reason to change the current law or create new laws that are difficult to enforce. **EXHIBIT 7**

Ron Silvers, licensed professional counselor, submitted written testimony which does not support the idea that pornography is a causal factor in commission of sex crimes. **EXHIBIT 8**

{Tape: 2; Side: A; Approx. Counter: ; Comments: Side B of Tape 1 was not used.}

Charles Walk, Executive Director of The Montana Newspaper Association, is opposing both HB 82 and HB 83. He asked that his remarks could be included in the opposition to HB 83. The association sees both bills as being all-encompassing and overly broad attempts at legislation that will strike at the very heart of free expression and will result in unwarranted censorship of every phase and form of expression. The association believes existing legislation is adequate and reasonable protection.

CHAIRMAN CLARK agreed to that.

Samantha Sanchez, ACLU, presented her written testimony and stated that the ACLU opposed HB 82. She stated that changing the way people think should be reserved for parents and educators and not bureaucrats. Though the ACLU agrees that something must be done about sexual violence, they do not believe these bills will accomplish that. **EXHIBIT 9**

Paul Stahl, Chair of the Montana Cultural Advocacy, refuted the testimony regarding the Barnes case in which nudity was defined. He believes that the definition of nudity in this bill is overly broad and allows law enforcement to go after cultural institutions, health clubs, and cable television for criminal liability. He believes that the current law is sufficient.

{Tape: 2; Side: A; Approx. Counter: 13.9}

Jacqueline Lenmark, represents individual businesses, who are concerned about censorship and free expression and oppose the passage of HB 82. They adopt the testimony presented by other

opponents. She presented testimony from a client, **Russell Lawrence**, an owner of a bookstore in Hamilton. **EXHIBIT 10**

She raised the problem of clients using this law inappropriately in child custody and divorce cases. She believes the current law is sufficient and enforceable.

{Tape: 2; Side: A; Approx. Counter: 18.0}

Jim Hills voiced his concern about what he calls growing fanaticism and also the legislature enacting more laws to regulate citizens. He felt that current laws are sufficient.

Jim Hills, Jr., strongly oppose HB 82 and HB 83.

Lou Archambault opposes HB 82.

REP. KENNETH WENNEMAR opposes HB 82.

Stan Frasier opposes this bill.

Josh DeWeese, Director of Archie Bray Foundation, strongly opposes HB 82 and HB 83.

Orin Marsh opposes censorship in these two bills.

Informational Testimony:

Informational testimony on HB 82 included in **EXHIBIT 1** not specifically referred to by witnesses is as follows:

EXHIBIT 1L, testimonial letter by James W. Ramsey
EXHIBIT 1M, National Law Center Summary of Land Use Studies
EXHIBIT 1N, testimony of Gene McConnell

EXHIBIT 4A, is informational testimony for HB 82.

Questions From Committee Members and Responses:

REP. DEB KOTTEL asked **Mr. Munsil** to respond to testimony by an opponent that the Barnes case did not address the issue of overbreadth.

Mr. Munsil said the Barnes case said that it was appropriate for this type of legislation to be used against public nude dancing. The overbreadth issue was not before the court because the lower court had issued a narrowing construction of language.

REP. KOTTEL asked if it is correct that in the Barnes case only three justices signed off on the majority opinion.

Mr. Munsil stated that there was a plurality opinion of three U. S. Supreme Court justices and then an additional concurring

opinion by Justice Scalia. They went even further than the plurality opinion and also a concurring opinion by Justice Souter which was the fifth vote for upholding Indiana law. Justice Souter's basis for upholding the law is the one that this legislature needs to use.

REP. KOTTEL asked how many other states have similar law to this.

Mr. Munsil stated that this opinion from the U. S. Supreme Court is about three years old and Tennessee is the first state to enact a provision based on the Barnes decision. The opinion was challenged by nude dancing establishments; the federal court judge issued an opinion, denied the injunction and allowed the law to take effect and it is in effect today in Tennessee.

REP. DEBBIE SHEA asked if **Dr. Moser** felt the use of pornography caused his patients to perform their sex crimes, or if it was something more deep-seated in their history.

Dr. Moser said that it was part of many causes. Research doesn't provide a definitive answer to how much pornography, nude dancing, etc. contributed to sexual deviance. Most practitioners have come to the opinion that it does make a significant contribution. He noted that the only definitive experiment to draw such a conclusion would involve exposing a group of children to such material over a period of time and then follow their lives for 10-20 years to see the result. This experiment has not been done since no one will volunteer their children for such an experiment.

REP. BRAD MOLNAR asked what in the current statute, 45-5-504 MCA, is so inadequate that this bill is necessary.

REP. HERRON responded that the Montana statutes need to be upgraded constitutionally for the protection of women and children and families.

REP. MOLNAR asked for an expansion on this answer in terms of the numbers of convictions.

REP. HERRON said he is not sure, but he is sure that it will provide the vehicle, if it is necessary, for the sheriff or the county attorney to clean up the situation.

REP. LOREN SOFT asked what kind of relationship has been found between nude dancing and organized crime.

{Tape: 2; Side: A; Approx. Counter: 29.9}

Mr. Munsil said there is a connection. He cited examples from Phoenix, Arizona, which supported this point.

REP. SOFT asked about the concern of witnesses regarding the issues of breast-feeding in public. He asked for a comment on this.

Mr. Munsil said that in public decency law existing prior to the Barnes case, there has been concern. He said that there must be credit given to law enforcement people that they would not abuse this law by arresting nursing mothers, people in locker rooms of health clubs and men in swim suits on the beaches. He felt that rewording the proposed statute, however, would provide nude dancing establishments the latitude to avoid prosecution by changing their names from bars to art studios, for instance.

REP. SOFT asked about the effect on cable TV and health clubs.

Mr. Munsil said that this statute would only deal with public behavior of individuals and not material and so what is on TV would not be impacted. The consensus has been that it is unlikely that any law enforcement persons would go along with an application of the statute to health clubs.

REP. SOFT asked about the comparisons given with respect to European countries.

Mr. Munsil said that at the same time these countries decriminalized pornography, they also decriminalized many other sex offenses, and the net result is a lowering of the crime rate.

REP. SOFT asked for a comment on Section 2 of the proposed legislation concerning the words "private, non public places."

Mr. Munsil said that by changing Montana's public indecency law to make it apply only in public places, following the Barnes decision, would present a problem in that it would remove a statute that covers a circumstance where someone enters a private home and violates children in that setting.

REP. CHRIS AHNER asked **Mr. Silver** to elaborate on his testimony about sources of sexual stimulation such as catalogs and *NATIONAL GEOGRAPHIC MAGAZINE*.

Mr. Silver stated that he provided those examples to illustrate his point that sex offenders use all sorts of material to stimulate their fantasies. He stated that these offenders are restricted from many materials and activities that promote their deviant fantasies. He asked that his testimony be submitted in opposition to both HB 82 and HB 83.

REP. BILL CAREY asked for clarification regarding illustrations of already prosecuted cases involving organized crime in relation to nude dancing establishments.

{Tape: 2; Side: A; Approx. Counter: 39.1}

Mr. Munsil said he indicated that at a state level in many states, organized crime had been associated with these establishments and a number of cases involving organized crimes

had been successfully prosecuted. He gave specific examples to support his statement.

REP. CAREY asked if Montana's current law is similar to Arizona law where these successful prosecutions have occurred.

Mr. Munsil said that Montana's statutes are not at all similar in that area of law. For instance, Montana law does not cover the situation where sex acts are performed in a public place unless intent to affront or offend can be proven.

REP. CAREY asked about the liability of board members of a community theatre if someone objected to the content of the play.

Mr. Munsil replied that this bill applies only to someone who appears nude in public, so unless the board members were in the play, they would be exempt from liability under this proposed statute.

REP. LINDA MC CULLOCH asked **Mr. Campbell** to expand on his testimony.

Mr. Campbell said in the Constitutional Convention, he proposed the current law regarding the freedom of expression which was adopted and approved. In 1973, and again in 1975, the criminal code was discussed as to its adoption by the legislature. He reiterated his opinion that this legislation becomes absurd when it comes to enforcement.

{Tape: 2; Side: B}

REP. MC CULLOCH asked if a bill of similar nature had come up since that time.

Mr. Campbell said, "No." He felt that it is not a matter of conforming to federal law, because if such a case were to arise, it would do so as a First Amendment case.

REP. LIZ SMITH asked **Mrs. Crooks** if the obscenity law passed in Lincoln had an effect on public indecency, and how it is enforced and also if there has been a difference.

Mrs. Crooks quoted her husband, who is Vice President of Montana Citizens for Decency through Law, that they do not have a problem with public nudity in Libby now.

REP. SMITH asked about the enforcement.

Mrs. Crooks deferred the question to **Mr. Erickson** who said that Lincoln County doesn't have this public indecency law, it has a law that makes it illegal to perform nude in an establishment that sells alcoholic beverages. Lincoln County has had no problem since that law was passed concerning places that sell alcoholic beverages.

REP. SMITH asked the Chair for permission for **Mr. Erickson** to go ahead at this time to expound on the issues relating to HB 83.

Mr. Erickson said that all the cities in Lincoln County didn't pass an obscenity law similar to HB 83 until 1990 after a case involving a crime in 1986 which involved a man who had used pornography since the age of 10. Originally the language was changed which created problems for prosecution and then was reworded similar to this current bill being considered.

REP. DIANA WYATT asked for the year in which the rewrite of Montana codes in reference to criminal offenses of indecency and pornography took place.

REP. HERRON recalled that it was 1989.

REP. WYATT asked for the name of the Attorney General at that time who supported the rewrites of the Montana codes.

REP. HERRON said he did not know.

REP. WYATT stated that current Governor Marc Racicot was Attorney General at that time.

REP. WYATT asked about the possible complication in cases involving child custody.

Ms. Lenmark said that frequently a major point of contention between parties is the custody of children and often allegations of abuse are made. She feels that Section 2 focuses on conduct which takes place in private places where there are no witnesses supplying the parties in dissolution cases with an accusation which is difficult to disprove. She cited an example to support her concern about the wording of this statute.

REP. JOAN HURDLE asked if the sponsor's concern for women extends to the lack of sex education and birth control information available to these women.

REP. HERRON said that it does not necessarily address that concern. The protection of women he is trying to address is where a victim is unknowingly attacked not because of lack of education, but attacked for someone else's gratification.

REP. HURDLE asked about the ignorance of the women who work in such establishments.

REP. HERRON said he really could not answer that. In most cases, he believed evidence showed that women who work in such establishments have themselves been abused; and in that way, it is degrading to them and through a lowering of their self concept, may limit them to this type of employment.

REP. WILLIAM BOHARSKI wanted to know the locations of the seven nude dancing establishments.

Mr. Erickson said there are three in Missoula, one of those being in an adult book store, two in Great Falls, one in Helena and one outside of Billings. Billings has a law against nude dancing in establishments that serve alcoholic beverages. That law was upheld by the Montana Supreme Court.

REP. BOHARSKI cited a letter from the undersheriff in Missoula County stating that there is an increased level of activity such as prostitution around these dance parlors. He wondered if any information has been gathered on any of the other locations.

Mr. Erickson said that in the Billings area (Laurel), there is a higher rate of sex crimes, especially prostitution. He did not have information about the Great Falls area though the citizens there believe there is an increase in sex crimes around these areas.

{Tape: 2; Side: B; Approx. Counter: 17.1}

REP. BOHARSKI asked **Dr. Moser** to relate, from his experience in treating prisoners, any connection between their crimes and nude dancing establishments.

Dr. Moser could only answer in a very general way that 85% of sex offenders admit the use of pornography. He has a strong impression that obscene materials and/or nude dancing has sparked a number of sexual activities that feed into sexual deviance.

REP. BOHARSKI asked if there is a difference between someone renting an R-rated film and watching live dancing.

Mr. Moser said that the question assumes that one is sexually deviant. He did not see a way to provide a clear and definitive answer. The answer would come on a case-by-case basis.

REP. ELLEN BERGMAN asked if **Mr. Erickson** has been involved in law enforcement and as such for his experience.

Mr. Erickson affirmed that he had been in law enforcement and that without exception, in molestation cases that he handled, pornography always was involved and usually obscenity was involved. Usually it lowered the inhibitions of the children so that they would permit the actions the perpetrator would ask. He cited other law enforcement officials who also had never seen an exception to this. Concerning nude dance, he had limited experience with that as a law enforcement officer, but later he did observe increased lowering of public morality even in the schools around establishments which promoted it.

{Tape: 2; Side: B; Approx. Counter: 23.2}

REP. AUBYN CURTISS asked **Mr. Munsil** to capsulize the essence of Ted Bundy's testimony.

Mr. Munsil recounted Ted Bundy's interview. **EXHIBIT 1F**

REP. CURTISS asked if Ted Bundy had said that the process was progressive and that many on death row people had begun with soft core pornography and gradually moved to the "hard stuff."

Mr. Munsil affirmed that this was true and that the reports show that these criminals were exposed at a young age and reached the stage through the constant exposure which conditioned them for deviancies many ending up in violent sex. **Mr. Bundy** had said that it took about nine years of desensitization to move from one step to another.

REP. CURTISS asked if the testimony of Ted Bundy about the progressive and addictive nature of pornography was borne out by the task force on pornography.

Mr. Munsil said that the Attorney General's commission on pornography concluded that in the area of sexually violent material, there was a causal connection between sexual assaults and those who commit sexual crimes and their exposure to pornography.

REP. KOTTEL stated she was concerned about the overbreadth of the statute and asked if it is the sponsor's intent for this statute to be used to prosecute travelers who stop by the rural road to relieve themselves, farmers who relieve themselves in the field, the male swimmer who has an involuntary erection, or to charge the person changing a baby's diaper in public thereby exposing the baby's genitals or buttocks, or to stop women from wearing a lacy bra with a sheer blouse in public.

REP. HERRON answered, "No, it is not" to all of the above individual examples.

REP. KOTTEL asked **Mr. Munsil** if the statute as written would meet all of the elements of conviction in cases such as a traveler urinating by the side of the road, a farmer urinating in his field, a man wearing a brief swimsuit has an involuntary erection, or changing a baby's diaper in public thereby exposing his/her buttocks.

Mr. Munsil answered that these situations would lead to a charge of public indecency under this statute, but that they would even under the existing public indecency laws in any number of states. Though the answer to these questions is clearly, "Yes," that type of abuse by law enforcement has not happened where these laws are in effect and he would not expect it to do so here.

REP. KOTTEL said that her question concerns overbreadth and the constitutional challenge of the statute and not the discretionary powers of police. She asked if the statute as written would meet the elements of conviction if a woman wears a lacy bra with a sheer blouse revealing the shadow of a nipple.

Mr. Munsil said that case is less clear to him in terms of the statute, but that it would be directed at situations where the breast is clearly visible.

REP. BOHARSKI wanted to know how many states have statutes that prohibit nude dancing parlors.

Mr. Munsil said that states which have laws similar to HB 82 include only Tennessee. In regard to HB 83, 45 states have a similar law. In addressing the concerns about overbreadth, he felt that including some of the exceptions such as breast-feeding as amendments would be acceptable to the proponents of the bill.

REP. BOHARSKI re-asked his question.

Mr. Munsil said that most states outlaw public nudity with laws that say you cannot appear in public in a state of nudity, though nude dancing establishments cannot be outlawed. In those states, such laws would not apply to establishments that are open to the adult public. There are six or seven states pre- or post-Barnes, post-Tennessee example, whose legislatures are considering similar legislation to what is before this committee. Most of them have existing public indecency laws that are stronger than Montana's. In those states, they only need to extend the existing law to include establishment that are open to the public.

REP. BOHARSKI asked again how many states outlaw nude dancing.

Mr. Munsil felt he had answered the question, but said that most states have statutes limiting public nude dancing in establishments that serve liquor. It is when they attempt to move out of the liquor license scenario in offering complete nudity as entertainment that law enforcement sees a need to respond to. Post-Barnes, there are two states that deal with it in a general fashion. Most all states deal with public indecency outside of nude dancing and most deal with it in establishments that sell liquor.

{Tape: 3; Side: A}

REP. BOHARSKI asked the sponsor how many communities statewide do not permit nude dancing establishments.

Mr. Erickson said that Lincoln County has an ordinance concerning public nudity in places that serve alcoholic beverages. Ravalli County does now and also has the ordinance that is being considered now. Billings city proper has a law against nude

dancing which has been upheld by the Montana Supreme Court, which said that our constitution does not protect nude dancing at least in places that serve alcoholic beverages. He believed that Red Lodge adopted basically the same ordinance as Billings. Missoula does not have a law against it.

REP. SHIELL ANDERSON asked for information about the cause and effect of nude dancing and resulting number of sex offenders at the Montana State Prison that would suggest but for these nude dancing parlors, these people would not be there.

Mrs. Koutnik answered that she did not, but that in her estimation there is a correlation between those who participate in entertainment in nude dancing parlors and a progression toward sexual deviancy that ultimately leads to them being incarcerated in the Montana State Prison.

{Tape: 3; Side: A; Approx. Counter: 3.8}

Closing by Sponsor:

REP. HERRON recommended that the committee pass this bill.

HEARING ON HB 83

Opening Statement by Sponsor:

REP. JACK HERRON, HD 77, presented HB 83 to revise the obscenity laws. The intent of HB 83 is to address the role pornography plays in the development of sexual deviance, to provide for the protection of women and children, and to become tough on crime. He stated that this is unquestionably constitutional.

CHAIRMAN CLARK limited testimony to 20 minutes for both sides.

Proponents' Testimony:

Dallas Erickson, Montana Citizens for Decency Through Law, recounted what he and **REP. HERRON** saw in materials available in adult bookstores which depict degradation and violence toward women. He said these materials promote the myth that women want that kind of behavior. He referred to the testimony from the Missoula County sheriff's office, **EXHIBIT 1B**, and the letter cited previously as **EXHIBIT 1A**.

He further cited specific cases in Montana which he believes relate to his support of this bill. **EXHIBITS 1G & 1H** He presented **EXHIBIT 1I** in support of his testimony. He presented a letter from Rodney K. Smith, **EXHIBIT 1J**, also in support of his testimony.

Len Munsil, Attorney with National Family Legal Foundation, based in Phoenix, Arizona, said he is the co-author of a 300-page manual used by prosecutors around the country who enforce

obscenity laws and which he used in training prosecutors how to aggressively, effectively and constitutionally enforce obscenity statutes. He said there is no question about the constitutionality of this legislation. He presented written testimony **EXHIBIT 1K & 1K(a)** which cite MILLER v CALIFORNIA. He said that there is a higher conviction percentage in these cases than in murder and rape cases. Clearly obscenity is easily determined and distinguished from legitimate art and speech. He said that the Supreme Court has upheld a three-part test to determine the definition of obscene material: (1) material must depict specific sex acts defined in the state law in a patently offensive manner; (2) material as a whole must be intended to appeal to the prurient interest in sex; and (3) material must lack serious literary, artistic, political or scientific value.

Federal obscenity law already uses the standards proposed in this statute. Montana is one of five states that does not have this law in effect; and passing this law would give Montana the same authority and standards as the federal government already has in the State of Montana. Distributors of R-rated movies and soft core pornography have nothing to fear from prosecution of these laws. Legitimate first amendment rights are not affected by obscenity laws. It is concluded and well-documented by the Attorney General's Commission on Pornography and the California Attorney General's Commission on Organized Crime that this is an outlaw industry. They concluded that the national distribution of hard core pornography is essentially controlled by five mafia families out of the State of California. That this industry exploits young women was also discussed in his testimony. He said that this is an issue which gives the legislature the opportunity to protect the citizens which he sees as its role.

Dr. Mark Moser, Clinical Psychologist, submitted written testimony. **EXHIBIT 11.**

Arlette Randash, Eagle Forum, said she had canvassed the city and submitted a representation of videos from a convenience store three blocks from a primary school and a video store. These video covers were made available to the committee to view during the time of the hearing. She submitted written testimony. **EXHIBIT 12**

{Tape: 3; Side: A; Approx. Counter: 24.6}

Ken Moore, Chair of Montana Religious Legislative Coalition of the Montana Association of Churches, said that the Montana Association of Churches is supportive of laws in society that protect society from the dehumanization of persons through pornographic and obscene material. HB 83 would strengthen the existing obscenity law in their opinion and provide additional protection against a pervasive pornographic industry.

Sharon Hoff, Executive Director of Montana Catholic Conference, represented Montana's two Roman Catholic bishops by reading written testimony. **EXHIBIT 13**

Thesia Crooks, Libby, Montana, presented written testimony. **EXHIBIT 14**

Rachel Baker, Stevensville, Montana, supports HB 83. .

Wilma Wortman, Enough is Enough, spoke of statistics in support of HB 83 giving the correlation between pornography and deviant behavior, but these were not left for the committee. She asked that her testimony for HB 82 **EXHIBIT 3**, be included for HB 83.

Dianne Baker, Stevensville, Montana supports HB 83. **EXHIBIT 15**

Carolyn McGady is in support of this bill.

Linda Troutt, President, Montana Citizens for Decency through Law, left testimony in support of this bill. **EXHIBIT 16**

Laurie Koutnik, Executive Director, Montana Christian Coalition and mother of three, foster parent of 55 children of the State of Montana, recommended a Do Pass on HB 83.

Gladys Anderson, Stevensville, Montana, supports this bill.

Dale Anderson, Stevensville, Montana, strongly urged support.

{Tape: 3; Side: A; Approx. Counter: 33.4}

Opponents' Testimony:

Robert Dunlop, Helena Valley, stated that the issue is freedom. He questioned the influence of pornographic materials in the commission of crime. He urged the committee to remember the mandate by the voters for less governmental interference in the lives of private citizens.

Jerry Skillman, President of Montana Chapter of Video Software Dealers Association, presented testimony in opposition to HB 83. **EXHIBIT 17**

{Tape: 3; Side: A; Approx. Counter: 40.0}

Jacqueline Lenmark gave written testimony as representing businesses around the State of Montana. **EXHIBIT 18**

{Tape: 3; Side: B}

Paul Stahl, Chair, Montana Cultural Advocacy asked that his testimony on HB 82 be included on HB 83. He added that as an attorney he is concerned the passages in this bill that take away the ability of the person distributing, creating, or doing it has

to have some knowledge that it is obscene, on lines 10-11 on page 1. Also concerned about the wording on page 2, lines 4-11, which takes out the ability to introduce evidence regarding all of the Supreme Court criteria, and on page 3, line 19, the protection from criminal liability of the popcorn and ticket sellers and projectionist are also removed. He questions the constitutionality of this bill based on those concerns.

Deborah Schlesinger, Vice Chair of Montana Cultural Advocacy, presented written testimony in opposition to HB 83. **EXHIBIT 19**

{Tape: 3; Side: B; Approx. Counter: 2.9}

Chris Imhoff, League of Women Voters, submitted written testimony in opposition to HB 83.

Tim Holmes, local artist, asked that his written testimony be included in testimony in opposition to HB 82 as well. **EXHIBITS 21, 21(A), and 21(B)**

Robert Fitzgerald, submitted written testimony in opposition to HB 83. **EXHIBIT 22**

Scott Crichton, ACLU, submitted written testimony in opposition to HB 83 **EXHIBIT 23**

Jim Hills, voiced his opposition to HB 83.

Stan Frasier urged the committee not to pass this bill.

Carol Novotne, director of a local art center, educator and Vice Chair of Montana Arts Council, strongly opposes this bill.

Dan Erving, Montana Association of Theatre Owners, requested deletion of line 19, page 3. **EXHIBIT 24**

Howard Pickerill, owner of 14 screens in movie theaters, rose in opposition to HB 83.

Ayron Pickerill, opposes this bill.

Richard Miller, Montana State Librarian, stated opposition to HB 83.

Ian Steel, member of Video Software Dealers Association and video store owner, recommended opposition to this bill.

Lou Archambault, representing the artist community, stated opposition to HB 83.

Claudia Crase in support of artists and free expression, stated opposition to HB 83.

Dale Johnson, Discount Video, represents 43 locations in Montana and is in opposition to this bill.

{Tape: 3; Side: B; Approx. Counter: 12.2}

Informational Testimony:

EXHIBITS 25 - 40 are included as informational testimony on HB 82 and HB 83.

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked why the sponsor repealed 45-8-203 MCA which exempted theatre employees from liability under this act and if he would object to putting that back in.

REP. HERRON deferred to Mr. Munsil.

Mr. Munsil said that the use of the statute of obscenity in most cases does not have that type of exemption. The reason is to get to the people at the top of the chain of distribution, which often requires prosecution of clerks in establishments which provide pornographic materials. He suspected that the exemption being proposed for repeal under this bill was included originally because different conditions existed and children may have been employed in theaters where these materials were viewed.

REP. ANDERSON said that this provision is not limited to children, but extends to any employee under the direction of the theatre owner. He asked why they should be placed in jeopardy of arrest when they may have no idea of the content of the material.

Mr. Munsil said that he did not think it would be a problem in a motion picture theatre that is following the Motion Picture Association guidelines for rating the films. He said this would only apply to a circumstance where clerks in an adult bookstore are distributing the material. He said that there was a challenge to the statute on the issue of whether there is a "see-enter" requirement. It was decided through case law that there is a requirement of knowingly distributing obscene material. The Supreme Court said that until the jury determination is in, the legal status of the material is not known. They would have to know the character and content of the material, essentially knowing that they are dealing with sexually explicit material which puts them on notice that they are potentially violating the obscenity laws and ought not to be involved in its distribution. Under case law, that is a sufficient requirement for conviction. This proposed statute meets that constitutional standard. If the employee has no idea what they are distributing, they cannot be prosecuted. However, they would know from the position they held in that store.

REP. ANDERSON asked if the sponsor would object to reinserting the exemption in this bill.

REP. HERRON said he would object.

REP. WILLIAM BOHARSKI referring to the stricken language in 45-8-201 MCA and all of the language to be reinserted, said it appears that the intent is to include those over the age of 18. He asked why such a drastic approach is being taken. He wanted to know if the same goal could be achieved by striking all of the language referring to under the age of 18.

Mr. Munsil said that what is in current Montana law concerning obscenity is not what is considered traditional obscenity law. It is considered "the harmful to minors" law. It is called an obscenity law, but virtually every one of the 45 states which have obscenity laws criminalize the sale and distribution of hard core pornography to anyone. Montana's law has only dealt with the sale to children and it has never been used since its adoption.

REP. BOHARSKI stated that if the committee were just to strike the language "under the age of 18" from existing law, that would not withstand the court challenge.

Mr. Munsil said he would have to look at all of the provisions of the old statute which he believes was drafted pre-Miller vs California.

REP. BOHARSKI said he believed it was drafted in 1989.

Mr. Munsil said he believed this attempt to make an obscenity law was made in 1989, but what was passed was a law dealing with minors and so the language in that legislation did come pre-Miller. So he could not say that if the wording relating to the age were struck, it would be constitutional.

REP. BOHARSKI asked if it is the intent to extend the current obscenity statutes to adults.

Mr. Munsil said it was the intent and it would bring Montana into line with the current federal law.

REP. BOHARSKI asked if the video store owners must already make a determination under the current Montana statute prohibiting the knowing or purposeful distribution of obscene material to minors, why it would be any more difficult to carry this on to adults creating an additional burden on these business.

Mr. Skillman currently said that they follow the MPAA rating guidelines.

REP. BOHARSKI said that the sponsors of this bill are trying to do nothing more than extend the current prohibition on distribution of obscene material to everyone. He asked if it would be any more difficult for the industry to enforce this new statute.

Mr. Skillman said the problem is in determining who defines what is obscene and it appears to them that this bill goes beyond the MPAA rating scale and they are concerned that there is a lot of potential for problems since they won't know until a jury decides what is considered to be obscene.

REP. WYATT asked for a definition of movie theaters and the concern in reference to this piece of legislation.

Mr. Erving referred to **EXHIBIT 24** and the attachment, **EXHIBIT 24A**, in his answer which states that the members of the National Organization of Theatre Owners believe it would be bad for business if criminal liability is extended to theater employees who have no control or interest in the selection of pictures shown in the theaters. Most of these employees are under the age of 21 and have no financial interest in the business or responsibility in the selection of those motion pictures.

REP. HURDLE asked **Mr. Crichton** to give information on the constitutionality of this bill.

Mr. Crichton said he had consulted with attorneys about the overbreadth of this bill. While there is an attempt to meet the Miller standards in the first part of the bill, the definitions leave lots of areas for imprecise interpretations of offense. He believes the major flaw is in determining who wants to enforce the statute.

REP. MOLNAR asked **Mr. Pickerill** as an opponent how his testimony would be different from that of the association.

Mr. Pickerill said that his objection is its reference to motion picture film. To his knowledge 35mm motion picture film that is termed obscene is not available at this time. Legitimate theaters show absolutely nothing that has not been rated by the recognized rating system using parental guidelines. Unrated product is available, but it is not shown in legitimate movie theaters.

REP. SOFT addressed the thought that this bill would have serious economic effect on businesses that engage in video rental. He wanted to know what percentage of income received from video rentals would come from what is described in this bill as obscene material.

Mr. Skillman said that seems to be the problem because no one has adequately defined what is obscene under this legislation. In response to further questions by **REP. SOFT**, he said that the

wording listed on pages 2 and 3 might describe inventory that is rated R by the Motion Picture Association of America. The impact would be severe, up to 50-60% of the newer product on the market.

REP. SOFT asked **Mr. Munsil** to respond to **Mr. Skillman's** remarks.

Mr. Munsil said that the bill does not and cannot address R-rated material. Since the Miller decision, no R-rated movies or library material has ever been used to prosecute for obscenity because of the aforementioned three-part test that is applied to define obscene material.

{Tape: 4; Side: A}

REP. SOFT asked about the impact on employees of UPS who might be delivering this material.

Mr. Munsil said that it can't possibly have any impact on UPS workers unless they have knowledge of the character and content of the material.

REP. LINDA MC CULLOCH asked how, since this would establish a statewide community standard, could there be any local control when in reality this statutory change would eliminate local control.

Mr. Munsil said that the local control comes in the test itself for obscenity standards for the local community even if there is a statewide community standard and through the elective process whereby those prosecuting or who choose not to prosecute are selected by the communities.

REP. MC CULLOCH asked who, in **Mr. Munsil's** opinion, would ultimately set the standards for this bill.

Mr. Munsil said the state can set the obscenity law and how well it is carried out typically depends upon the local community.

REP. MC CULLOCH asked if "local community" means local prosecutors and "folks" in the court.

Mr. Munsil answered, "Yes."

REP. MC CULLOCH asked **Mr. Munsil** to define "reasonable person" and "community standards."

Mr. Munsil replied that none of these legal definitions exist in a vacuum and they are all part of the whole test for obscenity. The Supreme Court uses the term, "reasonable person," because jurors applying the first two prongs of the test for defining obscene material would have to remain more objective by using the same standard term used in any tort case.

REP. MC CULLOCH asked if there is anything in the bill that would prohibit certain books being removed from library shelves.

Mr. Munsil said, "Not technically." However, he stated that it would have to be a book that from beginning to end the dominant theme of the material is intended to appeal to the prurient interest and would have to have no literary value whatsoever and would have to depict sex acts in a patently offensive way. He said that though it is conceivable that this could happen, it never had happened in the 45 states and under federal law.

{Tape: 4; Side: A; Approx. Counter: 7.2}

REP. MC CULLOCH asked why the law is being changed now when so much work had gone into writing the statute in 1989.

Mr. Munsil met with then Attorney General Racicot who was supportive of the effort to do what is being proposed today. In 1989 that effort failed; a law was passed then that prohibits distribution of obscenity to children only.

REP. DANIEL MC GEE asked where **Mrs. Randash** had gathered the videos she presented for review by the committee.

Mrs. Randash said that four were from Terry's Convenience Store on Lamborn and one was from Video Excitement next to Pizza Hut on Euclid.

MC GEE asked **Mr. Skillman** if the Video Software Dealers Association represent distribution outlets.

Mr. Skillman said that it is only a trade group.

REP. MC GEE asked if this association represents either of the stores mentioned in **Mrs. Randash's** testimony.

Mr. Skillman said he believed that Video Excitement is a member of the association, but that Terry's is not.

REP. MC GEE asked if he had seen the material being discussed.

Mr. Skillman said, "No."

REP. DUANE GRIMES asked about the artistic element of this law and wondered if Montana has a broader level of artistic expression than the 45 other states which have adopted similar laws.

Mrs. Lenmark said she had not studied the laws in each of the 45 states. Her general response would be that Montana has greater freedoms. In 1972 when the new constitution was developed, two articles were included that specifically addressed these freedoms; an article protecting freedom of expression and an article protecting the right of privacy. Montana has one of the

strongest rights of privacy anywhere in the country. Specific state statutes will be used in interpreting this bill if it is passed.

REP. GRIMES in trying to understand what the impact on the community would be, asked for a practical example of what an artist could do here that he cannot do in Idaho.

Mrs. Lenmark could not give a specific example and cited that as the point of the objection to this bill. The determination of what is obscene is not made until the person is charged and the trial takes place and there is a conviction and then that conviction may go on to the Montana Supreme Court. She believes that this bill makes those determinations even cloudier and makes the job more difficult for those involved.

REP. GRIMES asked about the economic impact of the mandate in regard to local governments' enforcement.

Mr. Erickson answered that it had only been tested in Kalispell and Libby where the wording had been changed causing difficulty for prosecution and then a reversal to wording such as is in this bill and so there was not a clear answer to the question.

Mr. Munsil addressed the question regarding national experience. The federal government created the Obscenity Task Force that dealt on a national level with this issue costing \$1.5 million. The task force is funded by fines and forfeitures of the people who are involved in this \$10 million-a-year industry and has made 25 times over the amount of money that has been spent.

CHAIRMAN CLARK relinquished the chair to **REP. ANDERSON**.

REP. WYATT asked **Mr. Crichton** to elaborate on testimony about restrictions to libraries or in schools.

Mr. Crichton said that he could think of a half dozen cases in the last twelve months where books have been pulled from library shelves and challenged. Nationally these instances are increasing drastically. He said these had not been in court, but challenged quite often.

{Tape: 4; Side: A; Approx. Counter: 21.2}

REP. WYATT asked if a movie like *SLIVER* would be contestable.

Mr. Crichton said he did not know the movie.

REP. WYATT asked about *CATCHER IN THE RYE*, and *OH CALCUTTA*.

Mr. Crichton discussed the case of bringing *OH CALCUTTA* to Billings versus how it was handled in Boise.

REP. SOFT asked how big the hard-core pornography business is in dollars and where that money is going.

Mr. Munsil said that it is estimated to be a \$10-billion-a-year business and most of the money is used to underwrite other criminal activities. He also addressed the challenges of the books and plays mentioned above. He said these challenges are not coming from prosecutors, but from parents who are complaining that their children are exposed to these things in school. The state is not coming in to enforce a criminal obscenity law against certain library material.

REP. KOTTEL asked **Mrs. Randash** if the materials that she rented for the purpose of examples are obscene in her mind.

Mrs. Randash said they definitely are.

REP. KOTTEL asked if **Mrs. Randash** watched them.

Mrs. Randash said she did not.

REP. KOTTEL asked if she did not watch them, how under section 2(b)(3), as a reasonable person, she could find them to lack serious literary, artistic, political or scientific value when taken as a whole by only viewing the cover.

Mrs. Randash said that if **REP. KOTTEL** would view the cover, she would know immediately why.

REP. KOTTEL asked if **Mr. Munsil** had had an opportunity to review the movies presented by **Mrs. Randash**.

Mr. Munsil said he had not.

REP. KOTTEL asked **Mr. Munsil** to look at section 2(b) and subsections (1) and (2) and subsection (3) and tell why the standard is different in subsection (1) and (2) where the words, "average person" are used from subsection (3) where the words, "reasonable person" is used.

Mr. Munsil replied that that came in a case called Coke v Illinois from the Supreme Court in 1986, where the court clarified what had always been the law that the third prong of that standard was to be a "reasonable person" standard, not an "average person." He pointed out that since this is not an obscenity trial therefore **Mrs. Randash** was not required to view the materials she brought forward as she would have been if she were sitting as a juror in such a trial to evaluate it under the reasonable person standard as to whether it would have value.

REP. KOTTEL questioned the length of time required to train prosecutors in the use of this law while it was said earlier that, "you know it when you see it." She wanted to know why it takes so long to educate people about this statute.

Mr. Munsil stated that there is a \$10 billion industry that funds very good lawyers to defend in these cases. Because of that, there is a large body of case law related to these cases and this takes some time.

{Tape: 4; Side: A; Approx. Counter: 29.1}

REP. KOTTEL asked if an adult having a sex with a child would per se be obscene under this statute.

Mr. Munsil said that it would not be obscene per se under this statute. Those types of films fall under the Child Sexual Exploitation Statute. Two areas fall outside the protection of the First Amendment. One is obscenity and the other is child pornography.

REP. KOTTEL referred to section 3(b) of the bill dealing with a criminal penalty that only applies to section 1(d). That penalty is 50 times harsher in terms of the fine and 20 times more punitive in terms of the sentence. She asked why that group of individuals selected out for that type of punishment.

Mr. Munsil said it is harsher because it is going up the line in terms of the responsibility of distribution toward the organized crime elements who make all the money. That criminalizes importation into the state and goes after the people who are involved in national distribution.

REP. SMITH asked for the effective date of the federal obscenity law.

Mr. Munsil said that it was in 1973 in the case of Miller vs California.

REP. SMITH asked if this bill would apply to the computer transmission of pornography.

Mr. Munsil said the language is broad enough to encompass any image and therefore it would.

REP. SMITH asked if this would affect monitoring or intervention in deviate sexual conversations available to children as well.

Mr. Munsil asked for clarification.

REP. SMITH said she was referring to access phone numbers that provide sexual deviant conversations.

Mr. Munsil said that if there is an obscene message over telephone transmission it would have to meet all the elements of the test for obscenity, but he believed it would be covered.

REP. SMITH asked about the exposure through music being covered also.

Mr. Munsil said he believed that would be more likely covered under the Harmful to Minors Law.

REP. AUBYN CURTISS asked what percentage of the video market is under the age of 18.

Mr. Skillman said he did not know exactly, but probably nearly 30%.

REP. CURTISS asked if recent studies had been done on those who used obscene materials, percentage-wise and age-wise. She said she was referring to what she understood to be the biggest users of obscene materials being children between the ages 12-14 and she wanted to know if that is still true.

Mr. Munsil said that many studies have been done. He said she is right on her reference. Only two government commissions at the federal level that have studied the issues of hard core pornography and obscenity. One was the 1970 Presidential Commission when material was much less explicit than is available today. He said it was ACLU-dominated and came to the conclusion that pornography was "wonderful" and it should be decriminalized. The other was the 1986 Attorney General's Commission which had a balanced perspective. In both cases, they concluded the primary users of hard core pornography are males between the ages 12 and 17.

REP. MOLNAR asked if **Mr. Skillman** of his industry advised members on issues that concern the industry.

Mr. Skillman said, "Yes."

REP. MOLNAR asked if this law were to pass if he would have any trouble advising them as to whether or not the material brought by **Mrs. Randash** was obscene.

Mr. Skillman said he was not in a position to personally advise anyone about anything. But he could say that the people he has talked to about these issues tell him that there is a lot of question about which of these materials meet the test and which ones don't. He cited an example of a case that ended with a hung jury to support his statement.

REP. MOLNAR then asked if **Mr. Skillman** was saying that it is unclear to him and to his association as to whether or not the average person would consider these particular videos are obscene.

Mr. Skillman said that the issue is that the only persons who can make that determination are the members of the jury.

VICE CHAIR ANDERSON asked **Mr. Munsil** to clarify that the law that has been passed in the other 45 states is the 3-pronged test in the MILLER case.

Mr. Munsil said, "Yes."

VICE CHAIR ANDERSON asked if in those 45 other states, it applies to everyone or simply to minors.

Mr. Munsil answered that it applies to everyone. Most of them have an additional Harmful To Minors law that goes further in relating to distribution of soft core pornography to children.

VICE CHAIR ANDERSON asked if what the committee sees in front of it is basically what is in the other 45 states.

Mr. Munsil answered that that was correct.

VICE CHAIR ANDERSON declared the hearing on HB 83 closed.

REP. BOHARSKI MOVED FOR ADJOURNMENT.

{Comments: These minutes are complete on four 90-minute tapes..}

ADJOURNMENT

Adjournment: Meeting was adjourned at 12:25 PM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/9/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ <i>late</i>	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ <i>late</i>	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

Michael J. Scolatti, Ph. L.

Terrace West
619 S.W. Higgins, Suite N.
Missoula, MT 59801
(406)549-4870

EXHIBIT 1A

DATE 1/9/95

HB 82

December 3, 1991

Missoula City Council
Judicial Subcommittee
Jack Reidy
Al Sampson
Mike Cregg
Bcb Luceno
Don Shaffer

Dear Committee Members,

By way of introduction, my name is Michael Scolatti and I am a Licensed Clinical Psychologist, in private practice. I specialize in the assessment and treatment of sexual offenders and victims of sexual abuse. In addition, I am a consultant to the National Corrections Association, and I developed the Sex Offender Treatment Program currently used to treat sexual offenders at Montana State Prison. I have been working in this area for the past 11 years, and I have lectured in the United States and Canada. I have evaluated and/or treated approximately 500 adult and adolescent sexual offenders over the past 6 years in Western Montana.

I am writing to you in support of a City Ordinance to ban nude dancing. I feel that there is no merit to nude dancing and it does not serve any "artistic" purpose. Aside from my personal feelings that nude dancing is degrading and harmful to the moral fabric of our community I would like to inform the committee of some research findings concerning pornography in general, statistics from my outpatient sex offender treatment program, and some of my direct clinical observations regarding nude dancing and sexual offenders in our community.

Research has been somewhat equivocal in the area of the relationship of sexual offending and the use of pornography. There have never been any direct studies of nude dancing and sexual crimes, however, given the voyeuristic quality of nude dancing and its similarities to viewing pornographic materials I feel it is logical to assume the data regarding pornographic material could be extrapolated to nude dancing.

The most consistent finding is that violent pornography involving sadomasochist themes was significantly related to sexual crimes, especially rape. A 1984 study by Baron and Strauss found a significant correlation between the consumption of pornography (in this case soft-core) and the incidence of reported rape using the 50 U.S. states as cases. In this study it was found that the incidence of rape increased by 7 per 100,000 population, for an

increase of 1 standard deviation in pornographic magazine consumption.

A finding closer to my work with sex offenders indicates that 46% of rapists, 59% of homosexual pedophiles, and 50% of heterosexual pedophiles reported a desire to own some pornography while only 29% of the non-offending men in a control reported a similar desire (Goldstein et al., 1974). Of those men reporting a desire to own pornography, 100% of the rapists, 80% of the homosexual pedophiles, and 83% of the heterosexual pedophiles actually owned some type of pornographic material. Only 50% of the non-offending men in the control group actually owned some type of pornographic material. Therefore, the men in the sex-offender groups were about three times more likely to own pornography than non-offending men.

In my experience, approximately 75% of the sexual offenders I have worked with in my outpatient program have used some type of pornographic material on a regular basis. In addition, approximately 15 to 20 percent have indicated they are "addicted" to pornography. For the most part, the sex offenders use pornography to stimulate their sexual appetite, unfortunately their outlet for their sexuality could be a child. In my work with sexual offenders pornography is never the "cause" of sexual offending, however it is often the "trigger" that will set an offender's cycle of abuse into motion...

Whenever I do a sex offender evaluation I ask several questions regarding all aspects of their sexuality. This includes asking each man or woman their fantasies or participation in 30 atypical sexual behaviors ranging from the use of pornography to zoophilia. One specifically addresses nude dancing. An estimated 95% of the sex offenders I have worked with have gone to some type of "strip show". In addition, approximately 5 to 10% of those offenders have frequented such establishments on a regular basis (once a week).

What does nude dancing do for a sex offender? Besides the obvious answer of sexual arousal, nude dancing has a much more pernicious effect. Nude dancing objectifies, and depersonalizes women. This allows the offender (and most men in general), to see the dancer as an object, a commodity, a "life support system for a pussy" as one offender told me. Interestingly, approximately 80% of all nude dancers have been victims of childhood sexual abuse.

In conclusion, I would like to see the Council pass an ordinance to ban this form of "entertainment". It does not have any positive or redeeming social qualities, in my opinion it only serves to depreciate the quality of life in our city.

Respectfully,

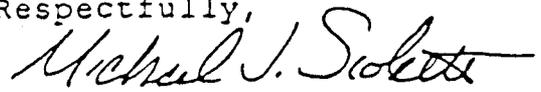

Michael J. Scolatti, Ph.D.



EXHIBIT 18

DATE 1/9/95

HB 82

January 6, 1995

Chairman
Senate Judiciary Committee
Capitol Station
Helena, MT 59624

Dear Mr. Chairman:

As a law enforcement officer with Missoula County for the past 24 years, I am writing this letter to you and the committee in order to advise you that I strongly support House Bill 82 and Senate Bill 83 for the following reasons.

I have worked numerous sex crime cases involving young children in the Missoula County area and I can advise you that in almost 100 percent of the cases worked, pornography in the form of either magazines, videos or 16mm film is always associated. As the statutes now stand, children are allegedly to be protected from such trash due to constraints placed on the retailers. Law enforcement will tell you that there is certainly no constraints placed on this material once it has left the retailer and it is in the hands of the perverts.

Montana does allow for misdemeanor punishment for providing children with this material; however, this seems ludicrous due to the fact that in all cases this officer has been associated with, a felony perversion has been already committed against the children. The misdemeanor offense is overlooked or never charged in favor of the felony offense.

These sexual perverts are utilizing this pornography material to groom or seduce the young victim. In a case I worked, an elderly male individual invited young teenage boys into his home and would casually mention to them in a joking way, and to call their attention to them, "do not look at those books on the floor" (pornographic magazines). Once the boys looked through the magazines, they were then introduced to pornographic video tapes and 16mm movies. After watching the videos and movies, the boys were talked into acts of fellatio and anal intercourse. This officer could go on with case after case; however, I feel this particular one makes the point.

Chairman
Page Two
January 6, 1995

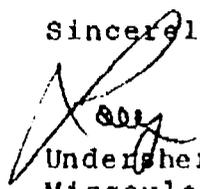
Missoula County has had nude dancing for the last several years. This officer has noted an increase in the activities of prostitution around these bars that permit nude dancing. Much of this prostitution is carried on by single female individuals with no organized ties; however, this department did arrest a ring of organized Korean prostitutes no more than two blocks from a bar that permits nude dancing.

A former dancer of "Pretty Girls" advised that it was her job to do a strip routine on stage while individuals in separate booths with glass fronts observed her. She advised that many male customers would masturbate while watching her and ejaculate on the glass partition that separates her from the customers. She further advised that it was the responsibility of the dancer to clean the semen off the glass partition. The dancer advised that she had to do dope in order to get through the performance. Intelligence information indicates that some of these strippers or dancers are providing customers with their telephone numbers and addresses in hopes of promoting themselves as prostitutes.

As a law enforcement officer with 24 years experience, I cannot tell you that pornography is the direct cause of perversion; however, I can say emphatically that pornography insights and excites these perverts into acts committed on these children. It is used as a tool or a basis to begin the act.

As a citizen, husband, father and a reasonable person, I find that pornography and nude dancing are of no literary, artistic, political or scientific value. I urge the passing of House Bill 82 and Senate Bill 83.

Sincerely,


Under Sheriff Larry C. Weatherman
Missoula County Sheriff's Dept.

LCW:sp

January 8, 1995

House Judicial Committee Chairman
Robert Clark & Committee Members
Helena, Montana

EXHIBIT 1C
DATE 1/9/95
HB 82

RE: House Bill 82

Dear Chairman Clark and Members of the House Judicial Committee:

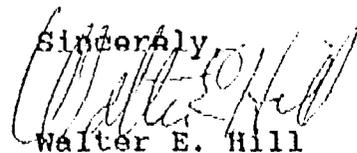
It is my understanding that you are presently considering a HB #82 which deals with Public Indecency and Public Sexual Conduct. I apologize for not testifying in person, but I have been out of town and was only apprized recently that this hearing was to be held on Monday, January 9, 1995. I was unable to alter my calendar to attend.

I am a concerned citizen, being a father with a family here in Missoula. I am also a concerned scientist, being a professor at the University. I will comment from both perspectives.

As a citizen, having served on the City Council, when an ordinance dealing with the same issues was under consideration, I am somewhat aware of the feelings generated in this matter. As a father, I have watched the decay of our moral underpinning, I have become deeply concerned. I realize that this legislation will not control the issue entirely. But it is a step in the right direction, and has been adjudged to be Constitutional. We critically need forthright, determined leadership at the State level to bring pressure to bear outlawing indecency and public sexual conduct. Such measures will help preserve an already pressured younger generation from unnecessary and unwanted indecency.

As a scientist, I am aware that masturbation occurs commonly in some of our "parlors" and other public places. I cannot believe that such activities will not affect - and infect - those that have to clean such places. Sexually-transmitted diseases, such as AIDS, can be transmitted through bodily fluids. There is absolutely no basis for allowing such activity in Montana. The health and well-being of our children and our children's children depend on strong measures to outlaw such behavior.

Please support this measure. It has great merit.

Sincerely,

Walter E. Hill



PATRICK J. MORGAN
DEPUTY ASSISTANT DISTRICT ATTORNEY

RAY C. ELLIOTT
DIRECTOR OF CRIMINAL DIVISION

ROBERT H. MACY
DISTRICT ATTORNEY
OKLAHOMA COUNTY

ROBERT L. MITCHELL
DIRECTOR OF CIVIL DIVISION

JOHN J. FOLEY
DIRECTOR OF JUVENILE DIVISION

February 22, 1991

EXHIBIT 1 D
DATE 1/9/95
HB 82

George Harper
Director,
Citizens Concern for Children
3317 South Wynn Drive
Edmond, Oklahoma 73013

Dear Mr. Harper:

In 1984 when we first discussed the issue of sex oriented businesses as being a cause factor in rapes, frankly I was a skeptic. To me it was the old question "Which came first the chicken or the egg?" It was my belief that anyone that patronized these businesses was already sick. The enforcement of the 1984 Oklahoma State Law regarding the sale of obscene material has completely changed my opinion. Hardcore pornography acts on a persons mind much in the same way as drugs. People who continually consume this material will in many cases eventually become involved in unacceptable sexual acts or behavior, including violence directed at women and children.

Oklahoma has enjoyed a steady decrease in the number of rapes each year starting in 1984 through 1989. (1990 statistics are not available), amounting to a total decrease of 27%.

Not only is this a dramatic reduction in the number of women and children that experienced the horrors of rape, it has also resulted in the freed up personnel and financial resources by reducing the number of rape trials conducted by my office. As long as I am District Attorney in Oklahoma County, you can be assured we will continue our policy of vigorous prosecution concerning violators of all Oklahoma Obscenity Law.

Respectfully,

Robert H. Macy
ROBERT H. MACY,
DISTRICT ATTORNEY

RHM/ja

District Attorney Bob Macy
 Oklahoma County Office Bldg.
 217 North Harvey
 Oklahoma City, OK. 73102

Oklahoma City Police Department
 Chief Bob Wilder
 701 Colcord Drive
 Oklahoma City, OK. 73102

Rape statistics for the State of Oklahoma and Oklahoma County for 1983 through 1989. Authority "Crime in Oklahoma" Uniform Crime Reports.

	Oklahoma County	Remainder of State	Total Oklahoma
Year	Rapes	Rapes	Rapes
1983	588	657	1,245
1984	565.....down....23	748.....up....91	1,313
1985	542.....down....23	710.....down..38	1,252
1986	479.....down....63	723.....up....13	1,202
1987	439.....down....40	733.....up....10	1,172
1988	435.....down....4	794.....up....61	1,229
1989	427.....down....8	782.....down..12	1,209
Total rapes in Oklahoma County down 161 or 27% decrease.		Total rapes in rest of State are up 125 or an increase of 19%.	

This is a list made in 1987, of the kinds of sex oriented business closed in Oklahoma County since 1984.

1. Porno book stores.....//. 12 of 12 closed
2. Porno theaters.....3 of 5 closed
3. Porno peepshows.....10 of 10 closed
4. Playboy Channel.....off the air
5. Houses of prostitution.....18 of 18 closed
6. Escort services (telephone prostitution).....35 of 42 closed
7. Nude bars.....75 of 75 closed

HOUSE BILL 82 -- PUBLIC INDECENCY

HARM: Caselaw has long established that states may stringently regulate establishments which combine the sale of liquor with public nude conduct and nude dancing. See e.g. California v. LaRue, 409 U.S. 109 (1972). The Supreme Court explained what goes on in the typical establishment that exploits the flesh of women for profit: "Prostitution occurred in and around such licensed premises, and involved some of the female dancers. Indecent exposure to young girls, attempted rape, rape itself, and assaults on police officers took place on or immediately adjacent to such premises.... Customers were found engaging in oral copulation with women entertainers; customers engaged in public masturbation; and customers placed rolled currency either directly into the vagina of a female entertainer, or on top of the bar in order that she might pick it up herself. Numerous other forms of contact between the mouths of male customers and the vagina areas of female performers were reported to have occurred." 409 U.S. at 111.

To get around the type of regulations approved in LaRue, many nude dancing establishments began to offer completely nude women as entertainment, but did not seek a license to sell liquor. While many of the problems the Court discussed in LaRue were still present, these establishments went completely unregulated, and were able to encroach into many rural, family-oriented neighborhoods, and law enforcement leaders begin to look for new ways to limit the negative effects of these unregulated sexually oriented businesses.

CONSTITUTIONALITY: The Supreme Court in 1991 for the first time considered one state's response to the growing problem of commercial public nudity. Law enforcement officials in South Bend, Indiana began applying that state's public indecency law against nude dancers. In the case of Barnes v. Glen Theatre, 115 L.Ed.2d 504 (1991), the Court upheld as constitutional the use of Indiana's public indecency law against commercial public nude dancing.

MONTANA'S PROPOSED LAW: House Bill 82 tracks word for word the definition of nudity in Indiana's statute approved by the U.S. Supreme Court. It also defines public place broadly to avoid abuse by nude dancing establishments that try to pass themselves off as private clubs. In 1994 Tennessee became the first state to enact this law following the Barnes decision, and the law has already been approved in federal court. The Tennessee law does include a provision making clear that the act "shall not apply to any theatrical production ... performed in a theater by a professional or amateur theatrical or musical company which has serious artistic merit...." Such a provision may be advisable under a recent U.S. Court of Appeals decision striking down Akron's public indecency law as facially overbroad for failing to prove any negative secondary effects from nude conduct in locations other than nude dancing establishments. Triplett Grille, Inc. v. City of Akron, 1994 WL 631202 (6th Cir. Nov. 14, 1994).

EXHIBIT 1E(a)
 DATE 1/9/95
 HB 82

MICHAEL BARNES, Prosecuting Attorney of St. Joseph County, Indiana, et al., Petitioners

v

GLEN THEATRE, INC., et al.

501 US —, 115 L Ed 2d 504, 111 S Ct —

[No, 90-26]

Argued January 8, 1991. Decided June 21, 1991.

Decision: Indiana's public indecency law, as applied to prohibit nude dancing performed as entertainment, held not to violate free expression guarantee of Federal Constitution's First Amendment.

SUMMARY

An Indiana statute made it a misdemeanor to appear in a public place "in a state of nudity." Within the statutory definition of "nudity" was the showing of (1) the female genitalia, pubic area, or buttocks with less than a fully opaque covering, or (2) the female breast with less than a fully opaque covering of any part of the nipple. Two entertainment establishments in South Bend, Indiana wished to provide totally nude dancing as entertainment, although the statute effectively required female dancers to wear at least "pasties" and a "G-string" while dancing. The two establishments, together with individual dancers employed at those establishments, brought suit in the United States District Court for the Northern District of Indiana against the city of South Bend and various state and local officials to enjoin the enforcement of the statute, on the ground that the statute violated the Federal Constitution's First Amendment. The District Court, granting an injunction, held that the statute was facially overbroad. The United States Court of Appeals for the Seventh Circuit, reversing on appeal, remanded the case to the District Court in order to determine whether the First Amendment was violated by the statute as applied to the type of dancing at issue (802 F2d 287). On remand, the District Court held that such dancing was not protected expressive activity, and accordingly judgment was rendered in favor of the defendants (695 F Supp 414). A panel of the Court of Appeals, reversing on appeal, held that the dancing at issue was expressive conduct protected by the First Amendment (887 F2d 826). On rehearing en banc, the

Court of Appeals (1) held that the Indiana statute was an improper infringement of expressive activity, because the statute's purpose was to prevent message of eroticism and sexuality conveyed by the dancers in question; (2) enjoined the state from enforcing the statute against the plaintiffs to prohibit nonobscene nude dancing as entertainment (904 F2d 1081).

On certiorari, the United States Supreme Court reversed. Although able to agree on an opinion, five members of the court agreed that Indiana statute, as applied to prohibit nude dancing performed as entertainment, did not violate the First Amendment.

REHNQUIST, Ch. J., announced the judgment of the court, and in opinion joined by O'CONNOR and KENNEDY, JJ., expressed the view that nude dancing as entertainment is expressive conduct within the 0 perimeter of the First Amendment; but (2) application of the Ind statute to such dancing was justified, despite the statute's incidental inroads on some expressive activity, because (a) the statute was within state's constitutional power, (b) the statute was designed to protect moral and public order and thus furthered a substantial government interest; this interest was unrelated to the suppression of free expression, in that perceived evil that Indiana sought to address was not erotic dancing rather public nudity, and (d) the requirement that the dancers wear at 1 "pasties" and a "G-string" was narrowly tailored to achieve the statute's purpose.

SCALIA, J., concurring in the judgment, expressed the view that (1) Indiana statute was not subject to First Amendment scrutiny at all, because the statute was a general law regulating conduct and was not specifically directed at expression; (2) there is no intermediate level of First Amendment scrutiny requiring that an incidental restriction on expression justified by an important or substantial government interest; and (3) Indiana statute was valid—even as enforced against those who chose to public nudity as a means of communication—because moral opposition to public nudity supplied a rational basis for the statute's prohibition.

SOUTER, J., concurring in the judgment, expressed the view that (1) dancing as a performance carries an endorsement of erotic experience thus is expressive activity that is subject to a degree of First Amendment protection; (2) the four-part inquiry applied by the court was the appropriate analysis to determine the actual protection required by the First Amendment; (3) the state's interest in combating the secondary effects—such as prostitution and other criminal activity—of live nude dancing in an entertainment establishments; and (4) this interest was unrelated to suppression of free expression, since such secondary effects would necessarily result from the persuasive effect of the expression inherent in nude dancing.

WHITE, J., joined by MARSHALL, BLACKMUN, and STEVENS, dissenting expressed the view that the Indiana statute should have been held invalid.

DR. JAMES DOBSON

Exclusive

interview

with

serial sex killer

THEODORE BUNDY

“...his death won't stop the killings.”

Executed January 24, 1989 for the sex slaying of 12-year-old Kimberly Leach Florida State Prison

aware that I can't begin to understand the pain that the parents of these children that I have—and these young women—that I have harmed, feel. And I can't restore really much to you, if anything. And I won't pretend to. And I don't even expect them to forgive me, and I'm not asking for it. That kind of forgiveness is of God. And if they have it, they have it. And if they don't, well, maybe they'll find it someday.

Dobson: Do you deserve the punishment the state has inflicted upon you?
Bundy: That's a very good question, and I'll answer it very honestly. I don't want to die. I'm not going to kid you, I'll kid you not. I deserve, certainly, the most extreme punishment society has, and I think society deserves to be protected from me and from others like me. That's for sure. What I hope will come of our discussion is [that] I think society deserves to be protected from itself because as we've been talking there are forces at loose in this country—particularly again, this kind of violent pornography—where on the one hand, well-meaning, decent people will condemn behavior of a Ted Bundy, while they're walking past a magazine rack full of the very kinds of things that send young kids down the road to be Ted Bundys. That's the irony. We're talking here not just about morals. What I'm talking about is going beyond retribution, which is what people want with me. Going beyond retribution and punishment, because there is no way in the world that killing me is going to restore those beautiful children to their parents and correct and soothe the pain. But I'll tell you, there are lots of other kids playing in streets around this country today who are going to be dead tomorrow and the next day and the next day and next month, because other young people are reading the kinds of things and seeing the kinds of things that are available in the media today.

Dobson: Ted, as you would imagine, there is tremendous cynicism about you on the outside, and I suppose for good reason. I'm not sure that there is anything that you could say that people would believe. And yet, you told me last night, and I have heard this through our mutual friend, John Tanner, that you have accepted the forgiveness of Jesus Christ, and are a follower and a believer in Him. Do you draw strength from that, as you approach these final hours?
Bundy: I do. I can't say that being in the valley of the shadow of death is something that I've become all that accustomed to, and that I'm strong and nothing's bothering me. Listen, it's no fun. It gets kind of lonely, and yet, I have to remind myself that every one of us will go through this someday in one way or another...

Dobson: It is appointed unto man.
Bundy:...and countless millions who have walked this earth before us have, so this is just an experience which we all share. Here I am.

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thoughts that I have steadfastly and diligently dealt with—I think successfully, with the love of God. And yet, it's reopened that. And I've felt the pain, and I've felt the horror again of all that. And I can only hope that those who I have harmed and those who I have caused so much grief—even if they don't believe my expression of sorrow and remorse—will believe what I'm saying now, that there is hope in their towns, in their communities, people like me today whose dangerous impulses are being fueled day in and day out by violence in the media in its various forms, particularly sexualized violence. And what scares me—and let's come into the present now because what I'm talking about happened 20, 30 years ago, that is, in my formative stages. And what scares and appalls me, Dr. Dobson, is when I see what's on cable TV, some of the movies, some of the violence in the movies that come into homes today was stuff that they wouldn't show in X-rated adult theaters 30 years ago.

Dobson: The slash movies that you're talking about.
Bundy: The stuff is—I'm telling you from personal experience—the most that is graphic violence on the screen, particularly as it gets into the home to the children who may be unattended or unaware that they may be a Ted Bundy who has that vulnerability to that predisposition to be influenced by that kind of behavior, by that kind of movie and that kind of violence. There are kids sitting out there switching the TV dial around and come upon these movies late at night, or I don't know when they're on, but they're on, and any kid can watch them. It's scary when I think what would have happened to me if I had seen [them]. Or to know that children are watching that kind of thing today, or can pick up their phone and dial away for it, or send away for it.

Dobson: Can you help me understand this desensitization process that took place? What was going on in your mind?
Bundy: Well, by desensitization, I describe it in specific terms. Each time I harmed someone, each time I killed someone, there would be an enormous amount of—especially at first—enormous amount of horror, guilt, remorse afterward. But then that impulse to do it again would come back even stronger. The unique thing about how this worked, Dr. Dobson, is that I still feel, in my regular life, the full range of guilt and remorse about other things. Regret and...

Dobson: You had this compartmentalized...
Bundy:...compartmentalized, very well focused, very sharply focused area where it was like a black hole. It was like a crack. And everything that fell into that crack just disappeared. Does that make sense?

Dobson: Yes, it does. One of the final murders that you committed, of course, was apparently little Kimberly Leach, 12 years of age. I think the public outcry is greater there because an innocent child was taken from a playground. What did you feel after that? Were there the normal emotions three days later? Where were you, Ted?
Bundy: I can't really talk about that right now. I would like to be able to convey to you what that experience is like, but I can't. I won't be able to talk about it. I can't begin to understand. Well, I can try, but I, I

lose in a society that tolerates.
Dobson: You feel this really deeply, don't you? Ted, outside these walls right now there are several hundred reporters that wanted to talk to you.
Bundy: Yeah.

Dobson: And you asked me to come here from California because you had something you wanted to say. This hour that we have together is not just an interview with a man who is scheduled to die tomorrow morning. I'm here and you're here because of this message that you're talking about right here. You really feel that hard-core pornography and the doorway to it, soft-core pornography, is doing untold damage to other people, and causing other women to be abused and killed the way you did it.
Bundy: Listen, I'm no social scientist, and I haven't done a survey. I mean, I don't pretend that I know what John Q. Citizen thinks about this. But I've lived in prison for a long time now. And I've met a lot of men who were motivated to commit violence just like me. And without exception, every one of them was deeply involved in pornography—without question, without exception—deeply influenced and consumed by an addiction to pornography. There's no question about it. The FBI's own study on serial homicide shows that the most common interest among serial killers is pornography.

Dobson: That's true.
Bundy: And it's real. It's true.

Dobson: Ted, what would your life have been like without that influence? You can only speculate.
Bundy: I know it would have been far better, not just for me—and excuse me for being so self-centered here, [but] it would have been a lot better for me and lots of other people. It would have been a lot better. There is no question but that it would have been a fuller life. Certainly a life that would not have involved—I'm absolutely certain—would not have involved this kind of violence that I have committed.

Dobson: I'm sure, Ted, if I were able to ask you the questions that are being asked out there, one of the most important as you come down to perhaps your final hours: Are you thinking about all those victims out there and their families who are so wounded? You know, years later their lives have not returned to normal. They will never return to normal.
Bundy: Absolutely.

Dobson: Are you carrying that load, that weight? Is there remorse there?
Bundy: Again, I know that people will accuse me of being self-serving, but we're beyond that now. I mean, I'm just telling you how I feel. But through God's help, I have been able to come to the point where I—much too late, but better late than never—feel the hurt and the pain that I am responsible for. Yes, absolutely. In the past few days, myself and a number of investigators have been talking about unsolved cases—murders that I was involved in. And it's hard to talk about all these years later because it revives in me all those terrible feelings and those

Dr. Dobson: Ted, it is about 2:30 in the afternoon. You are scheduled to be executed tomorrow morning at seven o'clock if you don't receive another stay. What is going through your mind? What thoughts have you had in these last few days?

Ted Bundy: Well, I won't kid you to say that it's something that I feel that I'm in control of, or something that I've come to terms with, because I haven't. It's a moment-by-moment thing. Sometimes I feel very tranquil, and other times I don't feel tranquil at all. What's going through my mind right now is to use the minutes and see hours that I have left as fruitfully as possible, and see what happens. It helps to live in the moment; in the essence that we use it productively. Right now, I'm feeling calm and in large part because I'm here with you.

Dr. Dobson: For the record, you are guilty of killing many women and girls.

Bundy: Yes. That's true.

Dr. Dobson: Ted, how did it happen? Take me back. What are the antecedents of the behavior we've seen? So much grief, so much sorrow, so much pain for so many people. Where did it start? How did this moment come about?

Bundy: That's the question of the hour and one that not only people much more intelligent than I have been working on for years, but one that I've been working on for years and trying to understand. Is there enough time to explain it all? I don't know. I think I understand it though... understand what happened to me to the extent that I can see how certain feelings and ideas that developed in me to the point where I began to act out on them—certain very violent and very destructive feelings.

Dobson: Let's go back, then, to those roots. First of all, you, as I understand it, were raised in what you consider to have been a healthy home.

Bundy: Absolutely.

Dobson: You were not physically abused; you were not sexually abused; you were not emotionally abused.

Bundy: No. No way. That's part of the tragedy of this whole situation, because I grew up in a wonderful home with two dedicated and loving parents. I'm one of five brothers and sisters. [It was] a home where we as children were the focus of my parents' lives, where we regularly attended church; [I had] two Christian parents who did not drink, they did not smoke, there was no gambling, there was no physical abuse or fighting in the home. I'm not saying this was "Leave it to Beaver."

Dobson: It wasn't a perfect home.

Bundy: No, I don't know that such a home even exists, but it was a fine, solid Christian home, and I hope no one will try to take the easy way out and blame or otherwise accuse my family of contributing to this because I know, and I'm trying to tell you as honestly as I know how, what happened. I think this is the message I want to get across. But as a young boy—and I mean a boy of 12 or 13 certainly—I encountered outside the home again... in the local grocery store and the local drug stores the soft-core pornography, what people call "soft core." But as I think I explained to you last night, Dr. Dobson, in an anecdote, that as young boys do, we explored the back roads

and side ways and by-ways of our neighborhood, and often times people would dump the garbage and whatever they were cleaning out of the house. From time to time we'd come across pornographic books of a harder nature, more graphic you might say, [off] a more explicit nature than we would encounter, let's say, in your local grocery store. And this also included such things as detective magazines...

Dobson: And those that involved violence, then.

Bundy: Yes, and this is something I think I want to emphasize as the most damaging kinds of pornography, and again I'm talking from personal experience—hard, real, personal experience. The most damaging kinds of pornography are those that involve violence and sexual violence. Because the wedding of those two forces, as I know only too well, brings about behavior that is just too terrible to describe.

Dobson: Now walk me through that. What was going on in your mind at that time?

Bundy: Okay, but before we go any further, I think it's important to me that people believe what I'm saying. I'm not blaming pornography; I'm not saying that it caused me to go out and do certain things. And I take full responsibility for whatever I've done and all the things that I've done. That's not the question here. The question and the issue is how this kind of literature contributed and helped mold and shape these kinds of violent behavior.

Dobson: It fueled your fantasies.

Bundy: In the beginning it fuels this kind of thought process. Then at a certain time it's instrumental in what I would say crystallizing it, making it into something which is almost like a separate entity inside. At that point you're at the verge, or I was at the verge of acting out on these kinds of thoughts.

Dobson: Now I really want to understand that. You had gone about as far as you could go in your own fantasy life with printed material, and then there was the urge to take that little step or big step over to a physical event.

Bundy: Right. And it happened in stages, gradually. It doesn't necessarily, not to me at least, happen overnight. My experience with pornography that deals on a violent level with sexuality is that once you become addicted to it—and I look at this as a kind of addiction—like other kinds of addiction... I would keep looking for more potent, more explicit, you keep craving kinds of materials. Like an addiction, you keep craving something which is harder, harder. Something which gives you a greater sense of excitement. Until you reach the point where the pornography only goes so far. You reach that jumping-off point where you begin to wonder if maybe actually doing it will give you that which is beyond just reading about it or looking at it.

Dobson: How long did you stay at that point before you actually assaulted someone?

Bundy: That is a very delicate point in my own development. And we're talking about something... we're talking about having reached the point or a gray area that surrounded that point over a course of years.

Dobson: You don't remember how long that was?

Bundy: I would say a couple years. What I was dealing with there were strong inhibitions against criminal behavior—violent behavior—that had been conditioned into me, bred into me, in my environment, in my neighborhood, in my church, in my school. Things which said no, this is wrong. I mean, even to think of this is wrong, but certainly to do it is wrong. And I'm on that edge, and these last...you might say, the last vestiges of restraint—the barriers to actually doing something were being tested constantly, and assailed through the kind of fantasy life that was fueled largely by pornography.

Dobson: Do you remember what pushed you over that edge? Do you remember the decision to go for it? Do you remember where you decided to throw caution to the wind?

Bundy: Again, when you say pushed, I know what you're saying...I don't want to infer again that I was some helpless kind of victim. And yet, we're talking about an influence which—that is the influence of violent types of media and violent pornography—which was an indispensable link in the chain of behavior, the chain of events that led to the behavior, to the assaults, to the murders, and what have you. It's a very difficult thing to describe. The sensation of reaching that point where I knew that it was like something had snapped, that I knew that I couldn't control it anymore, that these barriers that I had learned as a child, that had been instilled in me, were not enough to hold me back with respect to seeking out and harming somebody.

Dobson: Would it be accurate to call that a frenzy, a sexual frenzy?

Bundy: Well, yes. That's one way to describe it. A compulsion, a building up of destructive energy. Again, another fact here that I haven't mentioned is the use of alcohol. But I think that what alcohol did in conjunction with, let's say, my exposure to pornography [is that] alcohol reduced my inhibitions, at the same time. The fantasy life that was fueled by pornography eroded them further, you see.

Dobson: In the early days, you were nearly always about half-drunk when you did these things. Is that right?

Bundy: Yes. Yes.

Dobson: Was that always true?

Bundy: I would say that was generally the case. Almost without exception.

Dobson: Alright, if I can understand it now, there's this battle going on within. There are the conventions that you've been taught. There's the right and wrong that you learned as a child. And then there is this unbridled passion fueled by your plunge into hard-core, violent pornography. And those things are at war with each other.

Bundy: Yes.

Dobson: And then with the alcohol diminishing the inhibitions, you let go.

Bundy: Well, yes. And you can summarize it that way, and that's accurate, certainly. And it just occurred to me that some people would say that, well, I've seen that stuff,

and it doesn't do anything to me. And I can understand that. Virtually everyone can be exposed to so-called pornography, and while they were aroused to one degree or another, not go out and do anything wrong.

Dobson: Addictions are like that. They affect some people more than they affect others. But there is a percentage of people affected by hard-core pornography in a very violent way, and you're obviously one of them.

Bundy: That was a major component, and I don't know why I was vulnerable to it. All I know is that it had an impact on me that was just so central to the development of the violent behavior that I engaged in.

Dobson: Ted, after you committed your first murder, what was the emotional effect on you? What happened in the days after that?

Bundy: Again, please understand that even all these years later, it's very difficult to talk about it, and reliving it through talking about it, it's difficult, to say the least, but want you to understand what happened. It was like coming out of some kind of horrible trance or dream. I can only liken it to, and I don't want to overdramatize it, but I have been possessed by something so awful and so alien; and then the next morning wake up from it, remember, and what happened and realize that basically, I mean, in the eyes of the law, certainly, and in the eyes of God, you're responsible. To wake up in the morning and realize what had done, with a clear mind and all my essential moral and ethical feelings intact at that moment. [It was] absolutely horrified that I was capable of doing something like that.

Dobson: You really hadn't known that before?

Bundy: There is just absolutely no way to describe—first the brutal urge to do that kind of thing, and then what happens. I want people to understand this, too, and I'm not saying this gratuitously because it's important that people understand this. That basically, I was a normal person. I wasn't some guy hanging out at bars, or a bum. Or I was a pervert in the sense that people look at somebody and say I know there's something wrong with him and just tell. But I was essentially a normal person. I had good friends. I lived a normal life, except for this one small, but very potent, very destructive segment of it that I kept very secret, very close to myself, and didn't let anybody know about it. And part of the shock and horror for my dear friends and family, years ago when I was first arrested, was that there was no clue. They looked at me, and they looked at the All-American boy. I mean, I wasn't perfect, but I want to be quite candid with you. I was okay. The basic humanity and basic spirit that God gave me was intact, but it unfortunately became overwhelmed at times. And I think people need to recognize that those of us who in particular pornographic violence—are not some kinds of inherent monsters. We are your sons, and we are your husbands. And we grew up in regular families. And pornography can reach out and snatch a kid out of any house today. It snatched me out of my home 20, 30 years ago, as diligent as my parents were, and they were diligent in protecting their children. And as good a Christian home as we had—and we had a wonderful Christian home—there is no protection against the kinds of influences that there are

Missoula man charged with rape 83

■ MISSOULA — A Missoula man was charged Friday with raping 6-year-old twin sisters in June. Jack H. Swearingen, 27, allegedly forced the girls to take their clothes off and pose for pictures, and also sexually assaulted them.

Swearingen was arrested Thursday after police learned that the girls, who spent the summer with their father in Tacoma, Wash., told their father they had been assaulted by a man named Jack. Detectives spoke with the girl's mother, who confirmed she had a friend named Jack Swearingen.

Police searched Swearingen's Charlo Street house Thursday night and said they found pictures of the naked girls along with pornographic magazines and videos.

Justice of the Peace David Clark set bail at \$25,000.

Michael Moore, Missoulian

1/9/95
8-179

ROUNDUP

Suspect denies sex charges

■ MISSOULA — A Lolo man accused of drugging a teenage boy and then having sex with him pleaded innocent Monday to charges of deviate sexual conduct, sexual assault, criminal endangerment and unlawful restraint.

David Rowland Gibson was arrested in early July after a 14-year-old Lolo boy told a Missoula County sheriff's detective that Gibson had injected him with some kind of drug, possibly LSD. The sexual acts allegedly occurred between June 1 and June 30, although the victim is unsure of the exact dates.

A subsequent search of Gibson's mobile home yielded pornographic magazines and other items of sexual paraphernalia.

Gibson's attorney, public defender Larry Mansch, asked District Judge Douglas Harkin to reduce Gibson's bail, saying that the teen had burglarized Gibson's home and may have fabricated the allegations. Deputy Missoula County Attorney Fred Van Valkenburg said medical evidence suggests the boy was subjected to homosexual sex.

Harkin kept bail at \$5,000.

Michael Moore, Missoulian

Man charged with sexual assault

■ MISSOULA — A Missoula man was charged Friday with felony sexual assault for allegedly performing oral sex on a 14-year-old boy. Shawn Steele, 22, 2227 River Road, allegedly committed the act Dec. 20. An arrest warrant was issued for Steele on Dec. 30, but he didn't make his initial court Justice Court appearance until Friday. According to court documents, the act took place at Steele's home after the child's mother had bathed the boy, then given him to Steele to put to bed. Later that night, the child was taken to the hospital with genital injuries, court records state. A neighbor of Steele's told Missoula County sheriff's Capt Larry Weatherman that the boy's mother previously had shown her magazines with pictures of children performing sexual acts. The mother told the neighbor the magazines belonged to Steele, records state. Weatherman searched Steele's home Dec. 27 and found several pornographic magazines. Justice of the Peace David Clark allowed Steele to remain free on his own recognizance.

B-2—Missoulian, Friday, February 21, 1992

MONTANA ROUNDUP

Lolo man pleads to sex crime

■ MISSOULA — A Lolo man has pleaded guilty to sexually assaulting a 14-year-old boy last summer.

David Rowland Gibson agreed to plead guilty Tuesday to one felony count of sexual assault and one misdemeanor count of unlawful restraint, according to Deputy Missoula County Attorney Fred Van Valkenburg. Charges of deviate sexual conduct and criminal endangerment were dismissed, Van Valkenburg said.

Gibson's trial had been scheduled to begin Tuesday. Gibson was arrested in early July after the Lolo boy told a Missoula sheriff's detective that Gibson had injected him with a drug that made him pass out.

Gibson, v. free bail, in ser. 16 or 16. Gary Jahrig, Missoulian

Obscenity big problem

12/16/44

Whenever an effort to pass effective, up-to-date laws against the dissemination of obscenity and public nudity begins, immediately the media rises in opposition with a misinformation campaign.

The IR article of Friday, Dec. 9, headlined "Nudity coverup sought" was not surprising. It should have been on the editorial page rather than a "news" section.

The facts are that 95.8 percent of Americans, according to your IR definition, could be considered "prudes" and "daffy," as that many Americans live in states that have an obscenity law that makes the dissemination of obscene materials illegal to adults and children (Obscenity Law Bulletin, published by the National Obscenity Law Center of New York). Having Montana citizens fit in the 4.2 percent that do not have such protection indicates a failure of our state and community leaders to address this social problem.

OBSCENITY IS A legal term of art and its definition is part of the *Miller v. California* U.S. Supreme Court decision of 1973 that includes a three prong test for proposed legislation on obscenity.

I have found that most Montanans, when they hear the word obscenity, almost always think of Playboy and Penthouse. The material covered by this obscenity law is not even close in comparison. In several cities, in Montana, there are so-called "adult bookstores" that sell material showing women being tortured in every way you can imagine. I took Rep. Herron into two such stores in Missoula. He was appalled to count 108 videos showing women being crucified, whipped, punctured, hung, bound and gagged, in one store alone.

THE THEME OF most of these videos is that women enjoy being abused. Many of those who treat sexual offenders find that a certain percent believe this "rape myth" and end up acting it out on victims.

Where has the *Independent Record* been on this issue? If these atrocities were being performed on Blacks, Jews, or Hispanics, this paper would come along! Women will always be second class citizens in Montana as long as we permit such material to be sold. This so-called obscenity material is



DALLAS D. ERICKSON is president of *Montana Citizens for Decency Through Law, Inc.* at P.O. Box 4071, Missoula.

sex offenders I have worked with have gone to some type of 'strip show.' In addition, approximately 5 to 10 percent of those offenders have frequented such establishments on a regular basis."

YOUR EDITORIAL POKED fun at the wording of the public indecency bill which, if it becomes law, would make any public nudity illegal as well as public sexual conduct. In your article you quoted John Mac Master, staff attorney for the Legislative Council, as saying "... the nudity clause ... is too broad." The fact is, Mac Master is totally unaware of the U.S. Supreme Court decision upholding the Indiana law that this proposal is modeled after.

It would be interesting to see your paper do a serious factual report on this issue instead of an inaccurate slanted article and an editorial that reminds us of a giddy 12-year-old 'telling dirty jokes. Your complaint about the wording of "the covered male genitalia in a discernibly turgid state" shows an ignorant or uncaring attitude towards the many children that are abused in this way in public parks throughout America. Child molesters many times will masturbate in front of children but never expose their genitals. This is a problem that is not covered by present Montana law.

IT IS ALWAYS people who care about the victims. We will depend on people to see through the shallow reports of your paper and relate to the victims and call their legislators: We will have faith that the voters elected to public office those who will care for their victims by strengthening and enforcing these laws. Oklahoma County in just a few years reduced the rate of rapes by 27 percent. Prosecutor Robert H. Macy said, "Not only is this a dramatic reduction in the number of women and children that experienced the horrors of rape, it has also resulted in the freed up personnel and financial resources by reducing the number of rape trials conducted by this office."

Considering the rise in rapes in Lewis and Clark County alone, doesn't the IR have a responsibility to focus on solutions rather than endorsement of ineffective statutes?

YOUR TURN

protected by the Constitution and according to the U.S. Supreme Court, never has been.

The present Montana obscenity law is out of date, poorly written and unenforceable. Do you want proof? It has been on the books since 1972 during which time even "snuff films" (films in which the children or woman are actually killed) and child pornography were legally sold in Montana and it was never used.

Both the President's Commission in 1970 and the Attorney General's Commission in 1986 found that the largest consumers of this material are boys from 12-17 years of age.

EVEN THOUGH THE IR may deny it and cover up the fact, there are victims of the obscene materials and public indecency that is occurring in our communities. Dr. Michael Scolatti, clinical psychologist from Missoula, who specializes in the assessment and treatment of sexual offenders and victims of sexual abuse and who developed the Sex Offender Treatment Program currently being used at the Montana State Prison stated in a letter to the Missoula City Council on Dec. 3, 1991:

"In my experience, approximately 75 percent of the sexual offenders I have worked with in my outpatient program used some type of pornographic material on a regular basis. In addition, approximately 75 to 80 percent have indicated they are "addicted" to pornography. An estimated 95 percent of the

EXHIBIT 1 H
DATE 1/9/95
HB 83

12/14/94 FR

E. Helena man appears on abuse charge

Bail set at \$2,500

By CAROLYNN FARLEY
IR Staff Writer

An East Helena man appeared in Justice Court Tuesday after being arrested Monday for allegedly sexually abusing two boys when they were eight and 14 years old.

Judge Wallace Jewell formally charged Michael Sheldon Scott, 26, 302 East Clark St., with two counts of sexual intercourse without consent and set his bail at \$2,500.

Jewell said he considered the financial

state of the accused man and the fact Scott has lived in the community for eight years when he determined his bail.

East Helena authorities picked up Scott at his home after one of the boys came down to the police station with his mother and told officials Scott had been abusing him over the course of a few years, according to East Helena Police Chief Ron McGinnis.

In both cases, Scott befriended the single mothers of the boys, gained their trust and then offered to babysit the children, McGinnis said.

According to McGinnis, the boys told him that in addition to sexually abusing them, he

exposed them to pornographic videos and literature.

McGinnis said authorities are still investigating the case and suspect more children will come forward with allegations against Scott.

County Attorney Mike McGrath said his office doesn't plan to file any other charges against Scott at this time.

According to Jewell, if convicted, Scott could face not less than eight years in Montana State Prison and no more than 40 years for each count. He could also be fined not more than \$50,000.



Woman admits abuse

By The Billings Gazette

A woman accused of photographing her 12-year-old daughter being sexually assaulted by her live-in boyfriend pleaded guilty Wednesday in District Court as part of a plea bargain with prosecutors.

The Billings woman, whose name The Gazette is withholding to protect the identity of her daughter, pleaded guilty to sexual abuse of children, a felony that carries a maximum possible penalty of 50 years in prison.

In exchange for her plea, the Yellowstone County attorney's office dismissed four counts of sexual intercourse without consent, by accountability, against the

woman.

District Court Judge William

Speare set sentencing for Feb. 1.

The woman admitted during her court appearance Wednesday that she took pictures of her daughter being assaulted by Todd Anderson, whom she was living with at the time.

A babysitter for the woman last July found several pictures of Anderson and the young girl and notified police. Authorities obtained a search warrant and in addition to the photographs found other pornographic pictures, leather lingerie and books and videotapes depicting incest.

The couple were arrested a few days later in Jordan, where Anderson was working.

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1/11/94 IK

Judge delivers tough sentences on sex offenders

In keeping with his stated policy to move cases through his court in a prompt and precise manner, Ravalli County District Judge Jeffrey Langton sentenced seven individuals on various felony cases on Wednesday.

Ray A. Steele of Stevensville, who had pleaded guilty to sexual assault on a 5-year-old female, was sentenced to 90 years in the Montana State Prison, with the sentence suspended as part of a plea-bargain agreement. Steele was placed on probation with credit for time served in the county jail, ordered to successfully complete a sexual offenders' treatment program, ordered to have no contact with children under the age of 16 without adult supervision, ordered to complete 100 hours of community service, ordered to have no pornography in his possession and not to frequent

establishments where pornographic materials are sold or where nude dancing takes place.

In his reasons for sentencing as he did, Langton said he accepted the plea bargain "with the greatest reluctance" only because of the parents of the victim who stated their reluctance to have their child testify in a court proceeding. Langton warned Steele that even the slightest infraction of probation violations would result in Steele being sent to prison for the entire sentence.

In keeping with that philosophy, Langton sentenced Jimmy L. White to serve a previously suspended 10-year sentence in the Montana State Prison after finding him guilty of violating his probation on a felony conviction of sexual assault on a minor child in 1990. White admitted he

was arrested for DUI and that he had been terminated from a sexual offender treatment program in Missoula, both offenses occurring on Feb. 5. Langton ruled that White will not be eligible for parole until he has successfully completed phase one and two of the prison's sexual offender treatment program and successfully completed a chemical dependency treatment program. He was designated as a non-dangerous offender and given credit for time served in jail.

Koomey William Hook, who had pleaded not guilty to criminal possession of dangerous drugs with intent to sell, withdrew that plea and pleaded guilty to an amended plea of felony criminal possession of dangerous drugs. He received a sentence of five years in the Montana State Prison, with the sentence suspended and Hook placed on probation. Hook

was ordered to serve seven days in the Ravalli County Jail and was required to pay a \$5,000 fine to the Ravalli County drug fund. A misdemeanor charge of possession of drug paraphernalia was dismissed.

On June 11, 1991, Hook was found with a marijuana grow operation in his home west of Victor. In pre-trial hearings the evidence in the case was suppressed on the district court level, but that decision was later overturned by the Montana Supreme Court.

Michelle Cooibough appeared for sentencing on a felony, had check charge under a plea bargain agreement. She received a three-year deferred sentence on the condition of full restitution of the bad checks and payment of a prosecu-

See Judge page 8

RR 2-25-93

**95.8% OF U.S. POPULATION LIVES IN STATES HAVING MILLER - TYPE
STATE OBSCENITY LAW PROSCRIBING OBSCENITY TO ADULTS.**

The population of those States having a state obscenity law which follows the Miller v. California three pronged obscenity test and proscribes the dissemination of obscenity to adults is 238,203,000. The population of the States without such a law is 10,042,000. This means that 95.8% of the U.S. population lives in states having a Miller - type state +obscenity law proscribing the dissemination of obscenity to adults. To look at it from another perspective, there are approximately 24 times as many people living in States where the dissemination of obscenity to adults is proscribed by a Miller - type state law than in states without such a law.

Further, four of the states without a Miller-type state law (Montana being one of the four) authorize municipalities to adopt obscenity laws proscribing obscenity to adults. The States authorizing such local regulation of obscenity make up 2.2% of the U.S. population. This means that only 2% of the population of the United States lives in States where there are no Miller-type state or local laws proscribing obscenity to adults.

(From OBSCENITY LAW BULLETIN, VOL. 13, No. 6, December 1989, published by NATIONAL OBSCENITY LAW CENTER, suite 239, 475 Riverside Drive, New York, N.Y. 10115)

EXHIBIT 15
DATE 1/9/95
HB 83

Rodney K. Smith
4624 Aspen Drive
Missoula, MT 59802

July 27, 1994

Mr. Dallas Erickson
President, Montana Citizens for Decency
through Law, Inc.
P.O. Box 4071
Missoula, MT 59806

Dear Dallas:

I am honored to write a letter, which you may use in conjunction with your efforts to strengthen laws regulating obscenity and pornography throughout Montana. I must note at the outset, however, that I am speaking as a citizen and a parent and not in my role as Dean of The University of Montana School of Law.

I have reviewed the proposed laws that you hope to place on the ballot in Ravalli County and elsewhere. I believe that those laws are constitutional, although they might be challenged by those who have strong economic reasons for supporting growth of the pornography industry. Given the economic power of that industry, legal actions may be initiated. Fear of such law suits should not, however, restrain Montanans from having more restrictive laws in this area to protect men, women, children and families. To capitulate to the threat of a law suit in this area would be like refusing to enforce strong criminal restrictions in the white collar crime area, simply because white collar criminals are more likely to challenge enforcement of those laws.

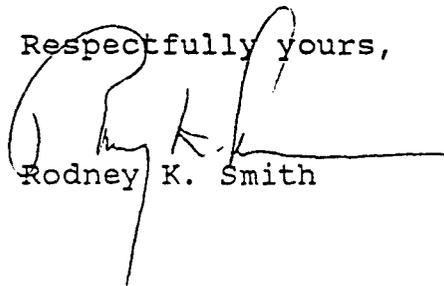
As you know, I am a constitutional lawyer. I tend to be quite libertarian, having worked for various groups, including having served as a consultant to the American Civil Liberties Foundation in Delaware. Nevertheless, in this area, I am convinced that the liberty or freedom issue cuts against purveyors of pornographic and obscene materials. There is increasing evidence of a strong correlation between the distribution of such materials and violence to women and children, violence that deprives the victim of his or her capacity to become a fully expressive (free) individual. In a related sense, I am troubled by the fact that young men, ages 12-17, consume obscene and pornographic material at a very high rate. There is evidence, as well, that would indicate that consumption of such material can lead to an addiction that adversely influences actions toward and relationships with others. Based on these concerns, I am convinced that much liberty is lost by virtue of our willingness to look the other way as the pornography industry profits from the distribution of material that effectively deprives others of their freedom. If you need further evidence regarding these issues, I suggest that you carefully review the work of Dr. Victor Cline. His work was highlighted during the recent War on Pornography Conference in Missoula sponsored by Montana Citizens

Erickson Letter
Page two

for Decency through Law. His views are shared by others who have spent years studying the correlation between pornography and violent criminal activity.

In conclusion, as a citizen, parent and Constitutional lawyer, I am convinced that Montana should increase the regulation of child obscenity and pornography consistent with national Constitutional standards. It is regrettable that we have been willing to promote the growth of the pornography industry in Montana by our inaction. At law, we often hold people responsible for acts of omission, as well as acts of commission. By omitting to act in this area, in a manner permitted by the Constitution, Montanans and their elected representatives are in some measure responsible for the increase in sexually related violence against women and children and the deprivation of liberty that arises as a result of the sale of obscene and pornographic material. I trust, in that spirit, that we will take responsibility and act to ensure that laws are adopted that will recognize the loss of freedom and related growth in criminal activity associated with the sale and distribution of such material.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Rodney K. Smith'. The signature is stylized with a large, looped 'R' and a long horizontal stroke extending to the right.

Rodney K. Smith

HOUSE BILL 83 -- OBSCENITY

HARM: Congress and the 45 states that already have obscenity laws have identified significant harms associated with the illegal traffic in hard-core pornography:

- Where more pornography is available, sexual assault rates are higher.
- Illegal "adult" hard-core pornography is used by more than 90 percent of child molesters to seduce children.
- According to every government commission to study the issue, no matter who purchases hard-core pornography, it winds up in the hands of children, leading to today's increased rates of sexual assault by children, teen pregnancy and sexually transmitted diseases.
- The national distribution of hard-core pornography is controlled by organized crime.

CONSTITUTIONALITY: The language proposed for Montana's obscenity statute is taken word for word from Supreme Court decisions, beginning with Miller v. California, 413 U.S. 15 (1973). The exact test for obscenity proposed for Montana's law is already in place under federal law, and is also the law in 45 other states. Virtually every word of the test for obscenity has been challenged by the \$10-billion per year hard-core porn industry, leaving us with an extensive body of caselaw affirming the validity and effectiveness of the exact language proposed for Montana's law. There can be no serious debate as to this proposed statute's constitutionality.

COMMON MYTHS:

This law will ban R-rated movies and any art that includes nudity. **The statute deals only with hard-core pornography. It must contain patently offensive depictions of specific sex acts defined in state law, be intended to appeal to a shameful or morbid interest in sex, and even then, is still not obscene unless it lacks serious literary, artistic, political or scientific value. No R-rated movies, no Playboy magazine, no art has ever been successfully prosecuted under obscenity statutes since the Miller case in 1973.**

This law is another example of big government interfering in people's lives. **The primary function of government is to protect its citizens. The organized-crime controlled hard-core pornography industry is an outlaw industry that exploits the flesh of women -- many of whom are teenagers off the streets, who receive no health benefits but are paid like prostitutes for each sex act they perform -- in order to make a huge profit. This industry tramples on the rights of people to keep their communities and neighborhoods free from sexually oriented businesses and the increased crime and sexual assaults which accompany such businesses.**

This law interferes with the right to privacy. **There is no right to privacy when private sex acts are publicly photographed and videotaped, publicly reproduced, and publicly distributed and displayed. Widespread availability of hard-core pornography threatens the safety of every man, woman and child in Montana.**

This law will cost lots of money to enforce. **At the federal level, fines and forfeitures against obscenity distributors have more than paid for the cost of prosecution.**

This is not remarkable, for in the area

[413 US 23]

of freedom of speech and press the courts must always remain sensitive to any infringement of genuinely serious, literary, artistic, political or scientific expression. This is an area in which there are few eternal verities.

The case we now review was tried on the theory that the California Penal Code § 311 approximately incorporates the three-stage Memoirs test, *supra*. But now the Memoirs test has been abandoned as unworkable by its author,⁴ and no Member of the Court today supports the Memoirs formulation.

II

[4-7] This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment. *Kois v Wisconsin*, 408 US 229, 33 L Ed 2d 312, 92 S Ct 2245 (1972); *United States v Reidel*, 402 US, at 354, 28 L Ed 2d 813; *Roth v United States*, *supra*, at 485, 1 L Ed 2d 1498.⁵

26 L Ed 2d 385, 90 S Ct 1884 (1970) (dissenting opinions of Burger, C. J., and Harlan, J.) The Redrup procedure has cast us in the role of an unreviewable board of censorship for the 50 States, subjectively judging each piece of material brought before us.

4. See the dissenting opinion of Mr. Justice Brennan in *Paris Adult Theatre I v Slaton*, 413 US, p 73, 37 L Ed 2d p 467.

5. As Mr. Chief Justice Warren stated, dissenting, in *Jacobellis v Ohio*, 378 US 184, 200, 12 L Ed 2d 798, 84 S Ct 1676 (1964):

"For all the sound and fury that the Roth test has generated, it has not been proved unsound, and I believe that we should try to live with it—at least until a more satisfactory definition is evolved. No government—be it federal, state, or local—should be forced to choose between repressing all material, including that within the realm of decency, and allowing unrestrained license to publish any material, no matter how vile. There must be

"The First and Fourteenth Amendments have never been treated as absolutes [footnote omitted]." *Breard v Alexandria*, 341 US, at 642, 95 L Ed 1233, 35 ALR2d 353 and cases cited. See *Times Film Corp. v Chicago*, 365 US 43, 47-50, 5 L Ed 2d 403, 81 S Ct 391 (1961); *Joseph Burstyn, Inc. v Wilson*, 343 US, at 502, 96 L Ed 1098. We acknowledge, however, the inherent dangers of undertaking to regulate any form of expression. State statutes designed to regulate obscene materials must be

[413 US 24]

carefully limited. See *Interstate Circuit, Inc. v Dallas*, *supra*, at 682-685, 20 L Ed 2d 225. As a result, we now confine the permissible scope of such regulation to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed.⁶ A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a

a rule of reason in this as in other areas of the law, and we have attempted in the Roth case to provide such a rule."

6. See, e. g., *Oregon Laws 1971*, c 748, Art 29, §§ 255-262, and *Hawaii Penal Code*, Tit 37, §§ 1210-1216, 1972 *Hawaii Session laws*, Art 9, c 12, pt II, pp 126-129, as examples of state laws directed at depiction of defined physical conduct, as opposed to expression. Other state formulations could be equally valid in this respect. In giving the Oregon and Hawaii statutes as examples, we do not wish to be understood as approving of them in all other respects nor as establishing their limits as the extent of state power.

We do not hold, as Mr. Justice Brennan intimates, that all States other than Oregon must now enact new obscenity statutes. Other existing state statutes, as construed heretofore or hereafter, may well be adequate. See *United States v 12 200-Ft. Reels of Film*, 413 US, p 180 n 7, 37 L Ed 2d p 507.

413 US 15, 37 L Ed 2d 419, 93 S Ct 2607

patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.

[8, 9] The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, *Kois v Wisconsin*, supra, at 230, 33 L Ed 2d 312, quoting *Roth v United States*, supra, at 489, 1 L Ed 2d 1498; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. We do not adopt as a constitutional standard the "utterly without redeeming social value" test of *Memoirs v Massachusetts*, 383 US, at 419, 16 L Ed 2d 1;

[413 US 25]

that concept has never commanded the adherence of more than three Justices at one time.⁷ See supra, at 21, 37 L Ed 2d at 429. If a state law that regulates obscene material is thus limited, as written or construed, the First Amendment values applicable to the States through the Fourteenth Amendment are adequately protected by the ultimate power of appellate courts to conduct an independent review of constitutional

[9] 7. "A quotation from Voltaire in the flyleaf of a book will not constitutionally redeem in otherwise obscene publication . . ." *Kois v Wisconsin*, 408 US 229, 231, 33 L Ed 2d 312, 92 S Ct 2245 (1972). See *Memoirs v Massachusetts*, 383 US 413, 461, 16 L Ed 2d 1, 86 S Ct 975 (1968) (White, J., dissenting). We also reject, as a constitutional standard, the ambiguous concept of "social import-

claims when necessary. See *Kois v Wisconsin*, supra, at 232, 33 L Ed 2d 312; *Memoirs v Massachusetts*, supra, at 459-460, 16 L Ed 2d 1 (Harlan, J., dissenting); *Jacobellis v Ohio*, 378 US, at 204, 12 L Ed 2d 793 (Harlan, J., dissenting); *New York Times Co. v Sullivan*, 376 US 254, 284-285, 11 L Ed 2d 686, 84 S Ct 710, 95 ALR2d 1412 (1964); *Roth v United States*, supra, at 497-498, 1 L Ed 2d 1498 (Harlan, J., concurring and dissenting).

[10, 11] We emphasize that it is not our function to propose regulatory schemes for the States. That must await their concrete legislative efforts. It is possible, however, to give a few plain examples of what a state statute could define for regulation under part (b) of the standard announced in this opinion, supra:

(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.

(b) Patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.

[12-15] Sex and nudity may not be exploited without limit by films or pictures exhibited or sold in places of public accommodation any more than live sex and nudity can

[413 US 26]

be exhibited or sold without limit in such public places.⁸ At a mini-

ance." See id., at 462, 16 L Ed 2d 1 (White, J., dissenting).

[12] 8. Although we are not presented here with the problem of regulating lewd public conduct itself, the States have greater power to regulate nonverbal, physical conduct than to suppress depictions or descriptions of the same behavior. In *United States v O'Brien*, 391 US 367,



EXHIBIT 1L
DATE 1/9/95
HB 82/83

Counseling & Stress Management P.C.

TESTIMONY CONCERNING NUDE DANCING AND PORNOGRAPHY

James W. Ramsey

I have served as a licensed Marriage and Family Therapist in the state of California for a number of years before moving to Missoula, Montana, in 1976. I was then licensed in this state as a Professional Counselor and have worked with over 1500 families or individuals in the Missoula area.

Rather than give you national statistics, I would prefer to share some observations with you that I have made from my private practice in Missoula. Prior to the legalization of gambling, I had no clients at all dealing with compulsive gambling. Since that time, the occurrence of gambling issues in my practice has become significant. At times, up to 25 percent of my case load has directly dealt with gambling issues. Apparently, prior to the legalization of gambling in Montana, a number of individuals in our community were either "latent gamblers" or gamblers who had no opportunity to gamble because it was not available in our state. In any case, now that the opportunity is here, they are having problems. The point I would like to make is that problems concerning gambling are directly related to its availability.

You may be wondering why I bring up gambling when making a case against nude dancing and pornography. Dr. Michael Scolatti, who is the leading expert on sexual crimes in the state of Montana, has testified from his personal experience, both at Deer Lodge and within his practice here in Missoula, that most sexual offenders use either pornography or nude dancing to become aroused and to trigger their sexual crimes. In the limited amount of work that I have personally done with sexual offenders, I have found this same pattern to be true. My clients have told me that they would use pornography to get aroused before committing a rape or some other type of illegal sexual act. Those of us in the Mental Health profession have found an increase in sex-related counseling that correlates with the increase in pornographic entertainment.

It seems very logical to me that if sexual offenders use these kinds of activities to trigger their acts of sexual violence, they would commit those acts within a reasonably short time after their arousal has been triggered, and within a reasonably short distance from where the arousal occurred. Therefore, in the interest of public safety for a given community, it would not seem wise to permit those kinds of triggering sexual entertainment activities to exist. The most effective way to protect all Montanans from sexual crimes would be to enact anti-pornographic legislation on the State level.

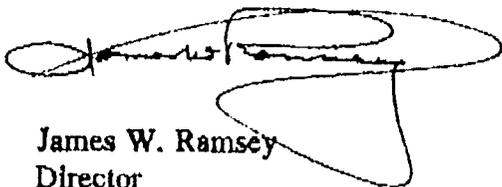
Whether there are latent sexual problems that exist within persons in a given community that progressively become more and more overt with the use of these types of sexual entertainment, or whether individuals who are sexual offenders come from outside the

community to enjoy such entertainment in a given community, the end result is the same: more sexual crimes occur within the community providing the "triggering stimulus". Therefore, we would be well advised to restrict the development of pornographic entertainment for the simple reason of protecting the health and safety of our state's citizens.

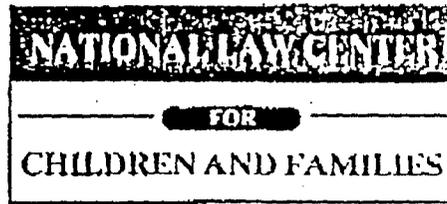
Another observation that I have made through the years is that explicit pornography, whether in a book, magazine, or video tape, can have a tremendously detrimental affect upon children. Quite often, a father, older brother, or uncle might have in the house explicit hard-core porn that he purchased or rented that will find its way into the hands of a pre-adolescent child. It is my personal conviction, based on specific cases that I have worked with, that for children to see any type of explicit pornography can be as damaging as for them as to be sexually abused. They tend to keep the experience a secret, and have guilt over experiencing it. They tend to be preoccupied with the images that they saw, often obsessive compulsively ruminating on them. They frequently are inclined to experiment with other children to try emulating what they saw in the pornographic material, and, therefore, become increasingly guilty over this sexual activity with other children. Likewise, it appears to me that there is a higher likelihood of adolescent boys who have been exposed to pornography as a pre-adolescent to sexually abuse younger children than if they had not been exposed to the material.

I think our state is making a huge mistake by having explicit pornographic material so available to children and adolescents. It appears to me to be very likely that we will see a tremendous upsurge in the sexual abuse of children as a result of this permissive attitude toward pornography. Therefore, I strongly encourage the members of the Montana State Legislature to pass laws that eliminate the sale of hard-core pornography in our State.

Sincerely,

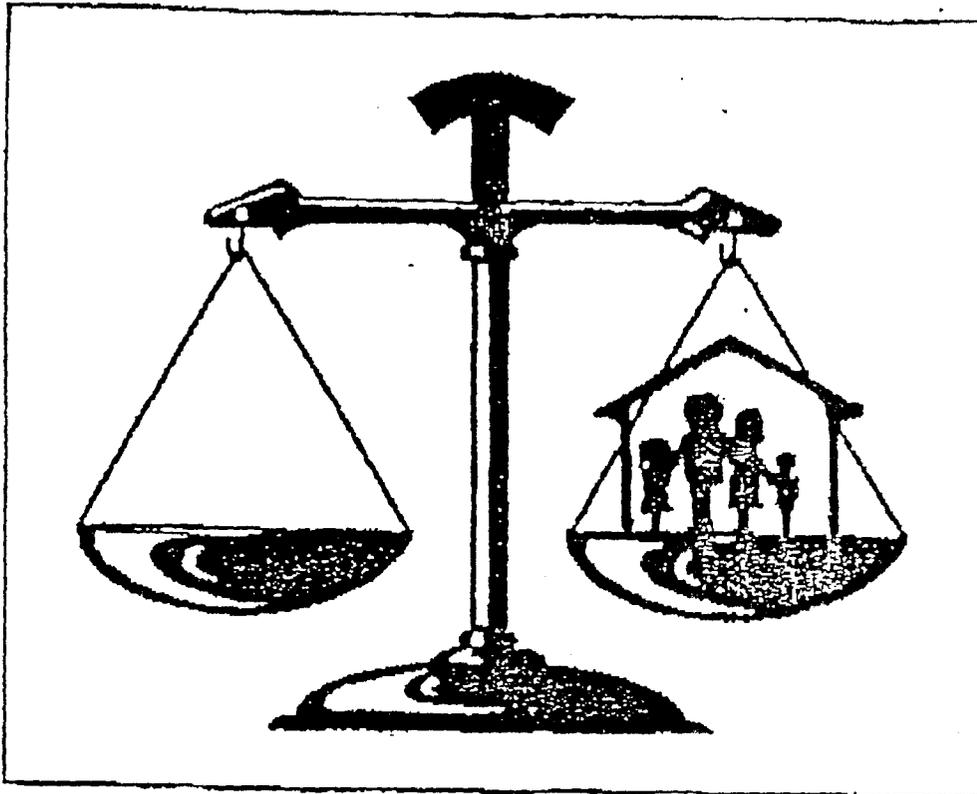
A handwritten signature in black ink, appearing to read "James W. Ramsey". The signature is stylized with a large, sweeping loop at the end.

James W. Ramsey
Director



Attachment #1

EXHIBIT 1.01
 DATE 4/9/95
 HB 82/83



SUMMARY OF LAND USE STUDIES

- | | |
|-----------------------------|----------------------------|
| 1. Garden Grove, California | 8. Oklahoma City, Oklahoma |
| 2. Phoenix, Arizona | 9. Amarillo, Texas |
| 3. Los Angeles, California | 10. Austin, Texas |
| 4. Whittier, California | 11. Beaumont, Texas |
| 5. Indianapolis, Indiana | 12. Houston, Texas |
| 6. Minneapolis, Minnesota | 13. Seattle, Washington |
| 7. Cleveland, Ohio | |

OVERVIEW: The study examines crime statistics for 1978 comparing areas which have sexually oriented businesses with those that do not. The results show a marked increase in sex offenses in neighborhoods with sexually oriented businesses, with modest increases in property and violent crimes as well.

Three study areas (near locations of sexually oriented businesses) and three control areas (with no sexually oriented businesses) were selected. The study and control areas were paired according to the number of residents, median family income, percentage of non-White population, median age of population, percentage of dwelling units built since 1950, and percentage of acreage used for residential and non-residential purposes.

CRIME: Three categories of criminal activity were included in the study: Property crimes (burglary, larceny, auto theft), Violent crimes (rape, murder, robbery, assault), and sex crimes (rape, indecent exposure, lewd and lascivious behavior, child molestation).

Average results from all three study/control areas, sex offenses were 506% greater in neighborhoods where sexually oriented businesses were located. (In one study area, sex crimes were more than 1,000% above the corresponding control area.) Property crimes were 43% greater. Violent crimes were only slightly higher (4%). Even excluding indecent exposure arrests (the most common sex offense), other sex crimes (rape, lewd and lascivious behavior, child molestation) in the study areas were 132% greater than control areas.

REQUIREMENTS: The Phoenix ordinance requires sexually oriented businesses to locate at least 1,000 feet from another sexually oriented business and 500 feet from a school or residential zone. Approval by the City Council and area residents can waive the 500 foot requirement. A petition which is signed by 51% of the residents in the 500 foot radius who do not object must be filed and be verified by the Planning Director.

EXHIBIT 1 m
DATE 1/9/95
§ 1 HB 82/93

LAND USE STUDY: CITY OF LOS ANGELES, CA

DATE: JUNE, 1977

OVERVIEW: The Department of City Planning studied the effects of the concentration of sexually oriented businesses on surrounding properties for the years 1969-75 (a time of proliferation for such businesses). The report focuses on five areas with the greatest concentration of these businesses (compared to five "control" areas free of them), and cites data from property assessments/sales, public meeting testimony, and responses from two questionnaires (one to business/residential owners within a 500 foot radius of the five study areas and a second to realtors/real estate appraisers and lenders). Crime statistics in the study areas were compared to the city as a whole. Also included: a chart of sexually oriented business regulations in eleven major cities, details of current regulations available under state/municipal law, and appendices with samples of questionnaires, letters, and other study materials.

PROPERTY: While empirical data for 1969-75 did not conclusively show the relation of property valuations to the concentration of sexually oriented businesses, more than 90% of realtors, real estate appraisers and lenders responding to city questionnaires said that a grouping of such businesses within 500-1,000 feet of residential property decreases the market value of the homes. Also, testimony from residents and business people at two public meetings spoke overwhelmingly against the presence of sexually oriented businesses citing fear, concern for children, loss of customers and difficulty in hiring employees at non-adult businesses, and the necessity for churches to provide guards for their parking lots.

CRIME: More crime occurred in areas of sexually oriented business concentration. Compared to city-wide statistics for 1969-75, areas with several such businesses experienced greater increases in pandering (340%), murder (42.3%), aggravated assault (45.2%), robbery (52.6%), and purse snatching (17%). Street robberies, where the criminal has face to face contact with his victim, increased almost 70% more in the study areas. A second category of crime, including other assaults, forgery, fraud, counterfeiting, embezzlement, stolen property, prostitution, narcotics, liquor laws, and gambling increased 42% more in the study areas over the city as a whole.

RECOMMENDATIONS: The study recommended distances of more than a 1,000 feet separating sexually oriented businesses from each other, and a minimum of 500 feet separation of such businesses from schools, parks, churches and residential areas.

LAND USE STUDY: WHITTIER, CALIFORNIADATE: JANUARY, 1978

OVERVIEW: After experiencing a rapid growth of sexually oriented businesses since 1969, the Whittier City Council commissioned a study of the effects of the businesses on the adjacent residential and commercial areas. At the time of the study, Whittier had 13 such businesses: 6 model studios, 4 massage parlors, 2 bookstores, and 1 theater. Utilizing statistics, testimonies, and agency reports, the study compared two residential areas and four business areas over a span of 10 years (1968-1977). One residential area was near the largest concentration of sexually oriented businesses, the other had no commercial frontage but was chosen because of similar street patterns, lot sizes and number of homes. For businesses, Area 1 had six sexually oriented businesses, Area 2 had one, Area 3 had three, and Area 4 had none. 1973 was selected as the year to compare before/after effects of these businesses. Two chief concerns cited in the report are residential/business occupancy turnovers and increased crime.

OCCUPANCY TURNOVER: After 1973, 57% of the homes in the sexually oriented business area had changes of occupancy, compared to only 19% for the non-sexually oriented business area. Residents complained of "excessive noise, pornographic material left laying about, and sexual offenders (such as exhibitionists) venting their frustrations in the adjoining neighborhood." Citizens also expressed concern about drunk drivers coming into the area. Business Area 1, with the highest concentration of sexually oriented businesses (6), experienced a 134% increase in annual turnover rate. Area 3, with three adult businesses at one location, showed a 107% turnover rate. Area 2 (with 1 adult business) had no measurable change and Area 4 (with no commercial or sexually oriented businesses) experienced a 45% decrease in turnover from similar periods.

CRIME: The City Council looked at the two residential areas for the time periods of 1970-73 (before sexually oriented businesses) and 1974-77 (after such businesses). In the sexually oriented business area, criminal activity increased 102% (the entire city had only an 8.3% increase). Certain crimes skyrocketed (Malicious Mischief up 700%; All Assaults up 387%; Prostitution up 300%). All types of theft (petty, grand, and auto) increased more than 120% each. Ten types of crime were reported for the first time ever in the 1974-77 period.

RECOMMENDATIONS: The Council's report recommended a dispersement type ordinance that prohibits sexually oriented businesses closer than 500 feet to residential areas, churches and schools. Distances between such businesses was recommended at 1,000 feet. In addition, the study proposed a 1,000 foot separation from parks because of their use by citizens after normal working hours. Sexually oriented businesses would be given an 18-36 month amortization period (if the change involved only stock in trade, a 90 day period was recommended).

EXHIBIT 1 m
DATE 1/9/95
1 HB 82/83

LAND USE STUDY: INDIANAPOLIS, IN

DATE: FEBRUARY, 1984

OVERVIEW: After a 10 year growth in the number of sexually oriented businesses (to a total of 68 on 43 sites) and numerous citizen complaints of decreasing property values and rising crime, the city compared 6 sexually oriented business "study" areas and 6 "control" locations with each other and with the city as a whole. The study and control areas had high population, low income and older residences. In order to develop a "best professional opinion," the city collaborated with Indiana University on a national survey of real estate appraisers to determine valuation effects of sexually oriented businesses on adjacent properties.

CRIME: From 1978-82, crime increases in the study areas were 23% higher than the control areas (46% higher than the city as a whole). Sex related crimes in the study areas increased more than 20% over the control areas. Residential locations in the study areas had a 56% greater crime increase than commercial study areas. Sex related crimes were 4 times more common in residential study areas than commercial study areas with sexually oriented businesses.

REAL ESTATE: Homes in the study areas appreciated at only 1/2 the rate of homes in the control areas, and 1/3 the rate of the city. "Pressures within the study areas" caused a slight increase in real estate listings, while the city as a whole had a 50% decrease, denoting high occupancy turnover. Appraisers responding to the survey said one sexually oriented business within 1 block of residences and businesses decreased their value and half of the respondents said the immediate depreciation exceeded 10%. Appraisers also noted that value depreciation on residential areas near sexually oriented businesses is greater than on commercial locations. The report concludes: "The best professional judgment available indicates overwhelmingly that adult entertainment businesses--even a relatively passive use such as an adult bookstore--have a serious negative effect on their immediate environs."

RECOMMENDATIONS: Sexually oriented businesses locate at least 500 feet from residential areas, schools, churches or established historic areas.

LAND USE STUDY: MINNEAPOLIS, MN

DATE: OCTOBER, 1980

OVERVIEW: This report is divided into two sections: the relationship of bars and crime and the impact of "adult businesses" on neighborhood deterioration. In the study, an "adult business" is one where alcohol is served (including restaurants) or a sexually oriented business (i.e., saunas, adult theaters and bookstores, rap parlors, arcades, and bars with sexually oriented entertainment). Census tracts were used as study areas and evaluated for housing values and crime rates. Housing values were determined by the 1970 census compared to 1979 assessments. Crime rates were compared for 1974-75 and 1979-80. The study is strictly empirical and reported in a formal statistical manner; therefore it is difficult for layman interpretation of the data.

FINDINGS: The report concludes that concentrations of sexually oriented businesses have significant relationship to higher crime and lower property values. Other than statistical charts, no statements of actual crime reports or housing values are included in the report. Thus, the lay reader has only the most generalized statements of how the committee interpreted the empirical data.

RECOMMENDATIONS: First, that adult businesses be at least 1/10 mile (about 500 feet) from residential areas. Second, that adult businesses should not be adjacent to each other or even a different type of late night business (i.e., 24-hour laundromat, movie theaters). Third, that adult businesses should be in large commercial zones in various parts of the city (to aid police patrol and help separate adult businesses from residential neighborhoods). The report said "policies which foster or supplement attitudes and activities that strengthen the qualities of the neighborhoods are more likely to have desired impacts on crime and housing values than simple removal or restriction of adult businesses."

EXHIBIT 1 m
DATE 1/9/95
HB 82/83

LAND USE STUDY: CLEVELAND, OH

DATE: AUGUST 24, 1977

OVERVIEW: This police department report is taken from information given by Captain Delau participating in a panel discussion at the National Conference on the Blight of Obscenity held in Cleveland July 28-29, 1977. The topic was "The Impact of Obscenity on the Total Community." Crime statistics are included for 1976 robberies and rapes. Areas evaluated were census tracts (204 in the whole city, 15 study tracts with sexually oriented businesses). At the time of the study, Cleveland had 26 pornography outlets (8 movie houses and 18 bookstores with peep shows). Their location was not regulated by city zoning laws.

FINDINGS: For 1976, study tracts had nearly double the number of robberies as the city as a whole (40.5 per study tract compared to 20.5 for other city tracts). In one study tract with five sexually oriented businesses and 730 people, there were 136 robberies. In the city's largest tract (13,587 people, zero pornography outlets) there were only 14 robberies. Of the three tracts with the highest incidence of rape, two had sexually oriented businesses and the third bordered a tract with two such businesses. In these three, there were 41 rapes in 1976 (14 per tract), nearly seven times the city average of 2.4 rapes per census tract.

CONCLUSIONS: "Close scrutiny of the figures from the Data Processing Unit on any and every phase of the degree of crime as recorded by census tracts indicates much higher crime rate where the pornography outlets are located."

LAND USE STUDY: OKLAHOMA CITY, OK

DATE: MARCH 3, 1986

OVERVIEW: This study contains the results of a survey of 100 Oklahoma City Real Estate Appraisers. Appraisers were given a hypothetical situation and a section to comment on the effects of sexually oriented businesses in Oklahoma City. The hypothetical situation presented a residential neighborhood bordering an arterial street with various commercial properties which served the area. A building vacated by a hardware store was soon to be occupied by an "adult" bookstore. No other sexually oriented businesses were in the area and no other vacant commercial space existed. With less than a one month response time, 34 completed surveys were received by the city.

FINDINGS: 32% of the respondents said that such a bookstore within one block of the residential area would decrease home values by at least 20%. Overwhelmingly, respondents said an "adult" bookstore would negatively effect other businesses within one block (76%). The level of depreciation is greater for residences than businesses. The negative effects on property values drop sharply when the sexually oriented business is at least three blocks away. In the subjective portion, 86% of the respondents noted a negative impact of sexually oriented businesses on Oklahoma City. Frequent problems cited by the appraisers included the attraction of undesirable clients and businesses, safety threats to residents and other shoppers (especially children), deterrence of home sales and rentals, and immediate area deterioration (trash, debris, vandalism).

CONCLUSIONS: Oklahoma City's findings supported results from other national studies and surveys. Sexually oriented businesses have a negative effect on property values, particularly residential properties. The concentration of sexually oriented businesses may mean large losses in property values.

EXHIBIT 1m
DATE 1/9/95
HB 82/83

LAND USE STUDY: AMARILLO, TX

DATE: SEPTEMBER 12, 1977

OVERVIEW: This Planning Department report cites several sources including national news magazines, "adult business" ordinances from other cities, an American Society of Planning Officials report and pertinent Supreme Court decisions. Lengthy explanation of the Miller test (with legal definitions), discussion of Young v. American Mini Theaters, and a comparison of the Boston and Detroit zoning models are included. The city defined "adult businesses" as taverns, lounges, lounges with semi-nude entertainment, and bookstores or theaters with publications featuring nudity and explicit sexual activities. At the time, Amarillo had 3 such theaters and 4 bookstores with space for such publications.

FINDINGS: The police department provided an analysis showing that areas of concentrated "adult only" businesses had 2 1/2 times the street crime as the city average. The Planning Department concluded that concentrations of these businesses have detrimental effects on residential and commercial activities caused by 1) noise, lighting and traffic during late night hours 2) increased opportunity for street crimes and 3) the tendency of citizens to avoid such business areas. The study noted that lack of zoning regulations would lead to concentrations of sexually oriented businesses (causing increased crime) or more such establishments locating near residential areas or family and juvenile oriented activity sites (churches, parks, etc.)

RECOMMENDATIONS: 1) Adult businesses locate 1,000 feet from each other. No recommended distance was specified from residential zones or family/juvenile activities. 2) City development of an amortization schedule and permit/licensing mechanism. 3) City regulation of signs and similar forms of advertising. 4) Vigorous enforcement of State Penal Code, especially relating to "Harmful to Minors." 5) City amendments prohibiting minors from viewing or purchasing sexually oriented materials (enforced physical barriers).

LAND USE STUDY: AUSTIN, TX

DATE: MAY 19, 1986

OVERVIEW: The report was the basis for developing an amendment to existing sexually oriented business ordinances. At the time, 49 such businesses operated in Austin, mostly bookstores, theaters, massage parlors and topless bars. The study examined crime rates, property values, and trade area characteristics.

The report focused on sexually related crimes in four study areas (with sexually oriented businesses) and four control areas (close to study areas and similar). Two study areas had one sexually oriented business and the others had two such businesses. To determine the effects of these businesses on property values, the city sent surveys to 120 real estate appraising or lending firms (nearly half responded). For trade area characteristics, 3 businesses (a bookstore, theater and topless bar) were observed on a weekend night to determine customer addresses.

CRIME: Sexually related crime ranged from 177-482% higher in the four study areas than the city average. In the two study areas containing two sexually oriented businesses, the rate was 66% higher than in the study areas with one such business. All control areas had crime rates near the city average.

REAL ESTATE: 88% said that a sexually oriented business within one block of a residential area decreases the value of the homes (33% said depreciation would be at least 20%). Respondents also said such a business is a sign of neighborhood decline, making underwriters hesitant to approve the 90-95% financing most home buyers require. They said commercial property is also negatively effected by such businesses.

TRADE AREA CHARACTERISTICS: Of 81 license plates traced for owner address, only 3 lived within one mile of the sexually oriented business. 44% were from outside Austin.

RECOMMENDATIONS: 1) Sexually oriented businesses should be limited to highway or regionally-oriented zone districts. 2) Businesses should be dispersed to avoid concentration. 3) Conditional use permits should be required for these businesses.

EXHIBIT 1 m
DATE 1/9/95
~~X~~ HB 92/83

LAND USE STUDY: BEAUMONT, TX

DATE: SEPTEMBER 14, 1982

OVERVIEW: This report by the city Planning Department encourages amendments to existing "adult business" ordinances to include eating or drinking places featuring sexually oriented entertainment (strippers, etc.). Zoning laws required "adult uses" to locate 500 ft. from residential areas; 300 ft. from any other adult bookstore, adult theater, bar, pool hall or liquor store; and 1,000 ft. from a church, school, park, or recreational facility where minors congregate.

CRIME: Police verified that bars, taverns, and lounges (especially those with sexually oriented entertainment) are frequent scenes of prostitution and the sale/use of narcotics. On the whole, all criminal activity was higher at sexually oriented businesses.

RECOMMENDATIONS: 1) Add eating/drinking places that exclude minors (under Texas law), unless accompanied by a consenting parent, guardian or spouse. 2) Require specific permits for areas zoned as General Commercial-Multiple Family Dwelling Districts. 3) Reduce the required distance of sexually oriented businesses from residential areas, schools, parks, and recreational facilities from 1,000 to 750 ft.

LAND USE STUDY: HOUSTON, TXDATE: NOVEMBER 3, 1983

OVERVIEW: Report by the Committee on the Proposed Regulation of Sexually Oriented Businesses determining the need and appropriate means of regulating such businesses. Four public hearings provided testimony from residents, business owners, realtors, appraisers, police, and psychologists. The committee and legal department then reviewed the transcripts and drafted a proposed ordinance. More hearings obtained public opinion on the proposal and the ordinance was refined for vote by the City Council.

TESTIMONY: The testimony was summarized into six broad premises: (1) The rights of individuals were affirmed. (2) Sexually oriented businesses could exist with regulations that minimize their adverse effects. (3) The most important negative effects were on neighborhood protection, community enhancement, and property values. (4) Problems increased when these businesses were concentrated. (5) Such businesses contributed to criminal activities. (6) Enforcement of existing statutes was difficult.

ORDINANCE: (1) Required permits for sexually oriented businesses (non-refundable \$350 application fee). (2) Distance requirements: 750 ft. from a church or school; 1,000 ft. from other such businesses; 1,000 ft. radius from an area of 75% residential concentration. (3) Amortization period of 6 months that could be extended by the city indefinitely on the basis of evidence. (4) Revocation of permit for employing minors (under 17), blighting exterior appearance or signage, chronic criminal activity (3 convictions), and false permit information. (5) Age restrictions for entry.

EXHIBIT 1m
DATE 1/9/95
31 HB 82/83

LAND USE STUDY: SEATTLE, WA

DATE: MARCH 24, 1989

OVERVIEW: The report concerns a proposed amendment to add topless dance halls to existing land use regulations for "adult entertainment establishments." Seattle had eight such dance halls (termed "adult cabarets"), six established since 1987. The study relies on reports from a number of cities, including Indianapolis, Los Angeles, Phoenix, Austin and Cleveland.

FINDINGS: The increased number of cabarets resulted in citizen complaints, including phone calls, letters (from individuals and merchants associations), and several petitions with hundreds of signatures. Protests cited decreased property values; increased insurance rates; fears of burglary, vandalism, rape, assaults, drugs, and prostitution; and overall neighborhood deterioration. The report notes that patrons of these cabarets most often are not residents of nearby neighborhoods. Without community identity, behavior is less inhibited. Increased police calls to a business, sirens, and traffic hazards from police and emergency vehicles are not conducive to healthy business and residential environments.

RECOMMENDATIONS: Since city zoning policy is based on the compatibility of businesses, the report recommends that the cabarets locate in the same zones as "adult motion picture theaters." This plan allows about 130 acres for such businesses to locate throughout the city.

Testimony of Gene McConnell

EXHIBIT 1A
DATE 1/9/95
HB 82-83

My name is Gene McConnell. As Regional Director of the National Coalition Against Pornography in California I have studied hundreds of pages of documentation proving the harmful effects of unregulated pornography and adult business on communities. The primary reason for submitting my testimony, however, is that as a former sex addict, I have experienced that harm firsthand.

My addiction began at an early age, when most sexual addictions begin. The largest single group of consumers of pornography is the 12 to 17 year-old male. The material draws them in, and distorts their attitudes about healthy sexual behavior. For some of them, like myself, the pull of this material becomes almost inescapable.

Once men become engrossed with or addicted to these kinds of sexual stimulations, adult businesses step in to fill their needs. For men like me, these businesses act as magnets, almost irresistible. They draw an addict into a progressive cycle. My use of soft-core pornography was soon not enough to satisfy me. I was drawn to adult bookstores, live nude establishments, massage parlors, and the prostitutes who are always available around these kinds of businesses.

Since most of you have probably never visited these kinds of businesses, let me explain a bit about how they tend to operate - details you probably won't read on the business license application.

First let me mention the adult bookstores. When I started going to the bookstores, I would always find a group of men loitering near the arcade booths. Nearly always, some of them would proposition me for sex. Although I refused these invitations, it was clear that many men were using the arcade booths as a preferred location for anonymous sex, going behind the doors of these booths together. The owners or clerks were not only aware of this behavior, but openly promoted it. Each booth had a box of tissues and a trash can. When these accessories were missing, the walls and the floor of the booths would invariably be covered with semen. The booths were poorly lit and had doors on them to contribute to the secrecy of the sexual encounters. On the way out of the adult book store, prostitutes often approached me. I accepted their offers on numerous occasions.

The next progression of my addiction was to live nude establishments. Here a real person is doing and performing what I had viewed in the magazines and videos. The usual routine involved three dances, each on revealing more of the body. By the third dance, there was nothing left to the imagination, they were at work in the art of seduction. They acted like

they wanted you, hoping you would leave them a large tip. Then the girl would leave the stage, and wait on the customers. Many times I offered more money for a special "one on one" table dance...leading to sex for the right price. Often the prostitutes walked the streets outside or just around the corner from the facility.

Finally, I began to frequent the massage parlors. Without exception, these places were simply fronts for prostitution. Many times I went in to find several girls paraded in front of me. I was to pick one or more. (Each additional girl was more money) They would always be skimpily dressed. They would have me go to a locker room, undress, and put my clothes in a locker. I was given a towel and led to a private room. Once in the room, the girl I elected would ask if I would like to see an adult movie. I would say yes, then she would turn on hard-core pornography while she gave a massage. Somewhere in the middle of the massage she would ask if I wanted something more. When I asked what she meant, she would describe several sexual acts, each with a different price. I reiterate that in all the years that I went to these places, I never found one that was not a front for prostitution.

My sexual addiction reached its height when I finally decided to act out all those images I had been taking in over the years - material seen or purchased at adult businesses. I was arrested for attempted rape. The attack was my responsibility, but there is no doubt that pornography was the fuel, the drug I used to prepare for my crime. I do not think the crime would ever have occurred without it. Ask a serial rapist or other sexual criminal what could be done to stop them from committing more crimes and many of them will tell you is to take away their pornography.

The connection between pornography, adult businesses and the rape and molestation rate in a community is clear, not only from talking to criminals, but also statistically. One excellent example of this is Oklahoma City.

Over a five year period, beginning in 1984, over 150 "sex-oriented" businesses (including peep shows, adult bookstores, and theaters) were closed in Oklahoma City. During that period, the rape rate declined 26 percent. During the same time period, the rape rate for the rest of Oklahoma, where adult businesses were not brought under control, increased 20.8 percent.

As a former addict, there is no question in my mind that pornography has a profound impact on a person viewing the material. It is subtle and has a latency period, not always an immediate impact, on the individual. Much like a cigarette, where constant use leads to cancer, constant exposure to pornography will eventually lead to what the material portrays, that is, the devaluation of meaningful relationships and sexual violence towards women and children.

EXHIBIT 2
DATE 1/9/95
HB 82

MARK H. MOZER, Ph.D.
Clinical Psychologist
Suite 4G, Arcade Building
Helena, MT 59601
(406) 442-0333

January 8, 1995

Mr. Chairman and members of the committee:

I am Dr. Mark Mozer, and I am a clinical psychologist from Helena. I have worked for 17 years as a consultant at Montana State Prison, and I have evaluated several hundred sex offenders.

Typical sex offenders avail themselves of a variety of types of sexual stimulation, including nude dancing. Public displays of sexually suggestive acts serve to sustain sexual deviance among sex offenders, and, in some cases, appear to have aroused such individuals to commit a sex crime.

I have also been a consultant at the women's prison, and have worked with a number of young women who performed in nude dancing establishments. Without exception, these were drug-dependent, emotionally disturbed young women, who often came into such employment off the streets. This is an industry which preys upon its vulnerable young employees.

While there are no clear statistics showing the contribution of public displays of sexually suggestive acts to the development of sexual deviance, I cannot imagine why we allow such public displays in an age of rising sex crimes, in the absence of any discernable redeeming social value of such displays.

This body has the opportunity to ban public displays of sexually suggestive acts, which appear to contribute to sexual deviance among sex offenders, and serve to degrade women. We owe the decent citizens of Montana the protection of a "do pass" recommendation on House Bill 82.



MARK H. MOZER, Ph.D.
Clinical Psychologist

2021 Hwy 141
Helmville, MT
January 9, 1995

House Judiciary Committee
State Capitol Building
Helena, Montana 59602

EXHIBIT 3
DATE 1/9/95
4B 82

Mr. Chairman and committee members,

I am grateful today for the privilege of testifying in regard to house bills 82 and 83. I am speaking on behalf of the "Enough is Enough!" campaign. This is a national grass-roots organization of women, endorsed by such prominent women as Barbara Bush and Hillary Clinton, and formed to take action against child pornography, hard-core and other illegal pornography in the local community.

The evidence is overwhelming and undeniable. Obscene material is abusive and predatory. It triggers a chain of destruction which victimizes all of us, but particularly women and children.

Nudity and overt sexual conduct in public affects the behavior of the viewer in the same way as exposure to obscene material does. With sex related crimes and sexually transmitted diseases now rampant in our society, house bills 82 and 83 will afford a measure of protection.

For these reasons I urge you to support these two bills with your vote for passage.

Thank you,
Wilma Wortman
"Enough is Enough!"

EXHIBIT 4
DATE 1/9/95
HB 82 + 83

To: House Judiciary Committee

1-9-95

From: Patricia Wilson RN Lactation Educator

Re: HB 82 & HB 83 Public Indecency

I want to exclude breastfeeding in HB 82. I'm an RN that teaches breastfeeding in a hospital. I do teach modesty. Getting a child (that is active) to latch on sometimes a woman would show ~~she~~ some of her breast or nipple.

However I feel strongly that breastfeeding is not ~~an~~ illegal conduct nor obscene or indecent. The woman is not flaunting herself. She is feeding her child naturally and the way her body is intended to work after child birth.

I'm concerned about the definition of obscene in HB 83. Does this mean that parents can't take pictures of their child's birth or the proverbial nude babe on the sheepskin ... will these be taken away.

Lastly, is there a fiscal note on this bill? With the broad base as it stands what would be the estimated cost of enforcing this law. ~~cost~~ In WA the cost was estimated at \$4,000,000.00

~~I explicitly~~

I want to exclude breastfeeding in public places

EXHIBIT 4A
DATE 1/9/95
HB 82

Committee 312-2800

(71)

TO: REP SEN RYAN JOHNSON
DATE 1-9-95 TIME 7:45 AM

YOU HAVE A PHONE MESSAGE FROM:

NAME VICKI BODLEY
1943 MARIPOSA LN
ADDRESS BILLINGS
59102
PHONE 256-1243

PLEASE RETURN CALL YES NO
SEE NOTE BELOW FOR AGAINST
SB# _____
HB# 82

Is lactation consultant;
Concern especially L. 148 L. 26.
Requests addendum to exclude
breast feeding women
Claire

EXHIBIT 5

DATE 1/9/95

HB 82 + 83

To: House Judiciary Committee 1-9-95
From: Lynn Cordaro RN, IBCLC
Re: HB 82 & HB 83 Public Indecency

I am a hospital nurse and Lactation Consultant. I am concerned that the proposed changes in public decency laws could be used against breastfeeding mothers.

In other states similar laws have been used to force nursing mothers to leave public places, or even to arrest them.

In Florida + New York legislatures have recently gone back to change their laws to specifically exclude mothers who are breastfeeding anywhere from possible arrest for indecent exposure.

They have done this with clause excluding brief nipple exposure secondary to infant feeding. I encourage you to do the same.

Everyone knows that breastfeeding is nutritionally and emotionally superior infant feeding. Breastfed babies also have fewer illnesses. Nursing is a mother's choice. We all save health care dollars when mothers choose to breastfeed.

There are enough barriers to successful nursing without new mothers having to worry about possible arrest for indecent exposure simply for meeting a child's need.

The purpose of this behavior is to nourish

and nurture an infant not for sexual stimulation.

Breastfeeding is a natural part of mothering.
It is not indecent.

If you decide to change public decency laws, I urge you to specifically exclude breastfeeding mothers from threat of prosecution.

EXHIBIT 6
DATE 1/9/95
HB 82

Dianne Baker
4109 Illinois Bench
Stevensville, MT 59870

January 8, 1995

Hearing for House Bill 82-Public Indecency

TO WHOM IT MAY CONCERN:

I am a registered voter, fourth generation Montanan, a wife, and mother of eleven children. When I was a child over thirty-five years ago, I was taught that a woman was never to go into a bar, that women smokers were disgusting, and that it was illegal to have sexual intercourse with anyone other than the person you were married too. My parents were not what you might term the religious right as they never attended church or spoke of religious things. I introduce this view point not because it is the same point of view that I have or the opinion I think you should have but because it is such a contrast between what a set of liberal parents taught thirty five years ago and what we see happening in Montana today.

Do you realize that thirty-five years ago there were no billboards advertising liquor in Montana? There were no abortion clinics, no legalized gambling, no porno shops, no nude dancing, drugs were not common and Marijuana was something smoked in the big cities.

In my family I have eight aunts and uncles, only two of them had been married twice. Things have sure changed today. Of the six of us children in my family, only one has only been married once. The rest have between two and seven marriages each. My family isn't that much different from other families I have spoken with. Why the breakups in marriages and all the heartache for adults and children that come with theses breakups? I strongly think that many of the things that I have mentioned that have been introduced into Montana in the last thirty-five years are a big part of the problem.

I say let's get back to the old ways of doing things. Lets clean up Montana. Passing House Bill 82 is a step in the right direction.

Sincerely,



Dianne Baker

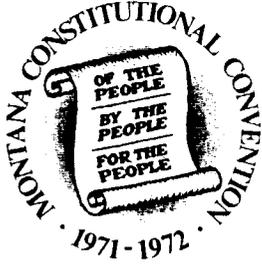


EXHIBIT 7
DATE 1/9/95
HB 82 & 83

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

JANUARY 9, 1995

HEARING ON HOUSE BILL 82

CREATING THE CRIME OF PUBLIC INDECENCY;
LIMIT THE CRIME OF INDECENT EXPOSURE TO PRIVATE PLACES.

TESTIMONY:

I am Bob Campbell, a 1972 Constitutional Convention Delegate and the author of the Freedom of Expression provision in Article II, Section 7 of the Declaration of Rights in the Montana Constitution. Freedom of Expression is a separate and distinct right as a cornerstone with our Freedom of Speech and Freedom of the Press also guaranteed in that section.

The question presented by HB 82 is whether or not a new criminal offense of Public Indecency is needed in Montana and whether the crime of Indecent Exposure should be weakened to only allow an officer to make an arrest in private places.

Twenty years ago the members of this committee were presented with the same proposal by a small group to expanded the criminal law into making nudity a crime. The members of this committee immediately rejected the bill and that is what I am asking you to do today. There is no indication that law enforcement finds vague nudity terms any more enforceable since rejected then.

By rejecting the proposed Public Indecency crime you should not, as proposed by this bill, weaken our present Indecent Exposure law in Section 45-5-504, MCA by removing the ability of law enforcement to make an arrest in a public place.

The testimony that follows will specifically show why HB 82 is an infringement of our Montana Freedom of Expression, why it is not necessary, why it is so poorly worded that it would create an enforcement nightmare for law enforcement, and a waste of taxpayers money trying defend in an already over crowded court and correctional system.

The contents of this bill have already subjected the legislature to ridicule and you should not prolong consideration of HB 82 when so much serious legislation needs your attention.

Your goal is to produce less government and more individual freedom to succeed this session. This can only be done with a DO NOT PASS vote on HB 82.

Ron J. Silvers, M.Ed. LPC
25 S. Ewing, Suite 500
Helena, MT 59601
(406) 442-7170

EXHIBIT 8
DATE 1/9/95
HB 82

Mister Chairman, members of the Committee, thank you for the opportunity to testify. 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 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.

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.

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

EXHIBIT 9
DATE 1/9/95
HB 82

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

January 9, 1995

Robert Clark, Chairman
House Judiciary Committee

Mr. Chairman, Members of the Committee:

For the record, my name is Samantha Sanchez, President of the Board of Directors for the American Civil Liberties Union of Montana.

In addition to my verbal testimony voiced today in opposition to HB 82, I am submitting the enclosed written explanation of our position.

WHY THE ACLU OPPOSES CENSORSHIP OF "PORNOGRAPHY"

■ Sexually explicit material, in literature, art, film, photography and music, has always been controversial in the United States, from James Joyce's *Ulysses* -- which was banned in the 1930s -- to rap music performed by 2 Live Crew, a target of prosecution in the 1990s. Traditionally, political conservatives and religious fundamentalists have been the primary advocates of tight legal restrictions on sexual expression, based on their view that such expression undermines public morality. In the late 1970s, however, those traditional voices were joined by a small but extremely vocal segment of the feminist movement. These women, who do not by any means speak for all feminists, charge that "pornography" is a major cause of discrimination and violence against women and should, therefore, be suppressed.

Although unsupported by any reliable evidence, this theory has been especially influential on college and law school campuses, leading to several incidents in which speech and works of art -- including works by women artists -- have been labeled "pornographic" and censored. Even classics like Francisco de Goya's painting, *The Nude Maja*, have been targeted.

The American Civil Liberties Union has fought censorship from the time of its founding in 1920. In our early days, we defended sex educator/activists Margaret Sanger and Mary Ware Dennett against criminal obscenity charges. Today, we continue to defend the free speech rights of all expression, including sexual expression. We believe that the suppression of "pornography" is not only damaging to the First Amendment, but also impedes the struggle for women's rights.

Here are some answers to questions often asked by the public about the ACLU's opposition to the suppression of pornography.

IS PORNOGRAPHY PROTECTED BY THE FIRST AMENDMENT?

■ Yes. The First Amendment absolutely forbids the suppression of ideas or images based on their content alone. Moreover, a basic tenet of U.S. Supreme Court jurisprudence is that laws must be "viewpoint" neutral. And even though the Court has carved out a narrow exception to the First Amendment for a category of sexually explicit material deemed "legally obscene," the term "pornography" has no legal significance at all.

The dictionary defines pornography simply as writing or visual images that are "intended to arouse sexual desire." Pro-censorship feminists have greatly expanded the common meaning of pornography, redefining it as "the sexually explicit subordination of women through pictures and/or words." They then define "subordination" as the depiction of women "in postures or positions of sexual submission, servility, or display." These extraordinarily subjective interpretations would apply to everything from religious imagery to news accounts of mass rape in Bosnia. Because the Supreme Court has consistently ruled that the government may not make content-based rules limiting free speech, material that

depicts "the subordination of women" enjoys the same First Amendment protection afforded material that depicts women in other ways. Were that not so, the government could suppress any ideas it didn't like, rendering the First Amendment meaningless.

IS PORNOGRAPHY A FORM OF DISCRIMINATION AGAINST WOMEN?

■ Sexually explicit words and images aimed at arousing sexual desire -- pornography -- constitute a form of expression. Pro-censorship feminists seek legal recognition of their counter-claim that such images are a form of sex discrimination because they reinforce stereotypes of women as inferior. The architects of the latter concept are law professor Catharine MacKinnon and writer Andrea Dworkin, who drafted a model law that would permit any woman claiming to have been harmed by pornography to bring a civil lawsuit for monetary damages, and to halt the production, distribution and sale of pornographic works.

The model law has been considered in numerous locales around the country, but when it was adopted by the Indianapolis City Council in 1984 it collapsed under a legal challenge brought by a coalition of booksellers and publishers and supported by the ACLU as a friend-of-the-court. Leaving no doubt that the law targeted expression, federal Judge Sara Barker wrote: "To deny free speech in order to engineer social change in the name of accomplishing a greater good for one sector of our society erodes the freedoms of all and... threatens tyranny and injustice for those subjected to the rule of such laws."

The ACLU's fears about the censorious effects of the MacKinnon/Dworkin law have been borne out in Canada, where the Canadian Supreme Court incorporated that law's definition of pornography into a 1992 obscenity ruling. Since then, more than half of all feminist bookstores in Canada have had materials confiscated or the sales of some materials suspended by the government. The most susceptible to repression have been stores that specialize in lesbian and gay writings.

WOULDN'T RIDDING SOCIETY OF PORNOGRAPHY REDUCE SEXISM AND VIOLENCE AGAINST WOMEN?

■ Although pro-censorship feminists base their efforts on the assumption that pornography causes violence against women, such a causal relationship has never been established. 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."

Correlational studies are similarly inconclusive, revealing no consistent correlations between the availability of pornography in various communities or countries and sexual offense rates. If anything, studies suggest that a greater availability of pornography seems to correlate with higher indices of sexual equality. Women in Sweden, with its highly permissive attitudes toward sexual expression, are much safer and have more civil rights than women in Singapore, where restrictions on pornography are very tight.

DOESN'T PORNOGRAPHY EXPLOIT THE WOMEN WHO PARTICIPATE IN ITS PRODUCTION?

■ The ACLU supports the aggressive enforcement of already existing civil and criminal laws to protect women from sexual violence and coercion in the process of making sexually oriented material. At the same time, we oppose the notion, advanced by anti-pornography feminists, that women can *never* make free, voluntary choices to participate in the production of pornography, and that they are *always* coerced, whether they realize it or not. This infantilization of women denies them the freedom of choice to engage in otherwise legal activities.

There are cases of women who say they were coerced into working in the pornography industry, the most well known being "Linda Lovelace," who starred in the movie "Deep Throat." But the majority of women who pose for sexually explicit material or act in pornographic films do so voluntarily. Indeed, these women resent attempts to outlaw their chosen occupation. As one actress exclaimed, "For them to tell me I can't make films about naked men and women making love is a grotesque violation of *my* civil rights."

WHY DOES THE ACLU SAY THAT ANTI-PORNOGRAPHY LAWS HARM WOMEN'S STRUGGLE FOR FULL LEGAL EQUALITY?

■ A core idea of the anti-pornography movement is the proposition that *sex per se* degrades women (although not men). Even consensual, nonviolent sex, according to MacKinnon and Dworkin, is an evil from which women -- like children -- must be protected. Such thinking is a throwback to the archaic stereotypes of the 19th century that formed the basis for enacting laws to "protect" women from vulgar language (and from practicing law or sitting on juries lest they be subjected to such language). Paternalistic legislation such as that advocated by MacKinnon and Dworkin has always functioned to prevent women from achieving full legal equality.

Furthermore, history teaches that censorship is a dangerous weapon in the hands of government. Inevitably, it is used against those who want to change society, be they feminists, civil rights demonstrators or gay liberationists. Obscenity laws, especially, have been used to suppress information and art dealing with female sexuality and reproduction. Thus, the growing influence of anti-pornography feminism threatens to undermine long-established principles of free speech.

Finally, the focus on sexual imagery and symbols diverts attention from the real causes of discrimination and violence against women, as well as from problems such as unequal pay, lack of affordable childcare and sexual harassment in the workplace.

TESTIMONY AGAINST HB 82

My name is Russell W. Lawrence. My wife and I own a small business in Hamilton, Chapter One Book Store. I am also the secretary of, as well as a performer and director for, the Hamilton Players, Inc., a local theater group in Hamilton.

I am here to testify against HB 82 because of the overly broad language it contains that would have a chilling effect on the arts in Montana. In the last five years or so I have personally attended four performances of major productions by reputable companies in Missoula that would have been illegal under a strict reading of this statute. "Man of La Mancha" and "Pippin," both produced by MCT, Missoula Community Theater, and "Lend Me a Tenor," produced by the Montana Repertory Theatre and toured throughout the Northwest, all contained what could only be construed as acts of "simulated sexual intercourse," which, however stylized or abstract, still would be illegal under this bill. The University of Montana production of "Hair" would have been prohibited because of brief nudity. Further, the opera "Jesus Christ, Superstar" and the passion plays I have seen presented at Easter include acts of flagellation, also prohibited under Section 1(a).

These productions were attended by thousands of people, who suffered no appreciable harm from their experience.

I have no idea how many other shows in the state would have been affected, but the point is that this bill makes no provision for legitimate theatrical presentations, wherein it is frequently important that the audience understands a sexual encounter has taken place. Do you really want to prohibit these cultural events?

A further example of the ridiculously broad language: every day for the last twenty years, as I get dressed I place in my left front pocket a bandana and a pocketknife. Now, is that what you see when you look at me, or am I appearing before you in "a discernible state of turgidity," as per section 3-a-iii. Which one of you wants to make that call, and how do you propose to preserve the evidence until the county attorney arrives?

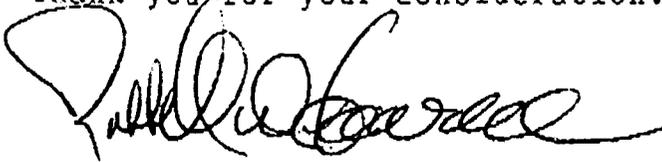
Now, if the proponents of this bill want to write something that bans nude dancing in bars, they're welcome to try. But this bill that you have before you is so poorly written it will have consequences far beyond what they state they are trying to accomplish.

Furthermore, the overwhelming political trend of the last few years has been to return government to local control. A mechanism exists under current state law for counties or communities to enact such ordinances on a local level. Ravalli county just did so, but Missoula county rejected it. That was

their choice. Given the political climate, isn't it presumptuous of you state legislators to impose something on Missoula County that they have already rejected? This would be a shining example of big government imposing something that the people don't want.

I urge you to examine the unintended effects of this poorly-written legislation, and to consider the message it sends of big government telling people what they can and can't view, and reject it. Please vote against HB 82.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Russell W. Lawrence". The signature is fluid and cursive, with a large initial "R" and "L".

Russell W. Lawrence
512 Blodgett Camp Road
Hamilton MT 59840

EXHIBIT 11
DATE 1/9/95
HB 83

MARK H. MOZER, Ph.D.

Clinical Psychologist
Suite 4G, Arcade Building
Helena, MT 59601
(406) 442-0333

January 8, 1995

Mr. Chairman and members of the committee:

I am Dr. Mark Mozer, and I am a clinical psychologist from Helena.

In my 17 years as a consultant at Montana State Prison, I have evaluated several hundred sex offenders, the large majority of which have utilized pornography as a part of their sexual deviancy. Research, in fact, shows that pornography plays a role in the sexual practices of 85% of sex offenders.

The role that pornography plays in the development of sexual deviancy is illustrated by the case of a mentally retarded individual that I evaluated a few years ago. This individual had been quite sheltered during his upbringing, and wandered into an adult bookstore as a young man, because a sign in the window advertising t-shirts had caught his eye. He literally received his sex education in the adult bookstore, and developed a number of highly deviant sexual interests. He was arrested when he took pictures of a small child in a state of undress, and took the pictures in to a drug store for developing.

That individual's experience illustrates what happens when an impressionable mind, such as that of a child, comes in contact with sexually deviant material. Experts working with sex offenders agree that a child's mind is a blank slate with respect to sexual development, and early sexual experiences write a powerful, lasting impression. Should the type of material that House Bill 83 seeks to ban fall into the hands of children, it becomes a recipe for future sexual deviance.

Sexual deviance is on the rise: the proportion of sex offenders housed at Montana State Prison rises with each passing year. Even more tragically, the incidence of sex offenses by children is rising, and one generally finds exposure to pornographic material in these cases.

If we could have banished the pathogens causing measles, polio, and any number of childhood diseases by simply passing a law, we would have done so years ago, for the sake of our children. This body has the opportunity to ban one of the pathogens leading to sexual deviance, a disease of the mind with roots in childhood. We owe the children of Montana a "do pass" recommendation on House Bill 83.


MARK H. MOZER, Ph.D.
Clinical Psychologist

EXHIBIT 12
DATE 1/9/95
HB 83

January 9, 1995 - House Judiciary Committee

Mr. Chairman, Members of the Committee, my name is Arlette Randash and I am representing Eagle Forum, a grassroots nationwide organization of women committed to strong families and sound government policy. We urge passage of HB 83.

However, the effort to make our communities obscene free crosses all political lines. Permit me to share with you a feminist, and University of Michigan Law School professor, Catherine MacKinnon's's position:

Insert.

Ladies and gentlemen, that sounds like a description you might expect of material available in California or the seamier side of New Orleans. But last night I canvassed Helena and what I found shocked me. The worst was in a convenience store, the favorite hangout of young children attending a primary grade school my own children once attended. What I found was so dangerous, so obscene, I was numb. I rented the videos and have brought them today. Out of respect for each of you I will leave them in this bag on that table. Should you want to view the video jackets I invite you to do so. After you do, nothing more will need to be said--I urge a "do pass" on HB 83.

An act of violence against women

Akin to lynching, it doesn't deserve legal safeguards

U of MICHIGAN Law School Prof
BY CATHARINE A. MACKINNON
SPECIAL TO THE EXAMINER

A few years back, during a referendum campaign in Cambridge, Mass., on a civil rights ordinance against pornography that Andrea Dworkin and I conceived, a photocopied leaflet was placed on cars and telephone poles in several neighborhoods late one night. Over a large scrawled black swastika, it said: "Help stop commie kike lezzie c---s* from telling us what we can read." This little triumph of economy of abuse referred, of course, to the supposed politics, religious heritage, sexuality and gender of the ordinance's proponents, and made the further quaint assumption that consuming pornography is reading.

While we absorbed this and pondered what to do, to our astonishment the police decided that a crime had been committed and confiscated most of the leaflets before morning. We had forgotten that Massachusetts has a law against group defamation. Freedom of speech in Massachusetts seems to have survived the existence of this law and this instance of its enforcement. Our ordinance in Cambridge did not survive its detractors, however, who defended pornography in the name of freedom of speech.

Pornography has a central role in actualizing a system of subordination of women to men in the contemporary West. Women in pornography are bound, battered, tortured, harassed, raped and sometimes killed; or, in the glossy men's entertainment magazines, "merely" humiliated, molested, objectified, and used. In all pornography, women are prostituted. This is done to provide sexual pleasure to pornography's consumers and profits to its providers, many of them from organized crime. In order to produce what the consumer wants to see, it must first be done to someone, usually a woman, a woman with few real choices. Because the customer wants to see it done, it is done to her.

To understand how pornography works, one must know what is there. In the hundreds and hundreds of magazines, pictures, films, video-cassettes and so-called books now available across America in outlets from adult stores to corner groceries, women's legs are splayed in postures of sexual submission, display and access. We are named after men's insults to parts

of our bodies and mated with animals. We are hung like meat. Children are presented as adult women; adult women are presented as children, fusing the vulnerability of a child with the sluttish eagerness to be penetrated said to be natural to the female of every age. Racial hatred is sexualized; racial stereotypes are made into sexual fetishes. Asian women are presented so passive they cannot be said to be alive, bound so they are not recognizably human, hanging from trees and light fixtures and clothes hooks in closets. Black women are presented as animalistic bitches, bruised and bleeding, struggling against their bonds. Jewish women have orgasms in re-enactments of actual death camp tortures.

In so-called lesbian pornography, women do what men imagine women do when men are not around, so men can watch. Pregnant women, nursing mothers, amputees, other disabled or ill women, and retarded girls, their conditions fetishized, are used for sexual excitement. In the pornography of sadism and masochism, better termed assault and battery, women are bound, burned, whipped, pierced, flayed and tortured. In some pornography called "snuff," women or children are tortured to death, murdered to make a sex film.

Documenting the harm

Hearings held by the Minneapolis City Council when our pornography ordinance was introduced there in 1983 documented the harms of pornography in proceedings one member of the city's Civil Rights Commission likened to the Nuremberg trials. Women told how pornography was used to break their self-esteem, train them into sexual submission, season them to forced sex, intimidate them out of job opportunities, blackmail them into prostitution and keep them there, terrorize and humiliate them into sexual compliance, and silence their dissent.

They told of being used to make pornography under coercion, of the force that gave them no choice about viewing the pornography or performing the sex. They told how pornography stimulates and con-

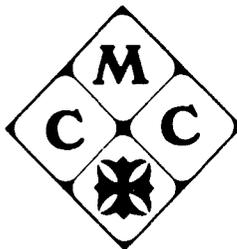
done rape, battery, sexual harassment, sexual abuse of children and forced prostitution. Those not expressly coerced into pornography were there for the same reasons other women are in prostitution: poverty, sexual abuse as children, homelessness, hopelessness, drug addiction and desperation. Those who say women are in pornography by choice should explain why it is women who have the fewest choices who are in it most.

In the hearings, women spoke of being coerced into sex so that pornography could be made of it. They spoke of being raped in a way that was patterned on specific pornography that had been read and referred to during the rape, of being turned over as the pages were turned over. One spoke of her father using pornography on her mother, and to silence her protest against her mother's screams, threatening to enact the scenes on the daughter if she told anyone. Another young woman spoke of being gang-raped by hunters who looked up from the pornography at her and said it all: "There's a live one."

Research studies and laboratory experiments documented the same

reality women documented from life. They showed that exposure to violent pornography increases men's punishing behavior toward women; that pornography that portrays sexual aggression as pleasurable for the victim — as so much pornography does — increases the acceptance of the use of coercion in sexual relations. Even pornography not considered violent was shown to lower inhibitions on aggression by men against women, increase sexual callousness toward women, decrease the desire of both sexes to have female children, increase reported willingness

LOW MURKIN
JUN 17
SAN FRANCISCO
EXAMINER
NOV. 29, 1992



Montana Catholic Conference

January 9, 1995

Chairman Clark, members of the committee, my name is Sharon Hoff. I am the executive director, Montana Catholic Conference and in that capacity, represent Montana's two Roman Catholic Bishops in 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.

Pornography, 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, much bigger than prostitution, 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 pornography 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. Pornography 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.

EXHIBIT 14
DATE 1/9/95
HB 83

Terry Crooks
662 Cherry Creek Rd.
Libby, Montana 59923

Testimony delivered to Montana State Legislature,
House Judiciary Committee.

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

Before the laws were passed, the opposition to these laws presented arguments focused on the uneducated. They used paranoia and hysteria to convince people that if these laws were 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. We do not have the problem of public nudity.

Please remember these facts in your consideration of the obscenity and public nudity laws.

Sincerely,


Terry Crooks

EXHIBIT 15
DATE 1/9/95
HB 83

Dianne Baker
4109 Illinois Bench
Stevensville, MT 59801

January 8, 1995

Hearing for House Bill 83-Obsenity

TO WHOM IT MAY CONCERN;

I am a forty-six year old wife and mother of eleven children, the last one adopted. I have worked with the youth and adults for the past twenty five years. Among the positions I have held in that time period are President of a youth organization, teacher of youth and adults, Den Leader, Webelos Leader, and teacher's aide. I have enjoyed serving in these areas.

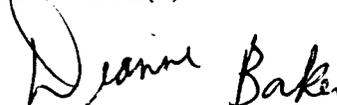
I love people and love for people to be happy. When people feel good about themselves they are happy. I have seen so many times the lack of self esteem the children have for themselves and adults have for themselves when they abuse their bodies, for example; smoking, taking illegal drugs, drinking alcoholic beverages, watching movies that portray others abusing their bodies, taking or allowing others to have sexual liberties with their bodies outside the bonds of marriage, and abortion.

I know three women that have had abortions and I often see and feel an anger in them that I don't see in any of my other women friends. These women do not feel good about themselves and they are not happy. Our law system has told them that abortions are alright but they are the ones suffering from the effects of those lies.

I know many smokers that started smoking as youth. They would love to quit now but don't have the mental strength to quit. How much better it would have been for them to have never started.

Now you have a chance to pass a law that will keep many from ever getting hooked on pornography. It will keep many from ever coming into contact with it because it will not be readily available nor will it be sanctioned by the laws. Pornography is an addictive evil that brings good to no one. Passing this law will be a benefit to many that may never know how much it has helped them because they will never fall into the addictive pornography trap. Please do your part to pass this law for the benefit, self esteem, and happiness of your fellow Montanans.

Sincerely,



Dianne Baker

EXHIBIT 16
DATE 1/9/95
HB 83

Testimony before the Judiciary Committee on HB 83/Obscenity

January 9, 1995

Linda Troutt, President,

Montana Citizens for Decency through Law; Ravalli County

I am here today as a mother and a grandmother to speak for the children. Research shows that over 90% of children have seen pornography and the average age of those exposed is nine years old. 80% of pornography purchased by adults finds its way into the hands of children who are then warped and injured by what they see. Every day a child sees pornography for the first time and they are never the same. They are robbed of their childhood and the innocence.

Counselors tell us that children who are exposed to pornography cannot distinguish between looking at pictures and being sexually molested. They carry the same kind of guilt and the same kind of shame. According to "Adult Video News," one of the largest selling hard core video series of all time is entitled "Taboo." The theme of this series is incest.

Sexually transmitted diseases now strike more children each year than were stricken with polio during the 11 year polio epidemic. Children ought not have sexually transmitted diseases.

A typical child molester will abuse over 360 children during his lifetime. Adolescent boys ages 12-17 are among the largest consumer of pornography.

I spoke at a meeting recently on this subject and after the meeting a young mother came to me and asked, "How can I protect my children. I am so afraid they will be exposed to this stuff!" She has 3 young boys in the public school system and as she spoke she had some books in her arms which she hugged to her heart as if she were trying to hold her little boys close to protect them.

What could I tell her? Pornography is everywhere. In my area it has been found at the school bus stop, on the playground, and yes, even in the classroom. A teacher told me one of her male students had pornography tucked inside his book and when she confronted him about it he looked at her and said, "And what are you going to do about it?"

We mothers and grandmothers are asking you here today, "What are you going to do about it? You have the power and the opportunity to pass this bill. Please do this and help us protect our children. Thank you

HB 83

EXHIBIT 17
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HB 83

My name is Jerry Skillman. I am president of the Montana Chapter of the Video Software Dealers Association. This organization, on a state and national level, is the trade group for video retailers I am here as a representative of that group.

I don't want to take up a lot of your time or bore you with old and tired arguments. I would like to tell you about the consequence of this type of legislation on video stores that have had to deal with it in other states. But first I want to take a moment to offer a personal observation. I, and many of my colleague are conservative, Republican businessmen. We believe that our philosophy of less government being good government is ~~now the watchword of this legislative body.~~ *now the watchword of this legislative body.*

That philosophy is rooted in the knowledge that politicians and bureaucrats are not good social engineers. More laws are not the answer to most social problems, and I hope this new majority in the Montana legislature agrees with me.

Now having said that, let me tell what happens typically when a video store is charged with obscenity under these laws that rely on this broad definition based on the average person applying community standards. Many times, knowing the financial burden will be heavier than the average "Mom and Pop" business

will be able to endure, and the reluctance to be paraded before the community as a "smut peddler", ^{has convinced} ~~these~~ stores ^{to} ~~have~~ capitulated without a fight. In cases where there has been a legal battle, The offending business has had it's inventory confiscated as evidence, and while the revenue producing ability of the store is locked away in an evidence locker the store owner spends large quantities of money mounting their defense. This generally averages \$30,000.00 to \$50,000.00, but can easily add up to \$100,000.00. Most typically these contested cases have culminated in the business being exonerated or with a hung jury. In the meantime the business fails as a result of the interruption of trade and the extremely large expense. So even though a jury doesn't return a guilty verdict, the accused has had his reputation badly damaged and his business is destroyed.

Now if any police officer or county attorney could come into my store and tell me specifically which movies might qualify as obscene under this law I might be able to remove them from my inventory and avoid a lot of trouble. The problem is, that would be called "prior restraint", and it is not legal. The only way for anyone to know which items in the inventory are prohibited are to wait for the jury to return a decision. The video store owner is then forced to err on the side of caution or risk prosecution. Erring on the side of caution is called "self censorship", and the Supreme Court has ruled many times that is a violation of First Amendment rights.

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This is an industry that has worked hard to be good citizens. VSDA members endorse a "Pledge to Parents", which outlines our policies regarding the rental of questionable material to young people. I will provide you a copy of that. Also video stores have an impressive record in their compliance with the MPAA movie rating system. This is what it looks like. Also we have in the last two or three months developed and implemented a rating system for video games, which is designed to prevent sexually explicit or excessively violent material from being rented to youngsters. Also, I personally have removed a fair amount of product, over the years, from my business because I did not believe it contributed to the well being of the community. And I know of many other owners who have made similar decisions. This is the way social change should occur. Not forced under the threat of intrusive laws that will cost everyone more than we can afford and may not even be enforceable. We already have a goodly amount of law protecting people. I believe there is no reason to establish a whole new class of victims and criminals in this state with this kind of legislation.

Thanks for your time.

PLEDGE TO PARENTS



The Video Software Dealers Association's Recommended Pledge Regarding the Rental or Sale of Videotapes to Persons Under Seventeen Years of Age

Laws aimed at protecting minors from the influence of "harmful" or "violent" videotapes have been introduced in a number of state legislatures. Many of these laws were introduced as a result of the widespread perception that children can enter a video store and rent whatever they desire.

The Video Software Dealers Association is aware that this is an inaccurate perception. Therefore, in order to educate the public about the prevailing practice in the industry, and to promote parental confidence in that practice, VSDA is issuing a PLEDGE TO PARENTS that may be adopted by video retailers in their own businesses.

A copy of the PLEDGE TO PARENTS statement is contained on the certificate included in this insert.

VSDA members can choose to subscribe to this PLEDGE and make it publicly available to their customers in order to underscore the proposition that industry self-regulation is preferable to any legislative solution.

While a retailer's adoption of the PLEDGE TO PARENTS is a voluntary decision, VSDA encourages all video retailers, regardless of whether they are members of VSDA, to adhere to the PLEDGE.

The manner in which parental consent may be given under point (1) will vary according to the method that works best for each store. Some video stores allow parents to designate restrictions in their computer membership files. Others provide that entrusting the membership card to the child constitutes parental permission. However, VSDA recommends that, in order to avoid ambiguities, a parental consent section (such as the one on the following page) should be included in the printed customer membership agreement for each store that adopts the PLEDGE TO PARENTS.

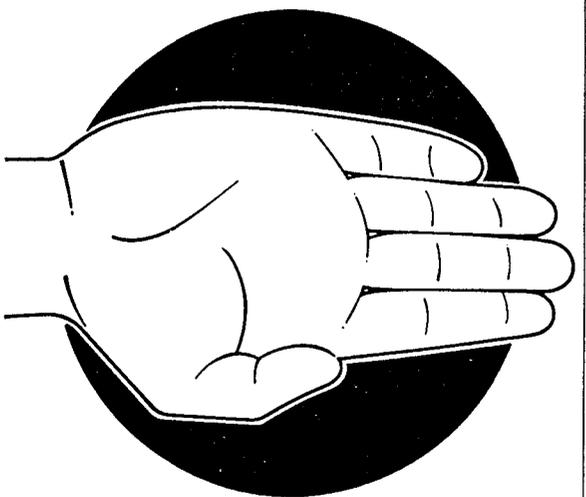
In addition to restricting minors' access to videotapes rated "R" or "NC-17" by the MPAA, the PLEDGE TO PARENTS provides video dealers with an option to make the determination that other tapes — including those not rated by the MPAA — should not be rented or sold without parental consent to persons under 17. To make such a determination, video dealers will be required to evaluate the content of particular videotapes, with their evaluation based on a screening of the tape, box art, published reviews, or similar information.

Of course, each store is free to make its own determination with respect to the sale or rental to minors of tapes that are not rated "R" or "NC-17." VSDA assumes that dealers will be guided in these matters by their own discretion and an assessment of the standards of the community in which they operate.

Each video store which adopts the PLEDGE TO PARENTS will be provided, upon request, with a PLEDGE TO PARENTS poster. Details regarding distribution of the poster will be made available shortly. In the meantime, please feel free to make use of the PLEDGE TO PARENTS certificate as you see fit.

You should be aware that adoption of the PLEDGE TO PARENTS and restriction of rental and sale to minors does not necessarily protect a dealer from legal liability. For example, films rated "NC-17" may well include "adult" films which, depending upon the particular community, might be deemed obscene and, therefore, illegal. Hence, each dealer will need to consider whether the rental or sale of a particular video, either to a child or to an adult, might be in violation of local community standards regardless of how it is rated or whether parental consent has been given.

OUR PLEDGE TO PARENTS



1. It is the policy of this store not to rent or sell videotapes designated as restricted to persons under the age of 17 without parental consent. Such designation includes (a) all tapes rated "R" by the Motion Picture Association of America and (b) any other tapes determined by our store to be of such a nature as to require parental consent for persons under the age of 17.
2. It is the policy of this store not to rent or sell videotapes rated "NC-17" by the Motion Picture Association of America to persons under the age of 17, or to rent or sell to such persons any other tape determined by our store to be unsuitable for them.

EXHIBIT 18
DATE 1/9/95
HB 83

TESTIMONY OF JACQUELINE LENMARK
ON BEHALF OF
MONTANA BUSINESS OWNERS CONCERNED WITH FREE EXPRESSION

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 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 82 and HB 83.**

These proposed bills are an attempt to rewrite Montana's obscenity and public indecency statutes to expand their 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

HB 83 attempts to redefine "obscenity" as well as repeal a current law that provides protection to non-owner employees of theaters--the projectionist, usher, popcorn seller. 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. Currently the definition of obscene material specifically excludes motion pictures or videos rated G, PG, PG-13, or R. This proposed legislation removes the language regarding under the age of 18, making the statute applicable to all consenting adults and also removes the exemption for movies and videos rated less than X. 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.

Most importantly, the proposed legislation removes any element of intent or knowledge in the commission of the offense. The "obscenity" of the material will not be determined until after the creation, sale, delivery, or possession of the material and apart from the intent of the creator, seller, delivery person, or owner of the 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.

HB 82

HB 82 proposes a new law that would prohibit "nudity," which the statute defines to include the showing of buttocks or the female breast. This statute is so broad that it would prohibit breast feeding, wearing revealing swim suits in public, the costumes currently worn by Grizzly cheerleaders, or a health club patron's unclad walk from the shower to his or her locker. Additionally the bill proposes amending the current indecent exposure statute to prohibit conduct in the privacy of one's own home, a particularly dangerous focus to place in criminal law.

CONSTITUTIONAL CHALLENGE

Apart from the very real impact both bills will have on business, both bills are subject to constitutional challenges, under US and Montana law.

The proposed bills are 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.

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1 HB 83

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 reflect those guidelines verbatim. To enact legislation that departs from the enunciated test opens the legislation to serious challenge.

Supporters will cite a more recent Supreme Court decision, *Barnes v. Glen Theatre, Inc.*, 111 S.Ct. 2456 (1991), involving an Indiana statute similar to that proposed here as legal authority approving such statutes. The reliance is misplaced, however. The *Barnes* decision was reached by only three of the justices, with four dissenting and two specially concurring. Its legal precedential value is negligible and would be applicable only to an identical factual situation. The Sixth Circuit Court of Appeals recognized this fact and in a later decision commenting on *Barnes* stated: "this splintered decision provides little clear guidance for resolving the question of whether the Akron ordinance [an ordinance substantially similar to the proposed legislation] at issues here impermissibly infringes expressive conduct protected by the First Amendment." *Triplette Grille, Inc. v. Akron*, 63 USLW 2313 (Nov. 1994). The Sixth Circuit struck down the Akron ordinance.

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.

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."

THE PROPOSED LEGISLATION IS UNNECESSARY

Finally, the two bills proposed are 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.

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X HB 83

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 these two proposed measures. The trouble with the bills, however, is that in their well-intentioned effort to protect, they cast a net that is too wide. Law is supposed to give notice of the conduct that will be considered and punished as criminal. These bills, 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 chill the free availability of literature, art, and entertainments now available to Montanans.

Testimony to House Judiciary Committee, January 9, 1995, HB 82 and HB 83.

EXHIBIT 19
DATE 1/9/95
HB 83

Testimonu of Deborah Schlesinger,
House Judiciaru Committee

Januaru 9.1994

~~Madam~~ Chairman, Members of the Committee, for the record my name is Deborah Schlesinger and I am Vice Chair of the Montana Cultural Advocacy. The Cultural Advocacy is a broad coalition of arts and cultural organizations in Montana. I am testifuing against HB83. I will be brief and I hope to the point.

There is no reason to change the existing law. It works well and it has provisions in it for more restrictive local statutes. The existing law makes provisions for local initiative and local control and recognized the variabilities in local community standards. There is no reason to intrude the State into dictating what should be a local community decision. We would hope to get Government out of our face not have it more prominatelly in our face

There are adequate and very enforceable existing Federal anti obscenity and child pornography laws in existence. The Montana law that now exists is adequate and reasonable and protects those that need protection.

The proposed law is an unwarranted intrusion in the private lives of adults and is too overly broad in its scope. As a practicing Librarian I can tell you that most Best sellers are filled with the kinds of sexual descriptions and sexual content as well as graphic violence that appeals to someone's prurient interests or they wouldn't be best sellers. Sex manuals and medical books and psychological studies are also filled with graphic pictures and descriptions that almost certainly offend someone. This is not a reason to ban them from libraries or bookstores. Because previous lawmakers understood the need for the free and unfettered access to information, for all citizens, they made sure that Libraries and museums and other educational institutions are exempted under the current law.

The Cultural Advocacy is strongly opposed to this legislation for the above reasons and hope that you will vote do not pass. Thank you

League of Women Voters
of Montana



EXHIBIT 20
DATE 1/9/95
HB 83

WRITTEN TESTIMONY SUBMITTED BY THE LEAGUE OF WOMEN VOTERS

House of Representatives
Judiciary Committee
8:00 a.m., Monday, January 9, 1995
House Bill 83 by Jack Herron

The Montana 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 oppose House Bill 83 and urge a do not pass on this measure. Thank you.

Chris Imhoff
League Legislative Chair

Testimony in opposition to HB 83

EXHIBIT 21
DATE 1/9/95
HB 83

Tim Holmes, Helena, MT, professional artist.

I have created sculpture for 28 years. Most of that work has been figurative, mostly nudes, sometimes dealing with sexual issues, though never with a purely prurient intent.

I sympathize deeply with the concerns of the proponents of these bills, and I wish there were a means of magically separating criminal activity from my professional activity, I would be all for it, but these bills are not the instruments to solve these problems.

An insensitive person would be able to mistake much of my work for pornography. I suppose some have so little imagination that they could mistake all of my art for pornography.

I aspire to make great art, which is always above mere prurience. But historically, and our own age will be no exception, I believe, great art has generally been misunderstood in its own time and only recognized for its depth and power by later generations.

There are people who are so incredibly insensitive that no matter how much beauty or pathos or spiritual longing an artist depicts in a nude, those people can still only find shame and filth.

These bills is designed to protect their sensibilities, but at a cost. The bills proponents would assure us that the innocent breast feeder or swimmer would not be targeted by law enforcement. But artists ~~are not innocent~~ like myself would not be protected, because we are not innocent. Our duty is to challenge common ideas of our time, and by ruffling feathers which is our duty, we would be inviting prosecution under this law. Art that has ~~not~~ such capacity is equally devoid of any capacity to enliven or educate, or to give us hope.

EXHIBIT 21 (a)
DATE 1/9/95
HB 83

Tim Holmes



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.

(pamphlet)

An Emergency of Joy

A TIM HOLMES SCULPTURE EXHIBIT



Необходимость Радости

ВЫСТАВКА СКУЛЬПТУР ТИМА ХОЛМСА

Helena sculptor gains exhibit in Russian museum

By SUSAN GALLAGHER
The Associated Press

HELENA — For sculptor Tim Holmes, recognition came thousands of miles from his Montana home, at a huge museum known for its collections of art by Rembrandt, Michelangelo and other masters.

After years of hearing his metal work wasn't good enough for the major museums of the United States, Holmes is drawing graves for his show at the Hermitage Museum in St. Petersburg, Russia. The Helena man with an artistic form likened to Rodin is the first contemporary American sculptor to be honored with a solo exhibit there.

"Sculptures by Tim Holmes deserve being displayed in the best museums of the world," Hermitage Director Mikhail Piotrovsky told a St. Petersburg newspaper. The Hermitage is one of them.

Holmes, just back from several weeks in Russia, said he was overwhelmed by the public response to his show, and to art in general. Even a man he remembers as "a Doberman of a customs inspector" shyly asked for Holmes' autograph on a catalog for the Hermitage exhibit.

For the 38-year-old sculptor, who works in a sunny studio a few blocks from the Montana Capitol, the international attention is a big break in a

career dating back to his boyhood in Billings.

Holmes said he's had a lot of "hit and miss" shows in the United States, and a few exhibits at respected places such as the Paul Mellon Arts Center in Connecticut. But he hasn't really unlocked the secure gates of this country's major museums.

"Americans respond more to fame than they do to quality," Holmes said. The month-long Russian show that runs through Dec. 5 provides a measure of fame that he hopes will remove some barriers.

About 35 Holmes works are on display. Three will remain in the permanent collection of the Hermitage. Holmes' pieces now sell for a few thousand dollars to \$10,000, and he supports himself through sculpture. In the competitive art world, that in itself is an achievement.

A show at the Frye Art Museum in Seattle turned out to be the break that led to the Hermitage invitation. A visiting Russian professor saw Holmes' sculpture and got things rolling.

Funding for the Hermitage project was arranged largely by a California businessman who collects Holmes' art, Gerald Alderson of Kenetech Corp., which is in the wind-power business, also put up the money for Holmes' Helena studio. Alderson gets sculpture in return.

Holmes' credits include an ong-

ing commission by Physicians for Social Responsibility. He produces "The Healing Touch," graceful hands with two fingers ending in doves, which the doctors present semiannually as a peace award. Recipients include former President Carter, Dr. Benjamin Spock, Dr. Jonas Salk, Norman Cousins and George Kennan, former U.S. ambassador to the Soviet Union.

Holmes' art deals with the big things: pain, disappointment, war and peace, love, inequality, the mother-and-child bond. He comes from a long line of Methodist ministers, and religion is never far from his work.

"I try to raise some life and death issues," he said. "I think part of an artist's job is to act like a town crier." Holmes describes art as "the clear voice across the tumult" in each generation.

Pieces in St. Petersburg include "Bus Stop in the First World," on the consumptive way of life in developed nations; "The Blast," on the nuclear threat; "China Peace," on the freedom movement in China; and "The Healing Touch."

The exhibit catalog includes Holmes' comments about each piece, but he told readers that trying to penetrate the meaning of art with words "is like trying to split wood with a begonia petal."

Some of the propulsion in his career has come from the Montana Logging and Ballet Co., which presents traveling shows of political satire and music. Holmes, one of the four performers in the act, shows his sculpture at these, and he has gained some followers that way.

The Logging and Ballet Co. began about 20 years ago as a recreational gymnick at Rocky Mountain College in Billings, where Holmes was student. He earned a fine arts degree there, went on to art school in London and travelled to some of Europe's leading museums, to see what he could learn.

Holmes believes he will continue to learn for the rest of his life. But already, according to Sergei Androsov, sculpture director at the Hermitage, he has the maturity and originality of a master.



"The Healing Touch," by sculptor Tim Holmes, is among 35 Holmes works on display at the Hermitage Museum in St. Petersburg, Russia.

Associated Press

Mr Chairman, Committee members my name is Robert S. Fitzgerald
I represent the previous speaker Sculptor, painter Tim Bohms... the
first American in our country's history to have done a solo exhibit at the
world famous museum The Hermitage in St. Petersburg, Russia. arguably one of
the two or three finest museums on our planet. Quite an honor for a mountain
artist. Tim's work contains nudity. This is what Sergey Androsov
says of Tim's work... (see page 3 of "Emergence of Jay" catalogue) Mikhail
Piotroffsky says (see enclosed news clipping). If these 2 laws pass
Tim is liable for fines and incarceration. This is laughable in the light of
the prevailing political ~~attitude~~ winds nationwide & state winds of getting
government off our backs and out of our face. ^{quote I.R. - former speaker Rep Meehan} If these two laws
^{House speaker +} pass I will have learned a valuable ^{political} lesson. Put government
where it belongs, off our backs, out of our face and sadly in our pants.
I recommend a do not pass of HB 82 & 83.

EXHIBIT 23
DATE 1/9/95
HB 83

ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

January 9, 1995

Robert Clark, Chairman
House Judiciary Committee

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director and Lobbyist for the American Civil Liberties Union of Montana, a membership organization dedicated to defending the Constitution and the Bill of Rights. I am here today to voice opposition to HB 83.

House Bill 83 is asking you to amend MCA 45-8-201. The language you are being asked to change was arrived at by Montana's 51st Legislative Assembly. It was a compromise that was reached protecting Montanans who are under the age of 18. Significantly, a bill very similar to HB 83, aimed at proscribing adult behavior, was rejected in 1989. The reasonable accommodation reached then, aimed at people under 18, is the law you are today being asked to amend.

Not only are you being asked to take a law that was originally aimed at protecting young people and transform it into a law to restrict adult citizens, you are also being asked to **broaden the scope of state involvement in the private lives of all Montanans**. A reasonable person would assume that the burden is on the bill's proponents to conclusively demonstrate that the existing law is faulty. I believe the fact is that that right now we have a law that has not been held unconstitutional under any court.

So here we are, debating the merits of a bill that would reach into further activities and would broaden definitions. This is fascinating because clearly one of the requirements that the Supreme Court has repeatedly said of obscenity statutes is that they must be sufficiently specific, they must be narrowly tailored to give people fair notice of what is permitted and what is not.

While HB 83 is somewhat specific, it is still disturbingly vague. As an unfunded mandate, it asking already overburdened police and county prosecutors to become "morality police". It would empower the state to reach into activities that are clearly not within anyone's definition of obscenity.

While by no means a comprehensive list, I offer for your consideration these examples. The definition of "sexual conduct" is very broad. For example, sub section (i) "Intercourse, whether

actual or simulated, whether normal or perverted", could make many, if not most movies, the object of prosecution. This targets not just X rated films, but R and probably even many that are rated PG 17, if they have some sort of sexual intercourse depicted or alluded to. HB 83 assumes that intercourse is by nature "obscene". I seriously doubt that this definition would stand scrutiny under any court decision. This seems to be too broad.

Under sub section (ii), it then defines, "masturbation, excretory functions, and lewd exhibition of the uncovered genitals". The fact is that the medical dictionary describes sweating as an "excretory function". Surely they're not calling sweating obscene. If they are not, then they have to explain what they are calling obscene.

Under subsection (iii), the definition of "Sadomasochistic abuse" that might be prohibited by this act includes for example "a condition that depicts torture... by being fettered or bound... in a revealing or bizarre costume". Under that definition the movie "Batman" then becomes obscene. Certainly his costume is bizarre. Certainly her costume is revealing. Certainly several times through out this movie, Batman and Batwoman are each being captured by their enemies and tied up. Even though this movie is rated so that children may attend it and was extremely popular, whoever might want to prosecute, could do so under this definition.

We have scenes in numerous documentaries about war that include scenes of torture. We have scenes in films about wartime that involve torture, even of people in their undergarments. Even if targeted for prosecution of the morality police, I would argue that none of these definitions would qualify under any judicial decision upholding an obscenity conviction.

I use these examples to demonstrate what is called the "overbreadth problem". The Court has repeatedly struck down other obscenity statutes, because the overly broad definitions reach all kinds of conduct that everyone agrees is not obscene.

Surely this proposed "amendment" of existing law overreaches and starts reaching material that no rational person could consider obscene. Moreover, while the bill almost entirely incorporates the Miller vs California standard for what is obscene, Miller does say that the state legislative act must describe with specificity what is exactly is being made obscene.

These bills represents un warranted intrusion and further expansion of the state into the day to day private affairs of Montana's adult population. If there was a mandate in November, it was for less government involvement in our lives, not more. Restricting the government's intervention in our lives was, after all, the intent of our nation's founders when they wrote the Bill of Rights. I urge you to reject both of the bills you are considering today.

DANIEL R. ERVING AGENCY
311 9TH AVENUE, #2
HELENA, MONTANA 59601
(406) 449-4737

EXHIBIT 24
DATE 1/9/95
HB 83

Professional Business Services

January 6, 1995

Representative Jack Herron
State Capitol Building
Helena, Montana

Re: HOUSE BILL #83

Dear Representative Herron:

I represent the Montana Association of Theatre Owners and the Montana Video Software Dealers Association as their lobbyist for the 1995 session.

The theatre owners are concerned that House Bill #83 would impose extended liability on their employees. (see attached documentation).

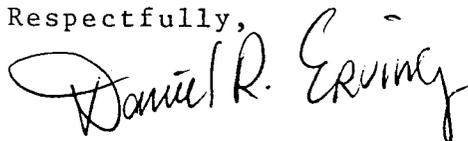
We respectfully request you consider removing the contents of line #19, page 3 from your proposed bill.

Theatre owners accept all legal responsibilities associated with the exhibition of motion pictures including, but not limited to, the application of state obscenity statutes.

Extending liability to certain personnel would place burden on those individuals that might discourage them from seeking or continuing employment in a motion picture theatre. In particular, young people, many of whom find their first jobs in theatres, might be discouraged from employment when this matter is disclosed by the employer.

I look forward to meeting with you and answering any questions you may have relative to our request.

Respectfully,



Retirement & Financial Planning, Legislation Monitoring, Graphics

**IN OPPOSITION TO REPEALING THEATRE EMPLOYEE
LIABILITY EXEMPTION FROM STATE OBSCENITY STATUTES**

- * Theatre owners in virtually every state in the U.S. accept all legal responsibilities associated with the exhibition of motion pictures including, but not limited to, the application of state obscenity statutes.
- * While theatre owners are convinced they do not exhibit any motion pictures that would be found to be legally obscene under any state law, each accepts the full responsibility and criminal liability associated with any such prosecution throughout the U.S.
- * NATO believes it would be unfair and unreasonable to extend the criminal liability associated with the application of state obscenity statutes to certain employees of a motion picture theatre. Employees involved in the physical operation of a theatre including box office, concession, projection, auditorium and management personnel are not responsible for or involved in the selection process of films that are exhibited on screen. Therefore, it is only fair that these theatre employees should be exempt from criminal prosecution under any obscenity law. For example, current Montana law exempts certain motion picture theatre employees that have "no financial interest in or control over the selection of motion pictures shown in the theatre" from obscenity prosecutions.
- * Extending liability to certain personnel would place a burden on those individuals that might discourage them from seeking or continuing employment in a motion picture theatre. In particular, young people, many of whom find their first jobs in theatres, might be discouraged from employment when this matter is disclosed by the employer.
- * The price of admission and concessions at theatres may increase due to the additional burden of liability that would be extended to employees if they were not exempt from obscenity prosecutions.
- * NATO members accept the responsibility of exhibiting motion pictures that they believe are not legally obscene, and believe it would be a burden to their employees and bad for business if liability were extended to employees that have no interest in or control over the selection of motion pictures shown in their theatres.

this state shall print a
each telephone directory

109.

possibility of corporations.

Conduct

the offense of obscenity
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o sell, deliver, or provide
entation or embodiment

or other performance, or
obscene, to anyone under

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ts an obscene exhibition

matter or material with
of 18; or

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and

appeals to the prurient

(a)(i), (ii), or (iii) in a

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section, evidence shall be

d what effect, if any, it

or other merits of the

l in the community;

of in advertising or other

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least \$500 but not more than \$1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of 45-8-206 and this section.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, L.M. 79, app. Nov. 7, 1978; amd. Sec. 5, Ch. 571, L. 1989.

Compiler's Comments

1989 Amendment: At end of (5) substituted "45-8-206" for "45-8-202"; and made minor changes in style.

Cross-References

Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Indecent exposure, 45-5-504.

45-8-202. Repealed. Sec. 7, Ch. 571, L. 1989.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3; amd. Sec. 6, Ch. 571, L. 1989.

Compiler's Comments

1989 Amendment: In (2) substituted "45-8-206" for "45-8-202".

45-8-204. Repealed. Sec. 18, Ch. 440, L. 1989.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.

45-8-205. Definitions. As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older

Would be REPEALED
in HB 83.
LINE 19

EXHIBIT 25
DATE 1/9/95
HB 82

ADDITIONAL SPONSORS

Additional sponsors may be added to a bill up until the time the first Standing Committee Report is filed.

The additional sponsors should sign this sheet. The chief sponsor should sign it at the bottom, date it, and return it to the Chief Clerk's Office. This filing will be noted by the Chief Clerk for the record on Order of Business No. 11.

The following additional sponsors are requested for HB 82
or HJR _____.

Norm A. Spills

L. Smith

Joe Barnett

Rick Jones

Dick Longman

Ray Starn

Dennis W. McEl

Aubyn Clark

James H. Burnett
SCOTT J. ORR

Jack Henson
Chief Sponsor

5 Jan 1995
Date

EXHIBIT 26
DATE 1/9/95
HB 83

ADDITIONAL SPONSORS

Additional sponsors may be added to a bill up until the time the first Standing Committee Report is filed.

The additional sponsors should sign this sheet. The chief sponsor should sign it at the bottom, date it, and return it to the Chief Clerk's Office. This filing will be noted by the Chief Clerk for the record on Order of Business No. 11.

The following additional sponsors are requested for HB 83
or HJR _____.

Tom Mills
L. Smith
Joe Barnett
Rick Gore
Rick Simpson
Ray Davis
Daniel W. Miller
Aubyn Curtis
Tom Keating
James W. Burnett
Scott J. Orr

Jack R. Henson

Chief Sponsor

5 Jan 1985

Date

EXHIBIT 27
DATE 1/9/95
HB 82-83

B 312-1A
TO: ~~_____~~ Judiciary Committee
DATE 1/10 TIME 11 AM
YOU HAVE A PHONE MESSAGE FROM:
NAME David Johnson
Missoula
ADDRESS _____
PHONE _____
PLEASE RETURN CALL YES NO
SB# _____ FOR _____ AGAINST _____
HB# oppose 82 & 83 _____

KBO

EXHIBIT 28
DATE 1/9/95
HB 82-83

Bob Clark, Chairman
House Judiciary Committee
Montana Legislature

Dear Chairman Clark,

As Montana writers we wish to express our dismay over House Bill Nos. 82 and 83. Montana is known as "The Last Best Place" in no small part due to its welcoming of artists and writers of every stripe, creed and color. We represent a non-polluting, fast growing industry which brings ever increasing tax dollars into our State. Please be assured that the steady inflow of writers could well be curtailed by passage of any bill which places government restrictions on what Montanans are allowed to read, view and enjoy, and correspondingly restricts what we as writers are permitted to create.

Freedom of thought is cherished in Montana. People's views on the appropriateness of sexual expression are as wide ranging and different as the plains and mountains which cover this great state. We find it repugnant that a small group of individuals now seeks to enforce their particular view of sexual appropriateness on all of us. Please do not let this happen.

Artistic brilliance flourishes best when artists are allowed to explore and address a broad spectrum of expression in all human endeavors. This naturally means that some expression will offend some citizens. The answer to this is not censorship, rather it becomes the right and responsibility of the offended persons to simply decline to read or view the material they do not like. That is how a free society functions, especially a constitutional democracy like ours. Perhaps Oliver Wendell Holmes, Jr. said it best nearly a century ago. What the Constitution requires of us as citizens is "not free thought for those who agree with us but freedom for the thought that we hate."

As concerned writers we urge you and the other committee members to support artistic freedom and to defeat House Bill Nos. 82 and 83.

Barbara Johnson Smith
President,
Montana Authors Coalition

Lise McClendon Webb
Past President,
Montana Authors Coalition

Sandra West Prowell
Past President,
Montana Authors Coalition

Rita Karnopp
President,
Montana Chapter,
Romance Writers of America

Kitty Donich
Past President,
Montana Chapter,
Romance Writers of America

~~House Judiciary Committee~~

EXHIBIT 29
DATE 1/9/95
HB 82-83

- Bob Clark (R) Ryegate [Chairman]
- Shiell Anderson (R) Livingston [Vice Chair, Majority]
- Diana Wyatt (D) Grat Falls [Vice Chair, Minority]
- Chris Ahner (R) Helena
- Ellen Bergman (R) Miles City
- Bill Boharski (R) Kalispel
- Bill Carey (D) Missoula
- Aubyn Curtiss (R) Fortine
- Duane Grimes (R) Clancy
- Joan Hurdle (R) Billings
- Deb Kottel (D) Great Falls
- Linda McCulloch (D) Missoula
- Daniel McGee (R) Laurel
- Brad Molnar (R) Laurel
- Debbie Shea (D) Butte
- Liz Smith (R) Deer Lodge
- Loren Soft (R) Billings
- Bill Tash (R) Dillon
- Cliff Trezler (R) Corvallis



THE W. A. SIMONS COMPANY
THE WILMA AMUSEMENT COMPANY • THE WILMA BUILDING COMPANY

104 Wilma Bldg., 131 So. Higgins, Missoula, Montana 59802 • P.O. Box 7277, Missoula Montana 59807-7277
Phone: (406) 513-1166 • FAX: (406) 728-7903

OFFICERS

TRACY J. BEALES
ROBERT V. SIA
W. ROBERT RANSTROM
EMILY BURSS
WILLIAM EMBERSO

January 10, 1995

To Montana Legislators:

Censorship is again at our doorstep. The current legislature is being asked to pass two and possibly four bills that would redefine obscenity and further erode personal freedom of expression.

I have a great concern regarding the two House Bills that have been introduced.

These bills are an attempt to rewrite Montana's obscenity laws to expand the definition of obscenity to include many forms of art, literature and entertainment that are now freely enjoyed by Montana citizens. These forms also provide revenue and business opportunities for Montana.

This legislation appears to be so far reaching that it could ban the sale, rental, transmission, or showing of such movies as "Batman", a PG-13 movie, or even "The Lion King" as viewed by some people.

I urge you to vote against House Bills # 82 and #83.

Sincerely,

Bob Ranstrom
Vice-President
W.A. Simons Co

Vice President
Wilma Amusement Co.



THE W. A. SIMONS COMPANY
THE WILMA AMUSEMENT COMPANY • THE WILMA BUILDING COMPANY
104 Wilma Bldg., 131 So. Higgins, Missoula, Montana 59802 • P.O. Box 7277, Missoula Montana 59807-7277
Phone: (406) 543-4166 • FAX: (406) 728-7903

EXHIBIT 29
DATE 1/9/95
X | HB 82-83

OFFICERS
TRACY J. BLAKESLIP
ROBERT V. SIAS
W. ROBERT RANSTROM
EMILY BURNS
WILLIAM EMMERSON

January 10, 1995

To All Montana Legislators:

Relative to House Bills # 82 and #83, such impositions on the people's freedom of choice has been attempted before here and voted down by the people by a margin of three to one.

We are firmly opposed to such legislation. It's not even Constitutional for a government to tell its population what it can or cannot see, read or hear.

Respectfully,

Robert V. Sias
Robert V. Sias
President
W. A. Simons Co.

EXHIBIT 30
DATE 1/9/95
HB 82-83



2100 STEPHENS AVENUE
MISSOULA, MT 59801
(406) 728-6677

January 11, 1995

Com 312-1a

~~Judiciary~~ Committee
House of Representatives
State of Montana
Helena, MT

Committee Members:

It is imperative that you deny House Bills 82 and 83. Both bills represent intrusion of government into the private lives of the citizens and allows the inclusion of church into government contrary to the U.S. Constitution.

More specifically, obscenity is in the eye of the beholder and therefore cannot be defined . . . what is obscene to one is not necessarily obscene to another. The Family Values issue is so obtuse as to defy interpretation. Most important, no one has the right, either moral or ethical, to dictate what his neighbors do in private by mutual consent.

The layer of religion, usually by misquoting the bible, has been the blight on humanity for centuries and such legislation as these two bills will only add to the injustices.

I cannot urge you too strongly to reject these two bills.

Sincerely yours,

Gilbert A. Millikan, owner
SHOWCASE VIDEO

3/2/95

EXHIBIT 31
DATE 1/9/95
HB 82-83

David Richards, D.Th.

P. O. BOX 3210
MISSOULA, MONTANA 59806

January 11, 1995

House Judiciary Committee
House of Representative
State of Montana
Helena, MT

Gentlemen, Ladies:

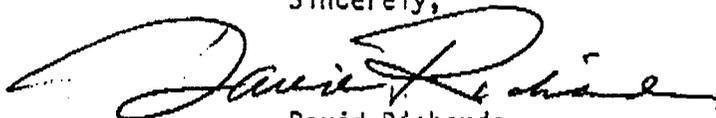
DO NOT BE MISLED BY THE CHRISTIAN COALITION IN THEIR EFFORTS TO PUSH THROUGH HOUSE BILLS 82 AND 83. UNFORTUNATELY GROUPS OF THIS NATURE BASE THEIR EFFORTS ON BITS AND PIECES OF BIBLICAL STRUCTURE CHOSEN TO FURTHER THEIR OWN GOALS AND NOT IN ACCORDANCE WITH TRUE SCRIPTURE.

THE GOD OF THE BIBLE IS A GOD OF LOVE NOT OF VENGEANCE AS THESE "CHRISTIANS" WOULD HAVE ONE BELIEVE.

SEX IS THE COMMON DENOMINATOR OF MAN -- OF ALL LIFE ITSELF -- WHETHER HUMAN, ANIMAL OR FOWL. ONLY MAN HAD CHOSEN TO MAKE IT AN UGLY THING. HOW LONG ARE WE GOING TO LIVE IN THE DARKNESS AND PREY UPON OUR FELLOW MAN? ISN'T IT TIME TO COME INTO THE LIGHT AND EXPRESS LOVE AND HATE?

YOU HAVE THAT OPPORTUNITY. EXERCISE IT.

Sincerely,



David Richards,
Doctor of Theology

EXHIBIT 32
DATE 1/9/95
HB 82-83

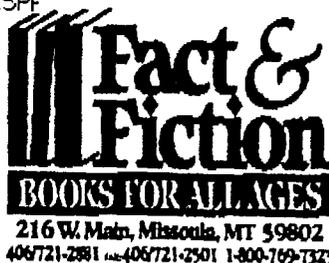
Montana State Legislature
Fax 1-900-225-1600

Testimony on HB 82 and HB 83

Speaker of the House John Mercer made a commitment in his opening remarks when convening the House for the 1995 session. He said that the Republican controlled House would grant greater personal freedom to the citizens of Montana. The hypocrisy of that statement is evident in the wording of HB 82 and HB 83.

The wording of these bills is such that, if it becomes law, I will be required to cancel my membership in the National Geographic Society, as I will no longer be able to receive the National Geographic magazine. Many TV commercials and programs, both entertaining and educational as well as the many exercise programs will violate the absurd nudity definition. But that is not my primary objection to this bill. How dare my State Government decree what I can or cannot read? Will copies of the frescoes on the ceiling of the Sistine Chapel have to be removed from public libraries? This sort of legislation is not "granting more personal freedom". It is a further invasion by a "Big Brother" government into the private lives of individuals. I strongly urge the defeat of HB 82 and HB 83.


Louis B. Gates
Kalispell

EXHIBIT 33DATE 1/9/95HB 82-83

MEMO

TO - ~~members of Montana House~~
Judiciary Committee

From - Barbara Theroux

Date - Jan 10, 1995

RE - House Bills 82 - 83

I am a parent & business owner who urges you to vote against House Bills 82 & 83.

As a parent, I am against pornography & materials that are harmful to minors. However, there are already laws to control sales of these materials. Further laws & penalties will not curtail pornography — only strong family role models & communication can educate our children.

As a bookseller, I object to these bills because of their vagueness & potential danger to my business. These bills will lead to censorship & will be more dangerous than any ideas expressed in literature or art.

Sum #
3/2-1a

LEE MORRISON GALLERY

3233 South Third West ☽ Missoula, Montana 59801

543-7372 / 1-800-735-9477

Judiciary Committee
House of Representatives
State of Montana
Helena, MT

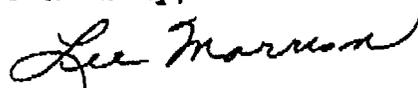
EXHIBIT 34
DATE 1/9/95
HB 82-83

Committee Members,

I can not urge you too strongly to reject House Bills 82 and 83. Both bills are a complete intrusion into the private lives of citizens and allows the inclusion of church into government which is in violation of the U.S. Constitution.

At a time when the voters have over-whelmingly given politicians the message we want LESS government interference in our lives, I can't believe you would even consider something of this sort. Obscenity is in the eye of the beholder ---what is obscene to one is not necessarily obscene to another. No one has the right, either moral or ethical, to dictate what his neighbors do in private by mutual consent.

Sincerely,



Lee Morrison
Lee Morrison Gallery

DATE 1/9/95

HB 83

Golden State Oil

SAVE-RITE STATIONS

4:30 A.M. To Midnight
365 Days A Year

Robert J. Uithof
573 U.S. Hwy #2 W.
Libby, Montana 59923
Home & On-the-job
Deliveries
24 Hour Keylocks
Gas & Diesel
Tanker Loads
"THE RESTAURANT"
201 California Ave
Libby Kwik Lube
619 Hiway #2 West

(406)293-6273 - Kwik Lube
(406)293-6767 - Restaurant
(406)293-4119 - Office
(406)293-3111 - West
(406)293-7331 - South
(406)293-7575 - FAX
Convenience Stores
Bulk Plant
Lube Oils
Road Oils
Mag. Chloride
Fuel Oil
Diesel #1 & #2
#5 & #6 Burner Oil
Propane
Jet A Fuel

*Room
312-1a*

1/11/95

*Home
Discussion
- M. Mason*

*Mr. Marc Mason
Rep. Scott Cruz
Sen. Bill Crismon
Attorney General -
Intention:*

*Concerning Dallas Erickson's proposal
State Wide 'Porno' Bill. What
Dallas proposes is censorship. Dallas
truly believes that he knows
what I shouldn't read, because
he has read it and I shouldn't.
Preposterous!!*

Golden State Oil

SAVE-RITE STATIONS

4:30 A.M. To Midnight
365 Days A Year

1/11/95

(406)293-6273 - Kwik Lube
(406)293-6767 - Restaurant
(406)293-4119 - Office
(406)293-3111 - West
(406)293-7331 - South
(406)293-7575 - FAX
Convenience Stores
Bulk Plant
Lube Oils
Road Oils
Mag. Chloride
Fuel Oil
Diesel #1 & #2
#5 & #6 Burner Oil
Propane
Jet A Fuel

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Gas & Diesel
Tanker Loads
"THE RESTAURANT"
201 California Ave
Libby Kwik Lube
619 Hiway #2 West

Rep. John Mercer
Fax - (1-900-225-1600)

Dear Representative Mercer:

As a Conservative Republican
with a B.A. from the good fathers
of the Holy Cross, and an altar boy
in Libby with Max Perceat I
ask you not to elevate Walker
Erickson and his porno bill to
public debate. He has the power of
intimidation.

Bob Uithof
Page 1 of 4

EXHIBIT 35DATE 1/9/95X HB 83

Golden State Oil

SAVE-RITE STATIONS

4:30 A.M. To Midnight
365 Days A Year

Robert J. Uithof
573 U.S. Hwy #2 W
Libby, Montana 59923
Home & On-the-job
Deliveries
24 Hour Keylocks
Gas & Diesel
Tanker Loads
"THE RESTAURANT"
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(406)293-3111 - West
(406)293-7331 - South
(406)293-7575 - FAX
Convenience Stores
Bulk Plant
Lube Oils
Road Oils
Mag. Chloride
Fuel Oil
Diesel #1 & #2
#5 & #6 Burner Oil
Propane
Jet-A Fuel

Also, in Dallas Erickson's political rhetoric in Helena to introduce & gain support for his bill, he holds Terrell County up as an example. Well, right now today, I sell the same magazines as I did five years ago. The only thing that happened was that I occupied a lot of court time, was found innocent by a jury of my peers, counter-sued Terrell County for expenses

Page 2 of 2

EXHIBIT 36
DATE 1/9/95
HB 83

January 10, 1995

Dear Rep. Bob Clark (House Judiciary Committee)

My name is Andy Shott and I have lived in Montana for 18 years. I have owned and operated two businesses in that span, one in Red Lodge and one in Missoula. Presently I am going back to school at the University of Montana. I am 43 years old and have been married once for 15 years. I have two daughters, ages 10 and 13.

I am writing you in regard to the recent censorship proposals being presented to this legislature. I am scared to death of the affect that these new proposals would have in our community. They are way beyond what we need and drastically intrude into our freedom and individual rights. I am strongly against obscenity and especially child pornography. However, there are currently laws on the books that adequately deal with these materials.

The smaller and more local the government, the better. Obscenity laws are supposed to be based on local community standards. I don't want people in other parts of the state telling us how to run our community, any more than I think we should tell them how to run theirs. I am very afraid that these new ordinances would affect the arts which is such a strong asset to our state. Just one example is movie making which is a huge industry and we can't afford to discourage movie makers from filming here. The economic benefits from this industry for our state are significant.

Sexuality is a part of human nature. Even in the Bible, it is openly celebrated in the Song of Solomon. Everyone is different. What one person finds acceptable may not be what another one does. Freedom of choice is very important not only in Montana, but in our country. Passing laws that are so restrictive that there would inevitably be costly legal battles challenging their constitutionality are an expense that we can live without. Our present laws have worked well for years and I think we should leave them as they are.

If there was one clear message sent in the last election it was that we want less government interference in our lives, not more. We sent you to Helena to solve the economic problems this state faces, not to legislate morality. These morality issues tend to divide people in a time when we should be coming together to forge a new future for Montana.

Sincerely,

Andy Shott
336 Connell
Missoula, MT 59801

EXHIBIT 37
DATE 1/9/95
HB 83TESTIMONY AGAINST HB 83
Russell W. Lawrence
512 Blodgett Camp Road
Hamilton MT 59840

My name is Russell W. 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 poorly-written attempt to legislate morality across the state.

The proponents of this bill suggest that it will make our communities safer by removing pornographic materials from the hands of twisted sex offenders. I am unconvinced of the evidence of this, but furthermore, this bill goes so far beyond that as to remove many important safeguards in existing law and to affect many areas unrelated to their stated intent.

First, the U.S. Supreme Court ruled last month that you cannot obtain a conviction on obscenity grounds unless the person accused had knowledge of the obscene nature of the materials. That protection is deleted in the first paragraph of this bill. (I regret that I don't have the title of that decision, but I promise to provide it to Chairman Clarke this week.) Off to a great start, right there in the first line of this bill it contravenes the most recent Supreme Court ruling on the subject.

You're probably aware that this area is a minefield of untested opinion, and the decisions are constantly in flux. Given the legal problems and the protection already afforded by state law, why would you enact something that's already questionable?

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 violent crime. Dr. Frederick Schauer, a member of the Meese Commission and author of the draft document that served as the basis for the Meese 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 violence."

In the Harvard Civil Rights-Civil Liberties Law Review, Barry Lynn writes "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. Banning, or trying to ban, any material that might cause someone 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 effects will 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."

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. Is it Hamilton? Ravalli County? Western Montana? And if I guess wrong, I go to jail. I would 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, and likewise 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.

I urge you to reject this poorly-written bill and respect the

EXHIBIT 38
DATE 1/9/95
HB 83

ATTENTION: Dallas Erickson

TO: House Judiciary Committee

Subject: House Bill 83

The intent of this letter is to provide an account of how I felt victimized by Pornography.

By the age of 20, I was a Registered Nurse, working in Obstetrics at a 250 bed, metropolitan hospital. A year later, I was married, and by the time I was 26 years old, I had given birth to four, healthy, beautiful children. Since my husband lacked the self-discipline to stay in school, or with a job for very long, I continued to work through my pregnancies.

No matter how carefully I budgeted, it seemed that we were always short of funds. I remember going several years without buying a new pair of shoes, having very little food in the cupboard, and wondering where the next gas money was coming from. I made most of my clothes, recycled Goodwill clothes for the children and used cloth diapers. All my children breastfed until they were at least 6 months old, and then, I was very pregnant with another child. My husband did not believe in birth control, although he had led me to believe differently before we were married. He wanted 12 children like his Grandmother.

Unknown to me, my husband was supporting a Pornography habit. According to his mother, his addiction for this material had started up as a young teen. He seemed consumed by this habit, filling up boxes and suitcases with lewd pictures. He spent hours keeping track of magazines and pictures by dating and filing them. His mother had hoped he would lose his appetite for such things when he married me. Five pregnancies in five years might indicate, that he wasn't denied anything in the bedroom.

When I finally discovered the Pornography, and confronted him, he admitted spending thousands of dollars on his addiction. I felt betrayed as a woman, a wife and a mother. "How did this man look at me?", I wondered. I left my children to go to work, so he could sit home and masturbate with a pile of paper dolls. What had my children seen? Sickening thoughts ran through my mind.

As an OB nurse, female anatomy does not shock me. But, I am hurt and humiliated, when I think of the human body being so graphically portrayed, used to arouse and excite men and women to such an extent that they forget their priorities of providing a nurturing home for their family. I believe that the more you view such material, the more calloused and insensitive you become to the needs of your spouse and to your children.

My husband agreed to counseling, but when that did not work, our 7 year marriage ended in divorce. With God's help I have

supported and raised 4 children by myself for the past 13 years. We have never cost the taxpayers anything for food stamps, welfare benefits or Medicaid but it's taken two jobs to make ends meet. One part time and one full time. Regretfully I haven't always been able to be there for my children when they needed me.

Pornography is a multi-billion dollar business that robs children of this country. Patrons could better use their money by contributing to the food, clothing and educational opportunities of the next generation of American children. Banning Pornography is not a First Amendment issue. It's an issue about what is good for this country. Pornography does not build or strengthen homes. It does not make you feel better about yourself. It's subtle decay which is causing many innocent people in this nation to suffer.

Lottie Leader
302 Norman Ave.
Libby, Mt. 59923

THE MEDIA COALITION, INC.

1221 AVENUE OF THE AMERICAS • 24TH FLOOR • NEW YORK, N.Y. 10020
(212) 768-6770

EXHIBIT 39DATE 1/9/95HB 83

Michael A. Bamberger
General Counsel

Christopher M. Finan
Executive Director

Anne F. Castro
Legislative Assistant

January 10, 1995

Representative Bob Clark
Chairman
House Judiciary Committee
State Capitol
Helena, MT 59620

Re: House Bill 83

Dear Representative Clark,

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. The members of the Media Coalition, who represent most of the publishers, booksellers, librarians, periodical wholesalers, recording producers and recording and video retailers in Montana and throughout the United States, have asked me to explain why House Bill 83 would have this effect.

The members of Media Coalition do not dispute the legislature's right to ban "obscenity" as that term has been defined by the Supreme Court. But they wish to emphasize that determining whether something is obscene is difficult. Individuals disagree. This uncertainty means there is danger that lawful works with sexual content may be suppressed by wholesalers and retailers who are afraid their sale might subject them to arrest.

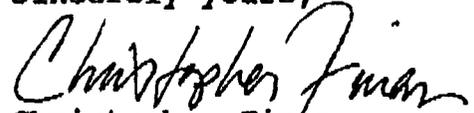
H.B. 83 almost ensures that legitimate books and magazines will be withdrawn from circulation by imposing an extreme penalty for "importing" obscene material from outside Montana. A first offense would be a felony and could result in a fine of up to \$50,000, a prison term of up to ten years, or both. Rather than risk being charged with a felony, wholesalers and retailers will discontinue the sale of all books, magazines, recordings, and videos with sexual content, including material that has serious literary, artistic or political value and is therefore protected by the First Amendment. This penalty seems particularly excessive considering that the sale of obscene material produced in Montana is treated as a misdemeanor.

Representative Clark
January 10, 1995
Page 2

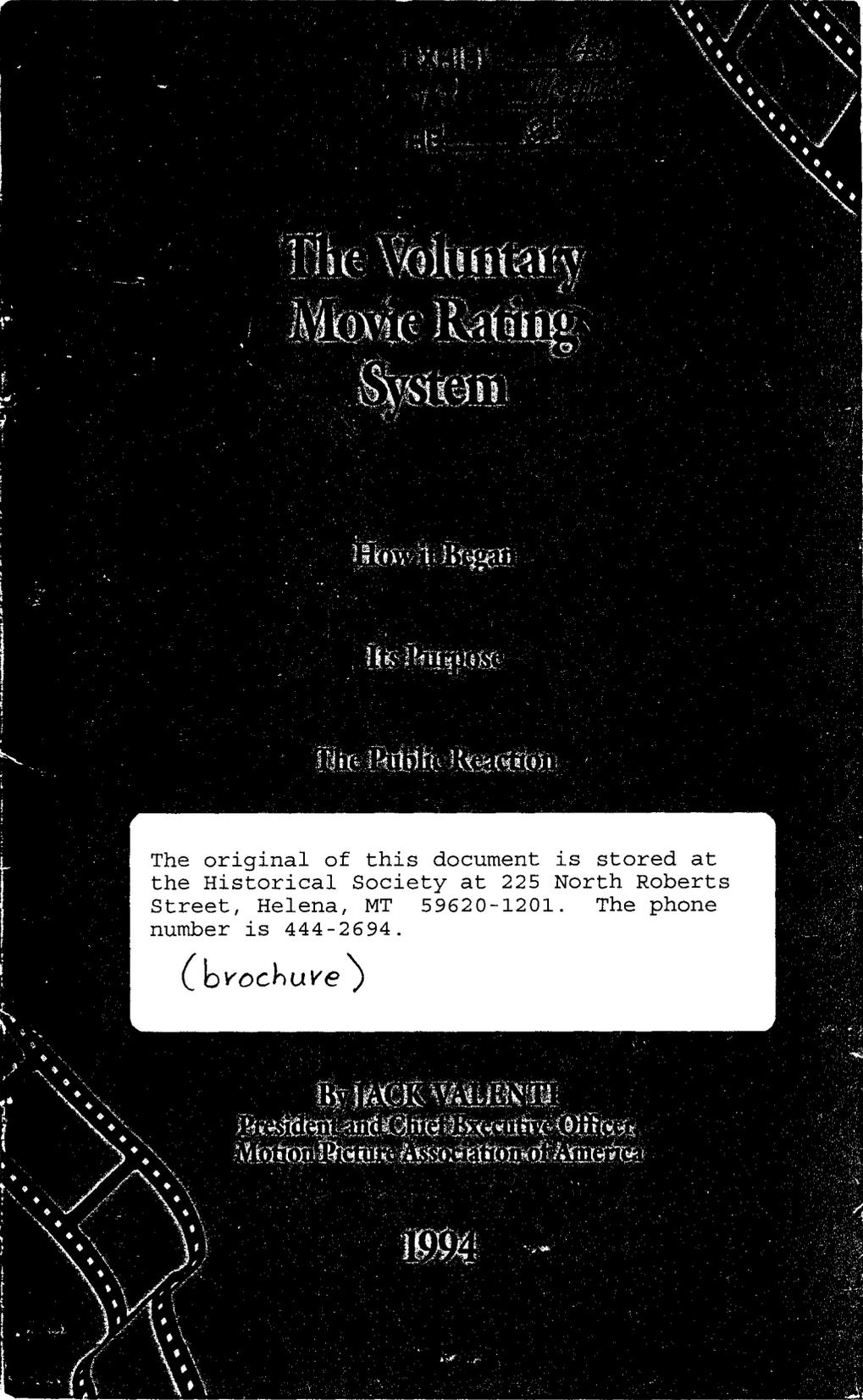
Excessive penalties have a chilling effect on the distribution of First Amendment-protected material. Please defend the personal freedom of the people of Montana by defeating H.B. 83.

Thank you.

Sincerely yours,



Christopher Finan
Executive Director



The Voluntary Movie Rating System

How it Began

Its Purpose

The Public Reaction

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.

(brochure)

By JACK VALENTE
President and Chief Executive Officer,
Motion Picture Association of America

1994



Motion Picture Association of America, Inc.

1650 Avenue Boulevard
Beverly Hills, California 91636
(818) 925-6600

1600 Eye Street, N.W.
Washington, D.C. 20006
(202) 293-4976

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary

COMMITTEE

DATE 4/9/95

BILL NO. 82

SPONSOR (Sen. Henson)

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Robert Dunlop	5820 N. Mont. Helena		✓
TERRY CROOKS	662 Cherry Crk Rd, Libby	✓	
Thesia CROOKS	"	✓	
Al Troutt	489 Hidden Vly Florence	✓	
Lynn Cordeiro	Box 412, Cascade		✓ as written
LELA Mitchell	(Self) Stevensville 5529 Eastside Hwy	✓	
Norman Mitchell	(Self) Stevensville 5529 Eastside Hwy	✓	
SKIP HOUE LAND	1000 POPLAR HELENA MT		✓
Arlette Randash	Eagle Forum	✓	
Monique Randash	100 Franciscan Way Box 412 Steubenville OH 43952	✓	
Carol Navotne	P.O. Box 14 Ft Harrison		✓
BUCKLY TIETJEN	4500 Fox Farm Rd		✓
BENITA WHEELER	1804 LAKE SIDE		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

CAROLYN MCGADY

LAURIE KOUTNIK
Sharon McKibben

Christian Coalition of MT

✓ (418)
82
✓

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary

COMMITTEE

DATE 1/9/95

BILL NO. 82

SPONSOR(S) Rep. Heron

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
## <i>Guiguline Denmark</i>	<i>Individual Businesses concerned w/ free expression</i>		X
<i>Paul Stahl</i>	<i>Montana Cultural Advocacy</i>		✓
<i>Lou Archambault</i>	<i>Practicing ARTIST</i>		✓
<i>Ron Silvers</i>	<i>Licensed P. Counselor</i>		✓
## <i>Deborah Scoble Singer</i>	## <i>MT CULTURAL ADVOCACY</i>		X
<i>DEBORAH SCOBLE SINGER</i>	<i>MT CULTURAL ADVOCACY</i>		X
<i>Margaret Green</i>		✓	
<i>Dale L. Johnson</i>	<i>SELF</i>		X
^{SAMANTHA} <i>Samantha Sanchez</i>	<i>ACLU</i>		X
<i>Gloria Sherman</i>	<i>MT Cult. Advocacy</i>		X
<i>Mark Mozer</i>	<i>psychologist</i>	X	
<i>Billie Lou & Ed Arnett</i>	<i>Rancher</i>	X	
<i>Law & Bonnie Steel</i>			✓

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HR:1993 *Dianne Baker*
wp:visshcom.mah
CS-14 *Tim Holmes*

self + family X
professional artist X

Guiguline Denmark
Dahlma Westman

self
"Enough is Enough!" X

HD# 71

oppose

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary

COMMITTEE

DATE 1/9/95

BILL NO. 82

SPONSOR(S) Rep Herron

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Rep. Peggy Arnott		X	
CHRIS IMHOFF	LEAGUE OF WOMEN VOTERS OF MONTANA		X
Stacy Frasier ^{Helen}	Self		X
Jenny Erickson	Self	X	
Bonnie Herron	SELF	X	
Richard Miller	MT State Library		X
Dianne Baker	self	X	
CAROLYN MCGADY	self	X	

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HOUSE OF REPRESENTATIVES

JUDICIARY

- COMMITTEE

HB92

WITNESS STATEMENT

PLEASE PRINT

NAME Dallas D Erickson BUDGET _____

ADDRESS 4479 Stone Lane DATE 1-9-95

WHOM DO YOU REPRESENT? Montana Citizens for Decency through Law

SUPPORT OPPOSE _____ AMEND _____

COMMENTS:

~~Beverly Tietjen 4500~~

Carol Nowatke opposed

Jan Archambault opposed

Ron Silvers opposed

Deborah Schlesinger opposed

REP Dick Green Proponent

~~Carolyn Massey~~

Josh DeWese opposed

Scott J. Orr PROPONENT

Claudia Crase opposed

Linda Troutt support

Gladys Anderson Support

Dale Anderson support

Al Troutt support

~~Jim Donaldson~~ support

Laurie Koutnik support

HR:1993 ~~St. Francis~~ support
CS16 Dianne Baker

SAMANTHA SANCHEZ

OPPOSED

For Consideration on
HB 82 and ^{HB} 83

HOUSE OF REPRESENTATIVES

JUDICIARY

- COMMITTEE

Bob Campbell

WITNESS STATEMENT

PLEASE PRINT

NAME

Bob Campbell

BUDGET

-

ADDRESS

401 Broadway

DATE

Jan 9, 1995

WHOM DO YOU REPRESENT?

Self -

SUPPORT

~~OPPOSE~~

AMEND

COMMENTS:

written testimony salary
written testimony attached
for committee distribution.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary COMMITTEE DATE 1/9/95
BILL NO. 83 SPONSOR(S) Rep Nelson

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Margulise Lenmark	Individual Businesses concerned w/ free expression		X
Robert's Fitzgerald 1515 Winke	Freedom of expression		X
Tom Holmes	Professional Artist		X
Paul Stahl	Montana Cultural Advocacy		X
Glori Lenneman	MT Cult Army		X
Bob Campbell	SPIF Bill of Rights		X
Wanda Church	Wanda Church		X
Sharon Hoff	MT CATH CONF	X	
Claudia Crase	educator		X
Mark Mozer	Psychologist	X	
DALE Anderson	Bishop	X	
Gladys Anderson		X	
Linda Trout	Florence, MT	X	

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CS-14

William

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary

SUB-COMMITTEE

DATE 1/9/95

BILL NO. 83

SPONSOR(S) Rep. Henry

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Rep Peggy Arnett		✓	
Jim Donaldson		✓	
LAW STEEL	USDA		✓
Bonnie Steel	USDA		✓
LAURIE KOUTNIK	Christian Coalition of MT	✓	
Elsa Frayer			✓
Jim Hills	self		✓
Jim Hills jr	Self		✓
Ken Moore	Montana Assoc. of Chs	✓	
CHRIS IMHOFF	LEAGUE OF WOMEN VOTERS OF MONTANA		✓
Josh DeWeese	Archie Bray Foundation		✓
Wilma Wortman	"Enough is Enough!"	X	
Carol Norstrom	M.A.C. + the Old Center		✓

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HR:1993

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Indiana

COMMITTEE

DATE 1-9-95

BILL NO. 83

SPONSOR(S) J. Heron

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dan Erving	Montana Assoc Theatre Owners		<i>Amend</i>
San A. NCHAMBAM	AM7157 OF MONT		
Jenny Erickson	Self	X	
Rachel Baker	Self	X	
PAUL McKibben	self	X	
Sharon McKibben	self	X	

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HOUSE OF REPRESENTATIVES

JUDICIARY - COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

House Bill 83

NAME DAN ERVING BUDGET _____

ADDRESS 311 9th Ave #2, Helena, MT. DATE 1-9-95

WHOM DO YOU REPRESENT? Montana Assn. Theatre Owners

SUPPORT _____ OPPOSE _____ AMEND X

COMMENTS: Respectfully Request line 19 page 3 be omitted from HB 83.

Theatre owners & managers Accept Liability, we request that employees do not come under Liability.

HOUSE OF REPRESENTATIVES

JUDICIARY - COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Terry Crooks BUDGET _____
ADDRESS 662 Cherry Creek ^{Libby} ^{mont} DATE 1-9-95
WHOM DO YOU REPRESENT? Montana Citizens for Decoy -
SUPPORT OPPOSE _____ AMEND _____

COMMENTS:
Libby has had a strong asset
law since 1980 and it has
supported and protected our
Libraries and book stores -

HOUSE OF REPRESENTATIVES

JUDICIARY - COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Patrice Wilson BUDGET _____

ADDRESS 3012 1st Ave No. DATE 1-9-95

WHOM DO YOU REPRESENT? self

SUPPORT _____ OPPOSE _____ AMEND _____

COMMENTS: _____

- want breastfeeding excluded
- concerned about fiscal note of bill

HOUSE OF REPRESENTATIVES

JUDICIARY

-COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Robert Dunlop BUDGET _____

ADDRESS 5820 N. MONTANA DATE 9~~8~~ JAN 95

WHOM DO YOU REPRESENT? myself

SUPPORT _____ OPPOSE AMEND _____

COMMENTS: Freedom liberty
Keep the state out of
other people business
live & let live