

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 ~~xx~~ ~~xx~~ a.m./p. m., on March 16, 1978.

All members were present except: Representatives Hoagland, Hurley and Mills, who were excused.

The next meeting of the Committee will be held at 3:30 ~~xx~~ ~~xx~~ a.m./p. m., on March 20, 1978.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Senator Jan Meyers
Rep. Glee Jones
Rep. Anita Niles
Mr. Vincent DeCoursey
Ms. Linda Mowbry
Mr. Joe Krahn, Dept. of Transportation
Senator Larry Rogers

The meeting was called to order by the Chairman, who introduced Senator Meyers to discuss SB 587. She explained the matter is being addressed at the federal level but it is now bogged down and it may be next year before it is even considered again. She expressed the opinion the situation is of sufficient import it should receive immediate attention at the state level. Senator Meyers stated the bill had been drafted to take care of the constitutional problems but the Senate Committee had amended it which might cause some concerns. She distributed some materials for the information of the committee. (See exhibit.)

The Chairman noted there is at least one district attorney in the state who would probably take the attitude that the definition appearing on lines 48 and 49 would preclude the use of medical books because he would conclude certain areas of the body were lewd. He suggested staff review the matter.

Senator Meyers explained the main concern of the committee in the Senate had been with the age and the selling aspect.

Rep. Jones appeared in support of the bill but proposed an amendment. She noted she had previously appeared on a House bill, which she asked be amended into this bill. He stated she had been told by a member of the Research Department these amendments would not cause a constitutional problem. (See proposed amendment.)

Rep. Niles appeared in support of the bill but urged the committee to consider the "distributing for resale" aspect. She urged the committee to adopt the amendments which she felt would make the bill a useful tool.

Mr. Vincent DeCoursey appeared in favor of the bill, and offered a printed statement. (See exhibit.)

Ms. Linda Mowbry, representing the Junior League of Topeka, appeared in support of the bill as amended by the Senate Committee. (See exhibit.) Rep. Ferguson inquired how they felt about the amendments and Ms. Mowbry noted the federal legislation has been passed by both houses and it does address interstate commerce, while this bill addresses itself to the production of the publications and parents and guardians who may be involved.

Mr. Joe Krahn of the Department of Transportation, appeared in opposition to SB 593, explaining they felt there is already adequate relief in the present law. He stated the proposal would cause a number of problems for DOT because if there was an error in surveying--even a matter of inches--it could cause them to have to remove expensive installations. In addition it would mean they would be paying attorney fees twice in some instances. Rep. Frey inquired if errors occur very often and Mr. Krantz stated it doesn't happen every often but there are some because of legal descriptions, surveying crew or a contractor error.

Mr. Bob Anderson testified he had talked with Senator Rogers and the matter which generated this bill was an American Legion in his area which owned a piece of property, and a water district obtained a right of way across the land but when they built their lines they did not follow the right of way and the fact became apparent when the Legion started construction on a building. He explained this matter was resolved because the water district had another place to construct, but that in some eminent domain cases this would not be so, and a bad case of surveying or a bad legal description could result in untold dollars being spent, all of which would eventually be passed on to the customer.

The Chairman inquired if the committee wished to discuss SB 587, and Rep. Ferguson asked if anyone had suggested these things are going on in Kansas. He stated that he had heard of no such instances, but was also concerned about the distribution of such materials. He then moved the Jones amendment, which motion was seconded by Rep. Matlack. Rep. Hayes stated he felt it should get to the distributor and should be "distribution for resale or selling". Rep. Ferguson and Rep. Matlack agreed this could be included in the motion.

Upon the arrival of Senator Rogers, the Chairman asked him to speak to SB 593. The Senator explained the problem as Mr. Anderson had done. He stated it had not been his intent to cause problems for DOT or utilities or such people over a three inch error in right of way, and if it could be amended to remove the objections, it would be satisfactory.

The Chairman asked to return to discussion of the motion on SB 587. Rep. Roth stated he is hesitant to support the amendments because it seems to open the matter up to a wide interpretation where materials could be censored unrealistically. Rep. Stites noted it is difficult to determine the age of a child from a picture in a magazine.

Rep. Gillmore inquired how the federal proposal is worded and Mr. Griggs explained one of them is almost identical to this, and that he couldn't say it is patently unconstitutional because the courts seem to change their stand every few years, but pointed out it is difficult from looking at a photograph to determine age.

Upon vote, motion lost.

Mr. Griggs stated if the bill is moved, he would recommend all of the amendments on Rep. Jones balloon and a re-numbering of the sections. It was moved by Rep. Gastl and seconded by Rep. Roth that these amendments be adopted. Motion carried. It was then moved by Rep. Matlack and seconded by Rep. Ferguson that the bill as amended be recommended favorably and placed on the consent calendar. Motion carried.

Rep. Lorentz inquired about the procedure in the subcommittee looking at SB 553, and the Chairman stated he would prefer the subcommittee to hear conferees and report back to committee.

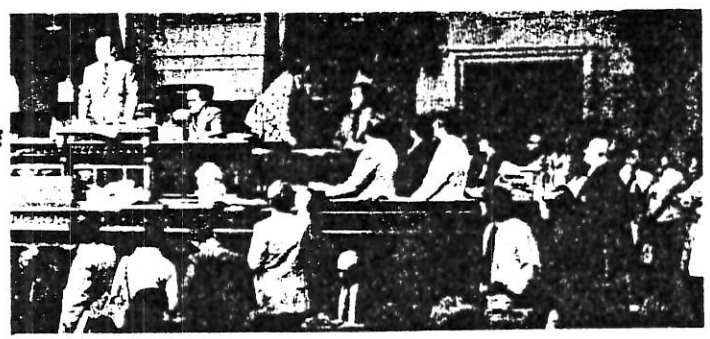
The meeting was adjourned.

House JUDICIARY

NAME	ORGANIZATION	ADDRESS
1 2 Stratton		1800 Engel Rd. Lawrence
Susan Lueger	Div. of St. Planning + Research	Topeka
D. WAYNE ZIMMERMAN	THE ELECTRIC CO. ASSN. OF KS.	TOPEKA
Vernon Douglas	KANSAS CATHOLIC CONFERENCE	KCIR
Robert Currier	Mid Cont Fed of O Stars	O Stars
Joseph Krahn	KDOT	Topeka
George Sims	Wichita	Hugoton
Jan Meyers		
Arda Mayhew	Jr League of Topeka	Topeka
Wally Latta	KANU	Lawrence

"STATE LEGISLATURES"
A PUBLICATION OF THE NATL. CONFERENCE
OF STATE LEGISLATURES

In Session



Crackdown on Child Porn

States have moved rapidly to check the multimillion dollar child pornography industry, according to a new survey by the NCSL. The 50-state poll found that 16 states have enacted strong, comprehensive laws this year, joining West Virginia and North Dakota, which previously had enacted reforms. Approval is expected in an additional six states this year, with a dozen more expected to reconsider the issue next year.

The legislative response comes on the heels of a massive public outcry against the porno trade. There are at least 264 magazines and untold numbers of films and photos distributed across the country that sexually exploit children. The Los Angeles Police Department estimates that 30,000 children from the Los Angeles area alone were involved in the production of "chicken porn," as it's known in the trade. And one estimate places the number of children commercially sexually abused nationwide at more than half a million. Some of the children involved are as young as two or three.

Experts agree that physical exploitation of children can leave lifetime psychological scars. "Only after one has seen the mindless expression on the child's face and the constant plaintive seeking of off-camera direction from the producers of the porno films, can one fully understand how helpless the child victim genuinely is," San Francisco County District Attorney Joe Freitas testified before a California legislative hearing last April. What the viewer sees, he says, is "a child who will never fully recover from the acts perpetrated. . . for the sake of profit and a few moments of sick pleasure for the audience."

Dr. Judianne Denson-Gerber, president of New York's Odyssey Institute, adds that sexual exploitation can lead victims to "join our deviant populations: drug

addicts, prostitutes, criminals and pre-adult parents. . . ."

As a first step, states have amended their obscenity statutes to prohibit the sale of child porn materials. But vague definitions of obscenity and fears of lengthy litigation on First Amendment guarantees of free speech have hampered efforts to crack down on those who market the materials.

To sidestep constitutional questions, states increasingly are defining child pornography as a form of child abuse. These new laws attempt to get to the root of the problem, making it a crime to actually photograph or film children in certain sexual acts.

California, one of the major child porn production centers, relied on a combination of approaches when it enacted tough new child porn laws recently. The state amended its pornography law, making it illegal to use children under 18 for specific sexual activities and to sell any child porn materials within the state. In addition, it is one of the first states to outlaw importation of "obscene material" involving children and to amend its child labor law, prohibiting children to pose or model for sexually exploitive materials.

Michigan also has one of the nation's most stringent laws. That state amended its child abuse law to create a separate ban on using children in sexually explicit material. And, like California, Michigan amended both pornography and child labor laws.

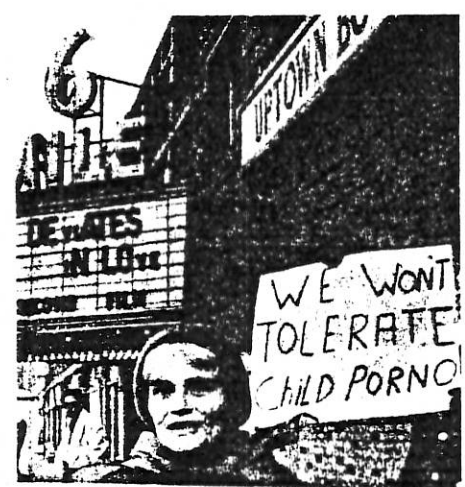
Penalties attached to the new laws are stiff, the NCSL survey found. Almost without exception, these offenses are classified as felonies, with fines generally varying from \$5,000 to \$10,000. California, however, imposes a \$50,000 penalty. Prison terms also vary, with most calling for up to 10 years.

Even with tougher laws, enforcement officials still face problems in detecting and prosecuting child porn producers. The materials are produced in secret, and producers frequently hide behind a number of dummy corporations in different loca-

tions. Films and magazines, for example, may be photographed in one state, processed in yet another, then shipped abroad for eventual distribution to U.S. markets.

To help track down producers, Delaware now requires adult bookstores to keep detailed records of all materials, wholesalers and distributors. And, to aid in prosecution of sellers, a number of states now provide that possession of three or more child porn materials is *prima facie* evidence of intent to sell.

Efforts are also underway at the federal level to deal with the problem. A House and Senate conference committee has resolved differences between several different child porn bills, reporting out legislation that would generally supplement state efforts.



law, and from what we've seen ... Hustler is as obscene as anything to be found on the newsstands."

Local prosecutors have begun their assault on obscenity partly at the request of angry citizens who feel that smut is not simply available, it is being thrust upon them and upon their children. Salt Lake City organized an anti-pornography campaign after several hard-core movie theaters opened near the Mormon temple; so far, one has been forced to close, and two others have softened their fare. Atlanta's crackdown began when a luckless street-walker invited Mayor Maynard Jackson to "come on in." City Solicitor Mary Welton proceeded to shut down six of the city's bathhouses as public nuisances. "I used to have a service station and every-

unless 51 per cent of the local people and businesses approved. Since that ruling, only two adult theaters have opened in Detroit.

City councils in New York and San Francisco are both considering zoning ordinances. Oakland, Indianapolis, Dallas and Fairfax County, Va., have all recently passed them. Zoning in Prince Georges County, Md., prohibits adult entertainment within 1,000 feet of a school or 500 feet of a church. Just to make sure passers-by can't get a peek at the action, the law requires doors and windows to be blackened.

Boston has tried another line of attack. Instead of dispersing pornography as Detroit has, it concentrates it in a two-block area known as the Combat Zone.

Much obscenity legislation is vague, and courts frequently declare it unconstitutional. By restricting—but not prohibiting—adult entertainment, legal experts say, zoning protects the rights of those who don't want to be exposed to pornography, but defends the right of those who do. "I don't think there is any First Amendment right to have pornography available every place," says Harvard law professor Alan Dershowitz. "Zoning is a reasonable idea."

But zoning does not go far enough for some. In Houston, Geneva Kirk Brooks organized Citizens Against Pornography (CAP) to lobby against smut in the city. The group's most recent goal has been to remove several books from the public library. They haven't succeeded, and in fact the CAP crusade has created such a demand for one—a children's sex-education book called "Show Me"—that library officials had to put it on reserve. Still, some believe Brooks's badgering may be what persuaded police to increase the vice detail from a part-time effort to a unit of four officers.

In Seattle last week, a group called DIET—Decency In Environment-Entertainment Today—began collecting signatures to put an anti-porn initiative on the ballot next fall. If approved, most of the city's adult entertainment businesses could be declared moral nuisances and closed down.

Pickets: The people of Fremont, Calif., a community of 120,000 on San Francisco Bay, used more imaginative tactics in their war on porn. Pickets suddenly began appearing in front of the city's massage parlors, often late at night. They usually marked the license numbers of parlor customers on their signs. After recognizing the family car's license number on the sign, some angry women joined the picket lines; others burst into the parlors searching for their husbands. Through a combination of harassment and regulations enacted under California's red-light-abatement law, Fremont eventually closed five of its nine parlors. A new city ordinance restricted hours for the others from 10 a.m. to 10 p.m., and not all are operating full time (perhaps because the ordinance also forbade nude massages). One parlor operator who said she did half her business between 10 p.m. and 2 a.m. tried to have the ordinance overturned, but so far the courts have refused.

Other citizens' groups have concentrated their attack on one of the most objectionable forms of smut: child pornography. Encouraged by permissive social attitudes and—more significantly—boredom with "conventional" adult entertainment, some pornographers have begun to exploit children. Magazines like "Young Stud" or "Chicken Supreme" show pre-teen boys, sometimes masturbating or engaging in homosexual acts. Boys and girls in movies like "Children Love" have sex with each other; they are so inexperienced that they can sometimes be seen looking off-cam-



Ira Rosenberg—Detroit Free Press

A Detroit protest against using kids in sex movies and magazines: Psychic damage

body that came in got their windshield cleaned," protested Jimmy Owens, owner of the Roman Bath House. "Now everyone who comes in here gets a rubdown, shower and sauna and comes out smiling. What's wrong with that?" Plenty, said Welcome (known as "Wild Mary"), and last week she forced the Roman Bath House out of business and took preliminary steps to shut down Atlanta's remaining sex parlors.

Zoning: After the Supreme Court upheld an innovative Detroit ordinance last June, more cities began relying on zoning to control pornography. Detroit's law allowed all existing adult entertainment businesses to stay open. But it stipulated that new enterprises could not open within 1,000 feet of old ones. Nor could they open within 500 feet of homes



The law has kept smut from moving into the rest of the city, but there have been problems within the zone itself, notably an increase in crime and violence; a Harvard football player died after he was stabbed there (NEWSWEEK, Dec. 6). Although Seattle passed an ordinance similar to Boston's, most cities prefer the Detroit model (the Seattle law is under challenge). Combat zones "breed criminality," says Comdr. Joseph DiLeonardi of the Chicago police. "You drag all your criminals into one area."

Joel Gora, acting legal director of the American Civil Liberties Union, objects to zoning because "you can't zone free speech." But whether by dispersing pornography or concentrating it, city officials believe zoning may be the best solution yet to regulating pornography.

era for instructions on what to do next.

Filmmakers have no trouble finding the stars for their movies. Some simply use their own children; others rely on runaways. In Los Angeles, where much of the child pornography is produced, police estimate that adults sexually exploited 30,000 children under 17 last year, and photographed many of them during the act. Dr. Judianne Densen-Gerber, a lawyer and psychiatrist who is leading the opposition to child pornography, believes the kids suffer permanent psychic damage. "There is no proven connection that I know of between adult pornography and sexual abuse," she says. "But this degradation of children scars them for life."

Contempt: Even "conventional" pornographers seem genuinely put off by smut involving what they call "young blood." After the San Francisco seizure of "Young Lolitas," the theater owner got a call from Jim Mitchell, who, with his brother, has made many porn films, among them "Behind the Green Door." "You're no pornographer any more," Mitchell told him. "You're a —. I've got nothing but contempt for you."

Until recently, Federal officials have taken little action against pornography (Federal statutes prohibit sending obscene material through the mail, shipping it across state lines or importing it). With the Supreme Court's 1973 obscenity decision, which allowed communities to set their own standards of obscenity, most U.S. attorneys have been content to leave pornography prosecution up to local D.A.'s. In addition, few Federal attorneys

like to risk their reputations on obscenity trials, which in the past have been costly, time-consuming and notoriously difficult to win. An exception is Larry Parrish, assistant U.S. attorney in Memphis. Nicknamed the Memphis Heat, Parrish prosecuted twelve obscenity trials last year, including one against actor Harry Reems in "Deep Throat."

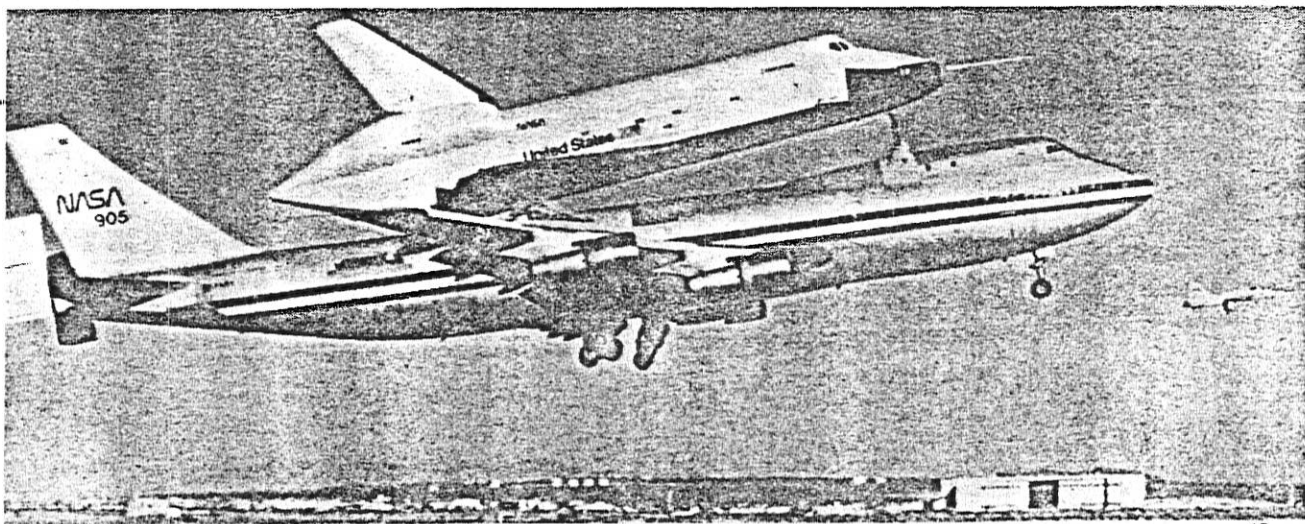
But the Federal government's attitude may be changing. Congress will probably soon take up a bill that would prohibit the manufacture or sale of pornography using children. Federal attorneys have also shown more interest in investigating what appear to be strong links between pornography and organized crime. "The mob has definitely moved in and it's not your two-bit mafiosi either," says Florida's Phillips. "To put up a peep machine, you have to go to one man or you don't get it." Community agitation against porn may encourage even more Federal prosecution, especially by ambitious attorneys. "I think you're going to see a tremendous amount of litigation in this area," says Illinois state Rep. Robert Mann, chairman of a subcommittee on obscenity. "Traditional values are being dusted off and looked at again."

Some of the people who make money from erotic entertainment don't mind cooperating with prosecutors—possibly because they, too, are dismayed by the rawness of the new pornography. When a judge in Rapides Parish, La., ruled last fall that 32 magazines sold on newsstands violated state obscenity laws, dealers simply agreed not to sell them. "After we were successful, the D.A. in

Shreveport told me he didn't even have to file a proceeding like I did," said Rapides Parish district attorney Ed Ware. "He just called the distributors and dealers in and they agreed to take them off the shelves." More commonly, though, people in the nation's \$3 billion pornography business are opposing attempts to put them out of it. "It's a business and it serves the legitimate sexual needs of adults," argues Al Goldstein, editor of Screw magazine, who was convicted in Kansas last year for sending obscene material through the mail—and recently won a new trial.

Digging In: Although some of the most shocking material will undoubtedly be forced off the market, few people believe the panderers of porn are seriously threatened by the latest assault on adult entertainment. Most have a well-known ability to dig in under attack (when the District of Columbia passed a statute forbidding employees of bath houses to massage members of the opposite sex, the parlors simply established take-out service and sent masseuses to clients' homes or hotels). "These crackdowns come and go," says John Rogan of New York City's public morals squad. "I've seen it for over twenty years. The best we hope for is to keep a lid on it." It is a lid that is difficult to keep on because the American public is clearly of two minds about pornography: there wouldn't be much to crack down on if more people weren't buying dirty books.

—SUSAN FRAKER with WILLIAM J. COOK in San Francisco, DEWEY GRAM in Los Angeles, HOLLY CAMP in Atlanta, ELAINE SCIOLINO in Chicago, STEPHEN G. MICHAUD in New York and bureau reports



THE ODD COUPLE TAKES OFF

Squatting like a toad atop a Boeing 747 jet, the space shuttle Enterprise flew into a cloudless sky above California's Mojave Desert last week—and a new era of space travel got off the ground. In a two-hour flight, the odd couple flew to 16,000 feet at up to 300 mph to test the mother ship for problems such as excessive vibration and buffeting. There were none, and the landing was perfect. "It performed even better than we expected," beaming test pilot Fitzhugh L. Fulton Jr. reported to observers at

Edwards Air Force Base. "Most of the time we couldn't even tell the shuttle was there."

In last week's test flight, the 75-ton Enterprise was unmanned. Within five months, however, pilots will fly the space shuttle off the top of the 747. And by 1979, the National Aeronautics and Space Administration hopes to launch the spacecraft—piggybacked aboard a rocket—into an orbit around the earth that will end with an airplane-like landing in the U.S. Eventually, the shuttle will carry astronauts and scientists to orbiting space stations or, quite possibly, to bases in outer space.

Child's Garden of Perversity

Lollitots magazine is one of the milder examples. It features preteen girls showing off their genitals in the gynecological style popularized by *Penthouse* and *Playboy*. Other periodicals, with names such as *Naughty Horny Imps*, *Children-Love* and *Child Discipline*, portray moppets in sex acts with adults or other kids. The films are even raunchier. An 8-mm. movie shows a ten-year-old girl and her eight-year-old brother in fellatio and intercourse. In another film, members of a bike gang break into a church during a First Communion service and rape six little girls.

These and a host of other equally shocking products are becoming increasingly common fare at porn shops and sex-oriented mail-order houses across the nation. They are part of the newest growth area pushed by the booming, billion-dollar pornography industry: child porn.

"I just found out about these magazines and films this summer, and I've become a raving banshee over it," says Dr. Judianne Densen-Gerber, a Manhattan psychiatrist who has been barnstorming around the country in a crusade against this abuse of minors. Her effort is only one part of a new campaign against child porn. New York City has cracked down, and police have at least temporarily forced kiddie-sex periodicals and films out of the tawdry Times Square area. Some twenty states are considering child-porn laws. Last week the Illinois house of representatives approved a bill setting stiff penalties for producing and selling child porn. The bill is expected to pass the senate and become state law.

Child porn is hardly new, but according to police in Los Angeles, New York and Chicago, sales began to surge a year or two ago and are still climbing. Years ago much child pornography was fake—young-looking women dressed as Lolitas. Now the use of real children is startlingly common. Cook County State's Attorney Bernard Carey says porno pictures of children as young as five and six are now generally available throughout Chicago. Adds Richard Ko-peikin, a state's attorney investigator: "They are even spreading to the suburbs, where they are now considered rare items, delicacies."

Among recent developments:

► Underground sex magazines are heavily stressing incest and pedophilia. One current West Coast periodical ran ten pages of photos, cartoons and articles on sex with children.

► In San Francisco hard-core child-porn films were shown in a moviehouse for five weeks before police seized the films last February. Even San Francis-

co's Mitchell brothers, the national porn-film kings, were outraged. Says Brother Jimmy: "We think obscenity laws should start with child porn."

► An Episcopal priest, the Rev. Claudius I. Vermilye Jr., who ran a farm for wayward teens in Winchester, Tenn., is awaiting trial on charges that he staged homosexual orgies with boys on the farm and mailed pictures of activities to donors around the country.

Until recently, much child porn sold in America was smuggled in from abroad. Now most of it appears to be home grown, with the steady stream of bewildered, broke runaways serving as a ready pool of "acting talent" for photographers. Pornographers who stalk children at big-city bus stations find many victims eager to pose for \$5 or \$10—or simply for a meal and a friendly word. Says Lloyd Martin, head of the Los Angeles police department's sexually abused child unit: "Sometimes for the price of an ice-cream cone a kid of eight will pose for a producer. He usually trusts the guy because he's getting from him what he can't get from his parents—love." In many cases, the porn is a byproduct of child prostitution. Pimps invite children to parties, photograph them in sex acts, and circulate the pictures as advertisements to men seeking young sex partners. Frequently, the pictures are then sold to porn magazines.

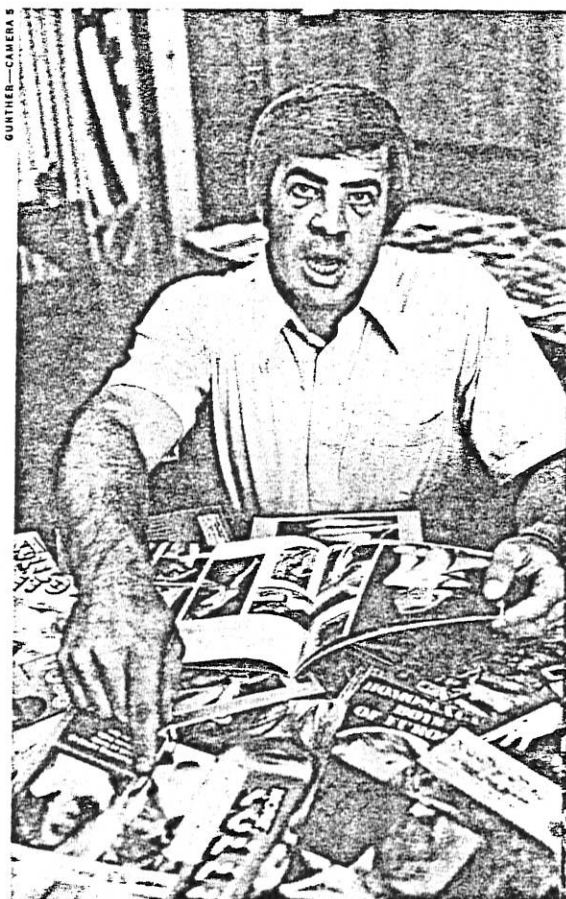
Even worse, some parents are volunteering their own children to pornographers, or producing the sex pictures themselves. Last year a Rockford, Ill., social worker was sent to jail for allowing his three foster sons to perform sex acts before a camera for \$150 each. In January, a couple in Security, Colo., was charged with selling their twelve-year-old son for sexual purposes to a Texas man for \$3,000.

Some children in porn photos are victims of incest. Parents will have intercourse with a son or daughter, then swap pictures with other incestuous parents, or send the photos to a sex publisher. Sex periodicals, particularly on the West Coast, publish graphic letters on parents' sexual exploits with their own children. Says Los Angeles' Martin: "We had one kid in here the other day who is eleven years old. His father started on him when he was six, then sold him twice as a sex slave. The kid had been in movies, pictures, magazines and swap clubs. After a while, he broke down and cried and said how grateful he was to have been pulled out of it."

Such experiences can of course scar a child for life. Warns New York Psychoanalyst Herbert Freudenberg: "Children who pose for pictures begin

to see themselves as objects to be sold. They cut off their feelings of affection, finally responding like objects rather than people." Some psychiatrists believe that children who pose in porn pictures are often unable to find sexual fulfillment as adults. Another danger, says Los Angeles Psychiatrist Roland Summit, "is that sexually abused children may become sexually abusing adults."

Child porn poses fewer hazards for the pornographers. Producers of child porn can be prosecuted for sexual abuse of children, but the children are hard to identify and locate. So are the produc-



LLOYD MARTIN OF LOS ANGELES POLICE
For an ice-cream cone or a kind word.

ers, who often hide behind a welter of dummy corporations. Thus most prosecutions are under the obscenity laws, which generally make no distinction between children and adults as porn models. One result: many lawyers believe that the genital pictures in *Lollitots*, however offensive, might be judged no more obscene under the law than similar photos of adult women routinely published in most men's magazines.

To make prosecutions easier, angry legislators in several states and Congress are proposing a kind of end run around the obscenity laws—a ban on sexually explicit pictures of children, whether le-

gally obscene or not. One bill introduced into the House of Representatives by Democrats John Murphy of New York and Dale Kildee of Michigan already has 103 co-sponsors. It would make any proven involvement with the production and sale of explicit sex pictures of children a felony. Says a Kildee aide: "Our bill is clearly enough directed toward child abuse so that the First Amendment should not arise. This is why we defined child pornography as a form of abuse, rather than a form of obscenity."

Under this approach, a salesman in an adult bookstore could be prosecuted as an active participant in the crime of

sexually exploiting the children pictured in the store's magazines. New York Lawyer Charles Rembar, who successfully defended *Lady Chatterley's Lover* and *Fanny Hill* against obscenity charges, thinks the seller of child porn is a suitable target: "It is totally unrealistic to say that the people who sell these magazines and films are not involved in the act themselves." Yet other lawyers consider a broad child-abuse law a form of backdoor censorship. Says Ira Glasser of the New York Civil Liberties Union: "I assume if you put your mind to it, you could come up with an acceptable statute prohibiting adults from using

children in explicit sex films and photos, but controlling what people see or read is another matter. Everything published ought to be absolutely protected by the First Amendment."

Despite First Amendment problems, public pressure for some kind of law is likely to grow. Many Americans battling against child porn view their efforts as a last stand against the tide of pornography. Says California State Senator Newton Russell: "This is a reflection of the social and spiritual morality of this nation. If there is to be any reversal in the trend, the place to start is child porn."

THE PRESS

NEWSWATCH/TOMAS GRIFFITH

The Greening of a Guerrilla

Against politicians he suspects of major wrongdoing, "the journalist's job is to get the story by breaking into their offices, by bribing, by seducing people, by lying, by anything else to break through that palace guard." This was Robert Scheer speaking, the self-styled "aggressive Berkeley radical" who got Jimmy Carter to confess to lust in his heart in that celebrated *Playboy* interview. Scheer's own matching candor about his right to lie and cheat seemed to confirm what Richard Nixon and Spiro Agnew once said about the press; Scheer shocked even a number of his fellow "counterjournalists" when he made the remarks in November, and it mightily embarrassed the Los Angeles *Times*, which had just hired him.

ROBERT SCHEER OF THE LOS ANGELES TIMES



That hiring is a strange union at best between the Berkeley Marxist and the conservative *Times* (which is not as intransigently conservative as it used to be). Editor Bill Thomas of the *Times* had been much impressed by Scheer's searching *Playboy* interviews with Carter and with Jerry Brown and decided "it's time we had something different going for us." And he detected a change taking place in Scheer himself, a change also evident in an interview with Scheer by Ken Auletta in the March issue of the journalism review *More*.

As editor for five years of the radical magazine *Ramparts*, Scheer thought of himself as a "guerrilla journalist" because he did not want to be part of "access journalism," which apparently refers to reporters who knock before entering. "We hung out at parties and eavesdropped and stole memos and every other damn thing to crash through. I wish we'd never had to do any of it." But, he argues, "a hell of a lot of the investigative journalism of the last five years has come from files that are lifted, people who are violating the conditions of their jobs and so forth." If the wrongdoing is important enough and "if that's the only way you can get that story, it should be done that way."

Changing Times. These views, set off with red headlines in *More*, have got Scheer in a lot of trouble. He insists that the lying and stealing question was hypothetical, and times have changed since the Nixon era: "I don't think you can make much of a case for burglary at this point in American history."

Scheer comes out of that generational journalism of the '60s, whose work is to be found in such magazines as *Esquire*, *New York*, *New Times* and *Rolling Stone*. Much of the tone of such writing is personal, confessional, full of macho bellicosity and show-biz put-on (Scheer acknowledges: "One of the ironies of celebrity is that you can prob-

ably advance your career by taking outrageous positions"). Scheer thinks of himself as a meticulous, aggressive fact gatherer, not a user of dubious means.

But though now an "access journalist," Scheer is not really housebroken. Attending his first Georgetown dinner party with a columnist, he relates: "I couldn't believe the conversation. Most journalists of power are part of a culture that is almost all 'off the record,' constantly swimming in a sea of information the rest of us don't get to see." If Scheer himself heard something of import at a dinner party, he would "violate that civilized behavior and maybe not get invited to any more parties." On the same grounds, he asserted his right to break confidences. These remarks enraged the *Times's* Washington bureau.

Keeping Secrets. The sea of information that Scheer imagines floating through Georgetown drawing rooms is not all that tidal, or ignored; access journalists fish rewardingly in such waters. Scheer seems to have confused "off the record" (which cannot be printed) with "not for attribution," where the sources cannot be named. But he nonetheless thinks the Washington press elite too cosily keeps secrets it should not.

His editor, Bill Thomas, still admires Scheer's abilities but "can't agree with his right to break confidences or to reveal sources he promised not to reveal. He's not going to behave that way in work he does for us, and we're not going to print anything got that way." Scheer says: "I accept the rules, I accept the restraints." He does not think he has been co-opted, even if the *Times* job did enable him at the age of 40 to buy the first real bed he has ever owned. He happily finds himself, and old colleagues from his radical and poor days like John Leonard and Seymour Hersh of the *New York Times*, able to get their "views printed in the mass media that would have ruled them out in the '50s and '60s." Access journalists have to live by more rigid rules than the fiercely "honest" radical journalists for whom, in more tumultuous times, the morality of righteous anger was enough.

SENATE BILL No. 587

By Senator Meyers

12-28

0015 AN ACT defining and classifying the crime of sexual exploitation
0016 of a child.

0017 *Be it enacted by the Legislature of the State of Kansas:*

0018 Section 1. (1) Sexual exploitation of a child is:

0019 (a) Employing, using, persuading, inducing, enticing or
0020 coercing a child to engage in sexually explicit conduct for the
0021 purpose of photographing, filming or displaying in any way the
0022 sexually explicit conduct promoting any film, photograph, neg-
0023 ative, slide, book, magazine or other printed or visual medium;
0024 or

0025 (b) Photographing, filming or displaying in any way a child
0026 engaged in sexually explicit conduct; or

0027 (c) Receiving for the purpose of selling or selling any photo-
0028 graph, film or other material which in any way displays a child
0029 engaged in sexually explicit conduct.

0030 (2) This section shall not apply if the photographing, filming
0031 or displaying in any way of a child engaged in sexually explicit
0032 conduct is for a legitimate scientific or educational purpose *Being*
0033 *a parent, guardian or other person having custody or control of a*
0034 *child and knowingly permitting such child to engage in, or assist*
0035 *another to engage in, sexually explicit conduct for the purpose of*
0036 *promoting any film, photograph, negative, slide, book, magazine*
0037 *or other printed or visual medium.*

0038 (3) As used in this section:

0039 (a) "Child" means any person who is less than ~~eighteen~~ (18)
0040 *sixteen (16)* years of age;

0041 (b) "Sexually explicit conduct" means actual or simulated:
0042 sexual interco~~it~~, sodomy, oral or anal copulation, genital-geni-

3-16

(c) Distributing for resale any film, photograph, negative, slide, book, magazine or other printed or visual medium knowing that the same contains illustrations of a child engaged in sexually explicit conduct.

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LEONARD H. AXE, S.J.D.(1975)

March 21, 1978

3-16

Hon. E. Richard Brewster, Chairman
House Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: SB 587

Dear Dick:

This letter is in response to our telephone conversation of March 13, 1978, regarding the position of the Kansas Magazine Wholesalers Association with respect to the above captioned bill.

As I am sure you are aware, SB 587 was introduced by Senator Meyers in substantially identical form to the bill introduced by Representatives Jones and A. Niles in HB 2821. The Senate Judiciary Committee amended SB 587 to conform, in large measure, to S. 1585 which is now P.L. 95-225.

We appeared at the Senate Judiciary Committee Hearing on Senate Bill 587 and, at that time, expressed the views of the Association with respect to that bill. We have also appeared before your Committee as to House Bills 2809 and 2821 and expressed similar views.

The Association takes the position that the Senate Bill, in its present form, is significantly better legislation than the bill prior to amendment. It is our opinion that the bill prior to amendment contained substantial constitutional defects and, in addition, was wholly unworkable as to the periodical distribution industry. Our express views are as set forth in our letter to Senator Pomeroy of February 2, 1978, a copy of which is enclosed.

Page Two
Hon. E. Richard Brewster, Chairman

The questions and comments set forth in this letter do not necessarily directly involve the Kansas Magazine Wholesalers Association or any of its members. Rather, our purpose here is to call to the attention of the Committee those facts we believe may be of assistance to them in considering the bill before them.

Were SB 587 an obscenity bill, we would be quite concerned about the language "lewd exhibition of the genitals or pubic area of any person." The reason for this concern is the lack of clear cut standards as to what constitutes "lewd exhibition." In this regard, we reference the letter of the Attorney General of December 6, 1976, to Mr. B. E. Nordling, City Attorney for Hugoton, Kansas, wherein it is stated..."the reference to 'lewd exhibition of the genitals' invites litigation in particular cases over what is 'lewd.'" Furthermore, the enlargement of the area of depiction to include the entire pubic area is, in our opinion, somewhat questionable. It was the testimony of Mr. Miller before the Senate Judiciary Committee that "lewd" meant a "clear" picture when applied to a depiction of the female breast. While we do not share the interpretation of Mr. Miller, we note that under his interpretation it would be impossible to produce in Sedgwick County photographs which normally would appear in magazines such as National Geographic (a fear that Senator Berman previously expressed) nor would the so-called nudist magazines, such as Sunshine and Health, be producible in that county although the Supreme Court of the United States has specifically determined certain issues of that title not to be obscene.

The Bill is not, in its present form, an obscenity statute, and we doubt that it would survive a constitutional test as an obscenity statute. The question raised before the legislature in Senate Bill 587 is basically to what extent should the legislature protect children from commercial sexual exploitation, bearing in mind, that the net cast to protect the child, may, in certain instances, make innocent acts subject to criminal prosecution. In this regard, we further note that neither S. 1585 nor Senate Bill 587 provide saving language in the event the use of the child is for a legitimate scientific or educational purpose. Given the broad scope of the prohibited depictions of a child,

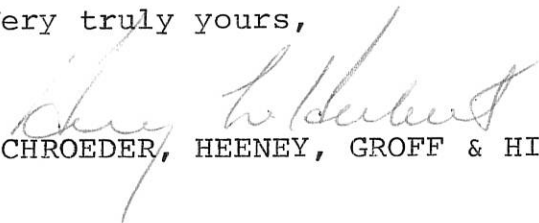
Page Three
Hon. E. Richard Brewster, Chairman

and recognizing that there may be legitimate scientific or educational purposes for an otherwise prohibited act, we believe SB 587 could well be strengthened by addition of appropriate saving language. Unfortunately, however, the saving language would have been even more appropriate in the Federal Act than it is in the Kansas Bill, an opportunity now lost to the Congress.

We hope the foregoing will be of assistance to you, but if you have any specific questions where we might be of assistance, please so advise.

Best regards.

Very truly yours,



SCHROEDER, HEENEY, GROFF & HIEBERT

HLH:cjw

Enc.

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LEONARD H. AXE, S.J.D.(1975)

February 2, 1978

Senator Elwaine F. Pomeroy, Chairman
Senate Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: Senate Bills 587 and 474

Dear Senator Pomeroy:

This letter is in amplification of the position previously articulated by us on behalf of the Kansas Magazine Wholesalers Association.

Once again the legislature has before it proposed legislation in an area where it may be unpopular to take a position adverse to increased governmental regulation. In contemporary times, the public consumes, publishers print, distributors distribute and retailers sell, significant quantities of material having some sexual orientation. No element of the media is exempt from this process. Fawcett Publications, a subsidiary of CBS, Incorporated, distributes many items which are clearly of this nature. This is not intended to be justification, in any way, for the state of the industry. It merely is a report of such state.

That public acceptance of sexually oriented material is widespread is well demonstrated by the fact that both Playboy and Penthouse magazines have circulations in excess of those of Time and Newsweek. Of publications classified as business-social-literary, Penthouse Forum, a sex advice magazine, has a newsstand circulation very nearly equal to the newsstand distribution of the next three publications combined, High Times, Scientific American, and Psychology Today. In fact, Penthouse Forum has a newsstand circulation very nearly equal to that of the remaining 20 magazines in this classification, including Fortune, Barons, Harper's Magazine, The Catholic Digest, Atlantic Monthly, Business Week, Saturday Review, National Observer, Forbes, and National Review.

Page Two

Senator Elwaine F. Pomeroy, Chairman

Of further significance is the fact that magazines of this type are not in general distribution. For example, the largest member of the Association might serve approximately 800 different retailers. Of those 800, however, only approximately 200 receive Playboy. Titles that are generically less "tame" than Playboy receive even more limited distribution. Thus, the distribution industry and the retailer both realize that availability of items of this particular nature must be treated differently than a news magazine.

Furthermore, upon request of the retailer, the wholesaler has been willing to place "blinder" plates over material which may depict nudity on its cover. So called "adult" items are generally placed at the top of display racks where they are not accessible, or visible, to the juvenile. Thus, the industry has always recognized that there are display problems attendant to this very sensitive area.

That is not to say, however, that the industry has an encompassing answer to the problem which is recurringly hashed out in the legislatures, the Congress, and the Courts. Furthermore, the "answer" has tended to become less, rather than more, clear with each passing action. Definitions of "obscenity" fashioned in courtrooms and legislatures, tend to be unrealistic when applied in the industry. Local interpretation solves the problem of defining "obscenity" in terms of local prosecution, but thoroughly chills the entire subject area as far as the retailer and national distributor and wholesaler are concerned. Since the retailer depends on the wholesaler to give appropriate service, broad, non-definitive and elusive standards merely cause the distributor to become a censor, a function which even Courts and juries have not been successful in carrying out.

The Association recognizes the noble purpose enunciated by Senator Meyers in Senate Bill 587, and is wholly in agreement with the concepts set forth in that bill. As a practical matter, however, paragraph (1)(c) of Section 1 of the Bill creates significant problems to the Association. Obviously, it lacks the requirements

Page Three

Senator Elwaine F. Pomeroy, Chairman

of scienter set forth in Smith v. California, 361 U.S. 147. Additionally, however, the recognition of age in a photograph is virtually impossible. It is not known whether or not reasonable cause arrests could emanate from Courts where judicial guesswork on age is used either. If the Committee were to strike that particular paragraph from the Bill, and appropriately modify paragraph (1)(b) by eliminating the words "in any way" the Bill would receive Association support. It is noted, however, that presently pending before the House of Representatives of the United States is Senate Bill 1585 which has been referred to the House by Joint Committee of the House and Senate. A copy of that bill is enclosed.

Senate Bill 474 poses more far reaching problems to the Association and its members. The basic problem has been outlined in the statement we submitted to the Committee on January 26, but, in addition, certain other points should be made.

While we recognize that it is not the province of the legislature to determine the constitutionality or nonconstitutionality of bills before it, certainly it is a consideration of the legislature inasmuch as a bill not meeting constitutional requirements would, upon a determination of such by an appropriate Court, effectively nullify the act of the legislature. From the point of view of the Association, legislation, whether constitutional or nonconstitutional, which causes distributors and retailers to recurrently defend themselves in Court, at tremendous expense, is most undesirable. In the case of a nonconstitutional act by the legislature, an otherwise legal act, the free exercise of speech, becomes a very costly practice. The Association therefore urges the Committee to consider the constitutional question as it relates to Senate Bill 474.

Mr. Miller, the Sedgwick County District Attorney, has furnished a copy of Ginsberg v. New York to the Committee members. Paragraph (3) of the syllabus of that opinion rendered by Justice Brennan states:

It is not constitutionally impermissible for New York, under this statute, to accord minors under 17 years of a more restricted right than

Page Four
Senator Flwaine F. Pomeroy, Chairman

that assured to adults to judge and determine for themselves what sex material they may read and see.

And such was Justice Brennan's dissenting opinion in the now landmark case in obscenity, Miller v. California, 413 U.S. 15. In Miller, because the Court was again split in its decision, Chief Justice Burger apparently wanted to rebut the dissenting opinions of the minority. Thus, the Chief Justice directly responds to the argument of Justice Brennan:

Paradoxically, Mr. Justice Brennan indicates that suppression of unprotected obscene material is permissible to avoid exposure to unconsenting adults, as in this case, and to juveniles, although he gives no indication of how the division between protected and nonprotected materials may be drawn with greater precision for these purposes than for regulation of commercial exposure to consenting adults only. Nor does he indicate where in the Constitution he finds the authority to distinguish between a willing 'adult' one month past the state law age of majority and a willing 'juvenile' one month younger. (emphasis added)

Furthermore, the Chief Justice makes it amply clear that it is the Miller decision, and not its predecessors, that is to determine the perimeters of protected expression:

It is in this context that we are called on to define the standards which must be used to identify obscene material that a state may regulate without infringing the First Amendment as applicable to the states through the Fourteenth Amendment. (emphasis added)

Again, we recognize that the Committee is not a forum for constitutional argument. Nevertheless, we find it difficult to ignore

Page Five

Senator Elwaine F. Pomeroy, Chairman

the response of the majority to the dissent of Justice Brennan. And it appears to us that it is that language that forecloses the possibility of enacting constitutionally valid legislation as set forth in Senate Bill 474.

The Committee's attention has already been directed, by one of its members, to paragraph (1)(a) of Section 1 of the bill wherein it would be impermissible for any person to "manufacture...any obscene material to a minor." In that particular instance, the language obviously must be modified if the prohibition is to make sense at all. We would like to direct the Committee's attention, however, to other activities made unlawful by the bill which are equally difficult to visualize in reality. Those activities wherein there is a direct relationship between the actor and the minor pose little or no problem. However, general prohibitions against distributing (normally distribution takes place between a wholesaler and a retailer) and advertising do not have the requisite relationship and create monumental problems. Should it be forbidden to advertise Playboy magazine because a particular issue of that title may be "obscene" as defined by the bill? Clearly this cannot be the intent of the legislature since the effect is to forbid the free exercise of otherwise permissible speech.

Paragraph (1)(b) of Section 1 of the bill seems extraneous. How could one determine if there was possession of a lawful item with intent to distribute to a minor?

Paragraph (1)(c) of Section 1 is fraught with the same difficulties as paragraph (1)(a) above.

That portion of the bill which reads "evidence that materials were promoted to emphasize their prurient appeal or sexually provocative aspect shall be relevant in determining the question of the obscenity of such materials, and shall create a presumption that the person promoting the same did so knowingly or recklessly," is problematical in that the Court held in Roth v. United States, 354 U.S. 476 at 487 that "sex and obscenity are not synonymous." Or in the words of Justice Brennan, joined by Justices Stewart and

Page Six

Senator Elwaine F. Pomeroy, Chairman

Marshall, in the dissenting opinion of Paris Adult Theatre I v. Slaton, 413 U.S. 49: "...that matter which is sexually oriented but not obscene is fully protected by the Constitution." Since the bill creates a dual definition of obscenity, advertisement of items that are within the protection of the Constitution, though they be sexually oriented, could operate presumptively against the promoter should they ultimately be sold to a minor.

Paragraph (2)(a) of Section 1 of the bill contains the "new" standard by which obscenity is to be determined in the case of a minor. We take specific issue with this standard, reiterating the position that it is overly broad, exceeds the limitations imposed by Miller v. California, and is wholly unworkable.

We note that paragraph (3) of Section 1 is a new defense under the law.

While we are not in possession of the amendment offered by Senator Francisco, we understand that paragraph (4) of Section 1 is amended to provide for a defense in the event the material was sold, leased, distributed, or disseminated by a parent in addition to the other classes permitted by the bill. We note, however, that this does not include a church, some of which have utilized similar material in sexual awareness classes. Due to the broad cast of the bill, it would be assumed that there may be even further justification for addition of church sanctioned dissemination.

As a final note, we add that any censorship legislation imposes significant burdens on the industry which provides the citizens of this state and county with a considerable majority of the wealth of written material which is available no where else in this world. If this industry is to be forced to exercise god-like judgment on each issue of each title it distributes we should be prepared to accept responsibility for its probable contraction of operations and ultimate demise.

Page Seven
Senator Elwaine F. Pomeroy, Chairman

For the reasons set forth above, we respectfully but emphatically urge that if Senate Bill 474 must be reported, that the Committee report the bill unfavorably.

Very truly yours,

SCHROEDER, HEENEY, GROFF & HIEBERT

HLH:cjw

Enclosure

3-16
Jones

SENATE BILL No. 587

By Senator Meyers

12-28

0015 AN ACT defining and classifying the crime of sexual exploitation
0016 of a child.

0017 *Be it enacted by the Legislature of the State of Kansas:*

0018 Section 1. (1) Sexual exploitation of a child is:

0019 (a) Employing, using, persuading, inducing, enticing or
0020 coercing a child to engage in sexually explicit conduct for the
0021 purpose of ~~photographing, filming or displaying in any way the~~
0022 ~~sexually explicit conduct promoting any film, photograph, neg-~~
0023 ~~ative, slide, book, magazine or other printed or visual medium;~~
0024 or

0025 (b) ~~Photographing, filming or displaying in any way a child~~
0026 ~~engaged in sexually explicit conduct; or~~

0027 (c) ~~Receiving for the purpose of selling or selling any photo-~~
0028 ~~graph, film or other material which in any way displays a child~~
0029 ~~engaged in sexually explicit conduct.~~

0030 (2) ~~This section shall not apply if the photographing, filming~~
0031 ~~or displaying in any way of a child engaged in sexually explicit~~
0032 ~~conduct is for a legitimate scientific or educational purpose *Being*~~
0033 ~~a parent, guardian or other person having custody or control of a~~
0034 ~~child and knowingly permitting such child to engage in, or assist~~
0035 ~~another to engage in, sexually explicit conduct for the purpose of~~
0036 ~~promoting any film, photograph, negative, slide, book, magazine~~
0037 ~~or other printed or visual medium.~~

0038 ~~(3)~~ As used in this section:

0039 (a) "Child" means any person who is less than ~~eighteen (18)~~
0040 ~~sixteen (16)~~ years of age;

0041 (b) "Sexually explicit conduct" means actual or simulated:
0042 sexual intercourse, sodomy, oral or anal copulation, genital-gen-

(c) Selling any film, photograph, negative slide, book, magazine or other printed or visual medium knowing that the same contains illustrations of a child engaged in sexually explicit conduct.

(2)

i

contact

0043 *tal, oral-genital, anal-genital, or oral-anal, whether between per-*
 0044 *sons of the same or opposite sex; bestiality; masturbation;; sado-*
 0045 *masochistic abuse for the purpose of sexual stimulation; lewd and*
 0046 *lascivious behavior or nudity; if such nudity is depicted for the*
 0047 *purpose of sexual stimulation or gratification of any person who*
 0048 *may view such depiction; or lewd exhibition of the genitals or*
 0049 *pubic area of any person.*

0050 (c) "Promoting" means producing, directing, manufactur-
 0051 ing, issuing, publishing, or advertising for pecuniary profit.

(3)

0052 ~~(4)~~ Sexual exploitation of a child is a class E felony.

(4)

0053 ~~(5)~~ This section shall be part of and supplemental to the
 0054 Kansas criminal code.

0055 Sec. 2. This act shall take effect and be in force from and after
 0056 its publication in the statute book.

3-16

TESTIMONY: Vincent DeCoursey, Executive Director
Kansas Catholic Conference

House Judiciary Committee
March 16, 1978

IN SUPPORT OF S.B. 587, AS AMENDED: "An act defining and
classifying the crime of sexual exploitation of a child".

I wish to thank the Chairman and members of the House
Judiciary Committee for the privilege of testifying in support
of S.B. 587.

It seems almost incredible that these so-called permissive
times have allowed our traditional sense of moral values to
decline to a point where legislation such as S.B. 587 becomes
necessary. However, it is all too clear that such is the case
and that being so it is necessary the state place criminal
sanctions on the actions of men and women who, for profit, would
sell the bodies and souls of children to those who pander to
deviant sexual taste.

We urge the committee and the House of Representatives
to vote to pass S. B. 587 and to put it into the laws of this
state.

3-16

Statement to the House Judiciary Committee on Senate Bill No. 587
March 16, 1978

I am Linda Mowbray, lobbyist for the Junior League of Topeka, Inc. I am here today to express our support of Senate Bill No. 587, as amended by the Senate committee.

Since 1975 Child Advocacy has been a program of the Junior League, and through conferences and institutes we have sought information for change which will, among other things, continue to improve child protection regulations.

It is our belief that this state legislation, in conjunction with federal legislation which is waiting the President's signature, will provide adequate protection from this particular form of child abuse.

Thank you.

3-16

KANSAS MAGAZINE WHOLESALERS ASSOCIATION
STATEMENT SUBMITTED TO SENATE JUDICIARY COMMITTEE
RE: SENATE BILL NO. 474

January 26, 1978

(A) The Kansas Magazine Wholesalers Association. The Kansas Magazine Wholesalers Association is an association comprised of distributors of magazines and paperback books to retail outlets in the State of Kansas. Retail outlets would include supermarkets, newsstands, drugstores, bookstores and virtually any in-store rack display of paperback books and magazines. As do most members of the Council of Periodical Distributors of America (CPDA), members of the Kansas Association distribute approximately 1660 different titles received from the thirteen major national distributors of magazines. (100 to 200 new titles are introduced annually.)

(B) Mechanics of the Distribution Industry. Counting all possible stages, within the magazine industry there are six major links in the chain of production and distribution. The first link is, of course, the author, followed by the publisher representing numerous authors. The third link is the national distributor representing in each case, numerous publishers. At this point in the chain of distribution, the

thirteen major national distributors have for sale to the wholesaler, approximately 1660 different titles. Except to the extent that a wholesaler specifically directs a distributor not to send to the wholesaler any item, the wholesaler will receive those 1660 titles in varying allotments. These 1660 titles are divided into 33 basic subject categories. New titles are distributed to the wholesaler by the national distributors as they become available and in allotments predetermined by the national distributor. At no instance in the chain of distribution is the wholesaler aware of the contents of any specific issue of any title or, in the case of a new title, anything about the new title, until it actually arrives at the dock of the wholesaler.

The fifth link in the chain of distribution is the retailer. The material a retailer will receive will depend upon the type of operation involved, i.e., a newsstand operation receives virtually all items while other types of retail outlets will receive a varying mix of the titles, by category, ranging from full newsstand operation to very limited distribution both as to category and number. The retailer, of course, may refuse to accept any title or issue for sale. Thus it is possible for the retailer to select his own distribution

list.

The sixth and last link in the chain of distribution is the consumer. And, to a very great extent, it is the consumer that determines the character of the publications made available by authors, publishers, national distributors, wholesalers and retailers. Obviously, the content and mix of publications available to the consumer are dictated by the reading tastes of the consumer.

(C) Censorship in the Chain of Distribution. At all points in the chain of distribution, some type of censorship takes place, whether it be active or passive. Authors and publishers must make some selection as to what is written about and published. National distributors make selection by publisher as to the nature of titles they want to distribute. Censorship by the wholesaler takes place after items are received at the dock of the wholesaler. At that point, the wholesaler will have approximately ten days in which to decide whether the item received from the national distributor will or will not be distributed to the retailer. Of the 1660 titles received from the national distributor, approximately 25% will be reviewed, page by page, generally as to any pictorial content that would be in violation of law. Categories of titles involved in this screening process would include calendar magazines, cycle maga-

zines, detectives and westerns, "girly" magazines, men's adventure magazines, movie magazines, romance magazines, teenage and music magazines and women's interest magazines (to a limited extent). Items not deemed suitable for distribution by the wholesaler are then returned to the national distributor.

Since it is the wholesaler that places items on the shelves of the retailer, retail censorship must take place after placement. Thus the retailer must review the items received from the wholesaler and, if any items are deemed offensive by the retailer, those items are removed from sale and returned to the wholesaler.

Of course, ultimate censorship is performed by the reader, the consumer, who decides what to buy and read.

(D) The Association Position on Senate Bill No. 474. As is typical with this very troubled area of the law, the bill before the committee poses numerous problems both in the practical application to the news distribution industry and constitutionally as well. Only the most significant issues will be dealt with here.

(1) The Problem of the Dual Standard. The bill establishes a definition of "obscenity" as it pertains to consumption by minors, which differs from the definition of "obscenity" pres-

ently in the Kansas Criminal Code. Since the wholesaler, in its "censorship" role, is rapidly screening material, and since it fundamentally has no control over the ultimate recipient of the material, it would almost certainly have to guide itself by the most stringent of the existent standards. Therefore, the bill before the committee is in essence determining the new standard. This is the practical result of the bill. In addition, however, numerous collateral legal problems are developed. For example, the bill prohibits the advertising of any obscene material (as defined by the bill) to a minor. Since material may be obscene under the bill but not otherwise obscene, normal advertisement of a perfectly legitimate item, once read by a minor, could render the advertisement to be in violation of the terms of the bill. Similar arguments would apply to all of the activities prohibited by the terms of the bill.

(2) Problems with the Standard Set Forth in the Bill.

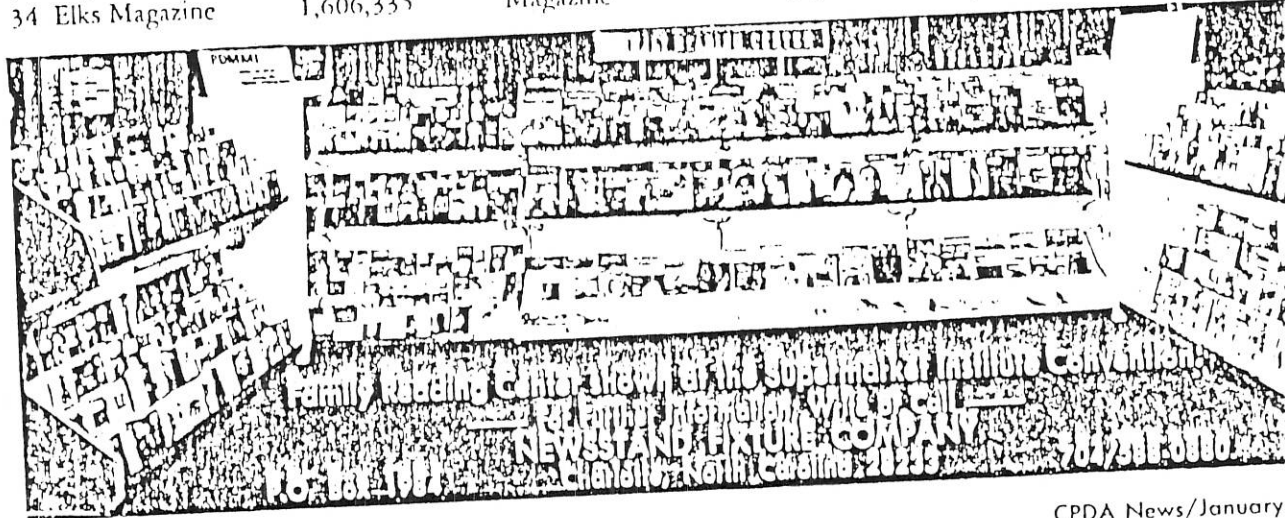
The new standard set forth in the bill significantly enlarges the scope of the term "obscenity" over that currently found in law. We are of the opinion that the standard so developed does not conform to constitutional requirements. In addition, as opposed to the present statute which is sufficiently clear that the wholesaler at least can determine potentially unlawful depictions, the

bill introduces concepts which would require substantial exercise of judgment by all links in the chain of distribution as to the suitability of any particular issue of any title for distribution and sale. In view of the substantial problems already visualized in the courtroom experience in "obscenity" cases, it is impossible for the wholesaler or retailer to effectively, within the time frame allowed, exercise the judgment that would be required by the terms of the bill. Thus, the net effect of the bill is to substantially broaden the already gray line that separates constitutionally protected speech from speech for which one may be imprisoned. For the foregoing reasons the Association is of the opinion that the bill in its present form does not meet the constitutional tests and otherwise would have a significant and deleterious impact upon the entire news distribution industry.

100 Leading A.B.C. Magazines*

*Figures courtesy of Magazine Publishers Association

Rank	Magazine	Circulation	Rank	Magazine	Circulation	Rank	Magazine	Circulation
1	TV Guide	19,811,268 ^a	35	Smithsonian	1,575,536	72	TV Mirror	734,281
2	Reader's Digest	18,512,453 ^a	36	True Story	1,554,156	73	Car & Driver	730,741
3	National Geographic	9,601,727	37	Parents' Magazine	1,505,241	74	Money	727,372
4	Family Circle	8,328,930	38	Seventeen	1,467,322	75	1,001 Decorating Ideas	726,323
5	Woman's Day	8,240,306	39	Midnight	1,461,663	76	Decorating & Craft Ideas	719,713
6	Better Homes & Gardens	8,031,981	40	Farm Journal	1,452,669	77	Motor Trend	714,642
7	McCall's	6,502,027	41	Southern Living	1,381,033	78	Gallery	703,100
8	Ladies' Home Journal	6,037,616	42	Sunset	1,357,413	79	Penthouse Forum	674,222
9	Good Housekeeping	5,081,173	43	Sport	1,340,541	80	New Woman	670,442
10	National Enquirer	5,017,569	44	Elbony	1,280,312	81	Forbes	668,406
11	Playboy	4,919,977	45	Grit	1,258,825	82	Scientific American	665,281
12	Redbook	4,687,020	46	Psychology Today	1,150,871	83	Gourmet	661,168
13	Penthouse	4,604,357	47	Nation's Business	1,123,469	84	The Lion Magazine	659,256
14	Time	4,364,016	48	Scouting	1,059,948	85	Golf	652,110
15	Newsweek	2,991,032	49	Oui	1,037,472	86	Signature	651,796
16	American Legion	2,629,169	50	House & Garden	1,012,543	87	Book Digest	632,479
17	Cosmopolitan	2,501,983	51	Esquire	1,004,590	88	Family Handyman	631,638
18	American Home	2,387,598	52	Junior Scholastic	964,072	89	Fortune	627,548
19	Sports Illustrated	2,263,258	53	Teen	939,449	90	Flower & Garden	621,113
20	People	2,137,872	54	Family Health	929,333	91	Sphere	616,111
21	U. S. News & World Report	2,073,026	55	Progressive Farmer	920,558	92	Jet	609,611
22	Field & Stream	2,001,517	56	Vogue	909,863	93	American Girl	601,331
23	The Star	1,903,488	57	Photoplay	891,852	94	Carte Blanche	570,000
24	Hustler	1,881,880	58	Sports Afield	890,316	95	Modern Photography	553,169
25	Glamour	1,814,702	59	Golf Digest	887,642	96	The Lutheran	553,081
26	Popular Science	1,813,230	60	Co-ed	872,979	97	Essence	550,381
27	Workbasket	1,779,253	61	Mademoiselle	850,019	98	Catholic Digest	542,671
28	Outdoor Life	1,775,407	62	Moneyworth	849,783	99	Simplicity Home Catalog	534,891
29	Today's Education	1,686,580	63	Apartment Life	826,593	100	Harper's Bazaar	533,491
30	V.F.W. Magazine	1,663,940	64	Hot Rod	823,708		TOTAL—	211,061,811
31	Popular Mechanics	1,653,870	65	House Beautiful	861,121		100 Magazines	211,061,811
32	Mechanix Illustrated	1,645,518	66	Popular Photography	786,457		*Includes general and farm magazines of the Audit Bureau of Circulations.	
33	Boy's Life	1,621,443	67	Business Week	768,187		Groups and comics not included	
34	Elks Magazine	1,606,335	68	Successful Farming	766,399			
			69	Playgirl	753,898			
			70	Club	752,122			
			71	Weight Watchers Magazine	745,817			





3-16

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

December 6, 1976

Mr. B. E. Nordling
City Attorney
Post Office Box 250
Hugoton, Kansas 67951

Dear Mr. Nordling:

We have your letter of November 23, 1976, enclosing a copy of an ordinance adopted by the City of Cushing, Oklahoma, regarding obscenity, and inquiring whether it complies with K.S.A. 21-4301, and -4301a, as amended by ch. 159, L. 1976.

The 1976 amendment incorporates precisely the standard which was enunciated by the United States Supreme Court in *Miller v. California*, 413 U.S. 15, 37 L. Ed. 2d 419, 93 S. Ct. 2607 (1973). The definition of "obscene" in the Cushing ordinance contains a puzzling reference to the contemporary community standards of the "City of Culture, State of Shock," a reference also found in paragraph 3 of section 1, an oversight in draftsmanship which might give the Cushing authorities some enforcement difficulties.

Passing that, the definition of obscenity appears to be substantially that which was approved in the *Miller v. California* decision, although there are slight differences in phraseology in part (b) of the three-pronged test. In addition, the ordinance definition omits serious "educational" value, which the Court found might redeem work otherwise obscene.

Sections 3, 4, 6, and 7 contain references to "explicit sexual material," as a class of material in addition to obscene material. As "explicit sexual material" is defined in section 1(2), it is not identified by the criteria applicable to obscenity, and indeed, presumptively, is material which is not obscene and does not satisfy the *Miller v. California* test. The references in these sections to "obscene items or explicit sexual material" supports the view that the two are entirely different classes of

Mr. B. E. Nordling
Page Two
December 6, 1976

material. To my knowledge, at least the First Amendment protection extends to all material which is not obscene. Thus, it is difficult to justify the provisions of the ordinance which penalize distribution or dissemination of sexually explicit material which is not obscene. Thus, the ordinance goes far beyond the limits of *Miller v. California* in its treatment of "sexually explicit" material which is other than obscene material.

The exception in section 10(b) is somewhat elastic and vague, and would pose serious enforcement problems, in my judgment. *E.g.*, I have read of problems in Indiana, where museums are excepted from the state obscenity or pornography law, and a number of shops promptly converted themselves into so-called museums, claiming the benefit of the exemption, and making doubly difficult the enforcement efforts of Indiana authorities.

To return to the section 1(8), defining obscenity, if the ordinance is to be adapted for consideration in Hugoton, I suggest that the exact language in the 1976 amendment to the Kansas obscenity law be used. The slight variances can lead to difficulties in litigation. For example, the reference to "lewd exhibition of the genitals" invites litigation in particular cases over what is "lewd." The enumeration of prohibited objects of portrayal, in addition to "ultimate sexual acts, normal or perverted," does not appear in the *Miller v. California* language, and is largely superfluous.

I hope this comments will be helpful to you. It is difficult, reviewing a lengthy ordinance such as this, to anticipate with much confidence the full range of problems which may arise. However, those discussed above are ones which appear the most likely weaknesses of the ordinance. Needless to say, it appears that the Cushing authorities have acted in great haste, even omitting to include references to their own city in the ordinance rather than the imaginary "City of Culture, State of Shock."

Yours very truly,

CURT T. SCHNEIDER
Attorney General

BY:

JOHN R. MARTIN
First Assistant
Attorney General

JRM:kj

(Published one time (1) in the Cushing Daily Citizen, November 4, 1976)

ORDINANCE NO. 11-1-76-154

AN ORDINANCE ON OBSCENITY, AMENDING SECTION 14:39 of the CUSHING CITY CODE 1974

BE IT ORDAINED BY THE CITY OF CUSHING, PAYNE COUNTY, STATE OF OKLAHOMA:

Section 1. Section 14:39 of the Cushing City Code 1974 is hereby amended to provide as follows:

Section (1) Definitions:

For the purpose of this ordinance, the following words shall have the following meaning:

1. "Distribute" means to transfer possession of in person, by mail, by agent, or by any other means, whether with or without consideration.

2. "Explicit sexual material" means:

(a) Any picture, drawing, photograph, motion picture, or other pictorial representation which depicts actual or simulated acts of human sexual intercourse, sodomy, bestiality, oral copulation, masturbation, excretory functions, torture in the context of a sexual relationship or exhibition of the genitals.

(b) Any artificial human penis or vagina or device primarily designed physically to stimulate genitals, or any description, advertisement or offer to sell or distribute such an artificial organ or device where such description or advertisement presents either a pictorial representation or a detailed verbal description of such organ or device or its manner of use.

(c) Any book, magazine, newspaper or other printed or written material, which is made up in whole or in dominant part of depictions or descriptions of human sexual intercourse, oral copulation, bestiality, sodomy, masturbation or torture in the context of a sexual relationship.

3. "Harmful to minors" means that quality of any description or representation, in whatever form, or nudity, sexual conduct, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful or morbid interest, (b) is patently offensive to prevailing standards in the adult community in the City of (Culture) State of Shock,) as a whole with respect to what is suitable material for minors, and (c) lacks serious literary, artistic, political, or scientific value for minors.

4. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of (a) the character and content of any material described herein which is reasonably susceptible to examination by the defendant; or, if applicable, (b) the age of a minor, provided, however, that an honest mistake shall continue to excuse a defendant from liability hereunder if the defendant made a reasonable, bona fide attempt to ascertain the true age of such minor.

5. "Material" means any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, motion picture or other pictorial representation, figure, object, article, instrument, novelty, device or recording or transcription.

6. "Minor" means any unmarried person less than eighteen (18) years of age.

7. "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered or uncovered male genitals in a discernibly turgid state.

8. "Obscene" means that which the average person, applying contemporary community standards in the City of Culture, State of Shock, would find, taken as a whole, (a) appeals to the prurient interest; and (b) which portrays, represents, depicts or describes in a patently offensive way, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, masturbation, sodomy, bestiality, and oral copulation; and (c) which, taken as a whole, does not have serious literary, artistic, political or scientific value.

9. "Obscene item" means (a) any obscene book, or (b) any obscene leaflet, pamphlet, magazine, book, picture, painting or drawing, photograph, film, negative, slide, motion picture, or (c) any obscene figure, object, article, instrument, novelty, device or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words, or sounds.

10. "Obscene live conduct" is (a) the actual or simulated performance of acts of human sexual intercourse, masturbation, sodomy, bestiality, oral copulation or excretory functions; or (b) the actual or simulated touching, caressing, or fondling of the anus, genitals or female breast, or (c) the actual or simulated displaying of the pubic hairs, anus, vulva, genitals or nipples of the female breast, and which production, performance, or exhibition, when, taken as a whole, lacks serious literary, theatrical or artistic value.

11. "Person" means an individual, partnership, firm, association, corporation or other legal entity.

12. "Public display" means any material that is visible on a billboard, viewing screen, theater marquee, news stand, display rack, window, show case, display case or other similar display area that is visible from a public street, sidewalk, park or other place of which the public has unrestrained access or from the property of others.

13. "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in under garments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

14. "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual simulation or gratification.

15. "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual simulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Section (2) Production, Publication, Sale, or Possession of Obscene Items

It is unlawful for a person knowingly to:

(a) Prepare any obscene item for the purpose of sale or distribution; or

(b) Print, copy, manufacture, produce or reproduce any obscene item for the purpose of sale or distribution; or

(c) Publish, sell, rent, lend, transport in intracity commerce, distribute, or exhibit any obscene item or explicit sexual material, or to offer to do any of these things; or

(d) Have in his possession with intent to sell, rent, lend, transport, or distribute any obscene item.

Section (3) Distributing Obscene Material to Minors

It is unlawful for a person knowingly to distribute obscene items or explicit sexual material or material that depicts nudity, sexual conduct, sexual excitement, or sado-masochistic abuse to a minor.

Section (4) Displaying Obscene Items to Minors

It is unlawful for a person knowingly to permit a minor who is not accompanied by his parent or lawful guardian to enter or remain on premises owned or controlled by him if in that part of the premises where the minor is permitted to be, there is visibly displayed any obscene item, or explicit sexual material, or material that depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse.

Section (5) Exhibiting Obscene Live Conduct to a Minor

It is unlawful for a person knowingly to engage in or participate in, manage, produce, sponsor, present or exhibit obscene live conduct or conduct involving a state of nudity or sexual conduct, sexual excitement or sadomasochistic abuse to a minor.

Section (6) Displaying Obscene Materials Generally

It is unlawful for a person knowingly to permit or authorize the public display of any obscene item or explicit sexual material, or material depicting nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

Section (7) Removing Obscene Materials from Public Display

It is unlawful for a person knowingly to fail to promptly remove from public display, from property in his possession or under his control, any explicit sexual material, obscene item, or material that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

Section (8) Nude Conduct

It is unlawful for a person knowingly to, voluntarily, and intentionally appear in public or in a public place or in a place open to the public or open to public view in a state of nudity, or to employ, encourage, or procure another person to so appear.

Section (9) Obscene Live Conduct

It is unlawful for a person knowingly to, voluntarily, and intentionally engage in an act of obscene live conduct in a public place or a place open to the public or open to public view, or to employ, encourage, or procure another person to so appear.

Section (10) Exceptions to the Application of the Ordinance

(a) Nothing contained in Sections 2, 3, 4, 5, 6 and 7, of this ordinance shall be construed to apply to:

(1) The purchase, distribution, exhibition, or loan of any material by any library, school, or institution of higher learning, supported by public appropriations; or

(2) The purchase, distribution, exhibition, or loan of any work of art by any museum of fine arts, school or institution of higher learning supported by public appropriations; or

(3) The purchase, distribution, exhibition or loan of any material to a minor by his parent or legal guardian.

(b) Nothing contained in Sections 8 and 9 of this ordinance shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theatre, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, show or performances as a form of expression of opinion, communication, speech, ideas, information, drama, or art, as differentiated from commercial or business advertising, promotion

or exploitation of nudity or obscene live conduct for the purpose of advertising, promoting, selling or serving products or services, or otherwise advancing the economic welfare of a commercial business or business enterprise such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall.

Section (11) False Representation

No person shall falsely represent that he is the parent, guardian, or spouse, of a minor, or furnish to any minor any identification or other document purporting to show that the holder is eighteen years of age or over, or married, for the purpose of enabling such minor to obtain any material or gain admission to any performance which is harmful to minors.

Section 2. That for the preservation of the public health, peace and safety an emergency is hereby declared to exist by reason whereof this Ordinance shall be in full force and effect from and after its passage, approval and publication.

Passed and approved this 1st day of November, 1976.

/s/ A. C. Gilliam
A. C. Gilliam, Chairman
Board of Commissioners

ATTEST:

(SEAL)

/s/ Maxine Kautz
City Clerk

J. Stewart Arthurs
City Attorney

- 11-403. BAWDY HOUSES. Any person who shall keep within the limits of the city any house of prostitution, bawdy house, or house of ill fame shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). (R. O. 1955, Sec. 12-130)
- 11-404. PIMPS AND PROCURERS. Any person who within the limits of the city, solicits patronage for, or on behalf of any common prostitute or woman of ill fame, or who shall solicit, induce or entice another into any house of ill fame, bawdy house or house of prostitution in the city shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). (R. O. 1955, Sec. 12-131)
- 11-405. IMMORAL SHOWS. It shall be unlawful for any person, either as owner, proprietor, lessee, actor or actress, to permit to be given or to take part in giving in any opera house or other place in the city, any show, play or exhibition or entertainment of an indecent, lewd or immoral character. Any person violating any of the provisions of this section shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). (R. O. 1955, Sec. 12-132)
- 11-406. OBSCENE LITERATURE. It shall be unlawful for any person to bring or cause to be brought into the city or to buy or sell or cause to be bought or sold, or to advertise, lend, give away, offer, show, exhibit, post up or distribute, or to have in his possession with the intent to sell, lend, give away, offer, show, exhibit, post up or distribute or cause to be distributed, or to design, copy, draw, photograph, print, etch, or engrave, cut, carve, make public or otherwise prepare or assist in preparing or receive subscriptions for any indecent book, pamphlet, magazine or paper, picture, drawing, figure, image, or other engraved, printed, or written matter or any article or instrument of immoral use, or any book, pamphlet, magazine or paper devoted principally or wholly to the publication of criminal news or pictures or stories of bloodshed or crime. Any person violating any of the provisions of this section shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100). (R. O. 1955, Sec. 12-133)
- 11-407. BETTING PROHIBITED. Any person who shall bet any money or property or any representative thereof at or upon a gaming table, bank, or other gambling device, or upon the result of the movement of any wheel or other device, or the throwing of dice, or upon the result of any game of skill or chance, whether with dice or cards, or other things, or hazard money or property upon chance to be determined by means of any kind of a device or bet upon any game played by any kind of a gambling device, shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100). (R. O. 1955, Sec. 12-134)

Legal Notice

City ordinance

Published one time (1) in the Cushing Daily Citizen Number 4, 1976.

ORDINANCE NO. 11-1-76-154

AN ORDINANCE ON OBSCENITY AMENDING SECTION 11:39 OF THE CUSHING CITY CODE 1974

BE IT ORDAINED BY THE CITY OF CUSHING, PAYNE COUNTY, STATE OF OKLAHOMA:

SECTION 1: Section 14:39 of the Cushing City Code 1974 is hereby amended to provide as follows:

Section (1) Definitions:

For the purpose of this ordinance, the following words shall have the following meaning:

1. "Distribute" means to transfer possession of in person, by mail, by agent or by any other means whether with or without consideration.

2. "Explicit sexual material" means:

(1) Any picture, drawing, photograph, motion picture, or other pictorial representation, which depicts actual or simulated acts of human sexual intercourse, sodomy, bestiality, oral copulation, masturbation, excretory functions, torture in the context of a sexual relationship, or exhibition of the genitals.

(2) Any artificial human penis or vagina or device primarily designed physically to stimulate genitals, or any description, advertisement or offer to sell or distribute such an artificial organ or device where such description or advertisement presents either a pictorial representation or a detailed verbal description of such organ or device or its manner of use.

(3) Any book, magazine, newspaper or other printed or written material, which is made up in whole or in dominant part of depictions or descriptions of human sexual intercourse, oral copulation, bestiality, sodomy, masturbation or torture in the context of a sexual relationship.

3. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful or morbid interest, (b) is patently of

other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation, figure, object, article, instrument, novelty, device or recording or transcription.

6. "Minor" means any unmarried person less than eighteen (18) years of age.

7. "Nudity" means a state of undress so as to expose the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered or uncovered male genitals in a discernibly turgid state.

8. "Obscene" means that which the average person, applying contemporary community standards in the City of Cushing, State of Shock, would find, taken as a whole, (1) appeals to the prurient interest; and (2) which portrays, represents, depicts or described in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, masturbation, sodomy, bestiality, and oral copulation; and, (3) which, taken as a whole, does not have serious literary, artistic, political or scientific value.

9. "Obscene item" means (1) any obscene book or, (2) any obscene leaflet, pamphlet, magazine, book, picture, painting or drawing, photograph, film, negative, slide, motion picture; or, (3) any obscene figure, object, article, instrument, novelty, device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words, or sounds.

10. "Obscene live conduct" is:

(1) the actual or simulated performance of acts of human sexual intercourse, masturbation, sodomy, bestiality, oral copulation or excretory functions; or

(2) the actual or simulated touching, caressing, or fondling of the anus, genitals or female breast; or

(3) the actual or simulated displaying of the pubic hairs, anus, vulva, genitals or nipples of the female breast, and which production, performance, or exhibition, when, taken as a whole, lacks serious literary, theatrical or artistic value.

11. "Person" means an individual, partnership, firm, association, corporation or

knowingly to permit a minor who is not accompanied by his parent or lawful guardian to enter or remain on premises owned or controlled by him if in that part of the premises where the minor is permitted to be, there is visibly displayed any obscene item or explicit sexual material or material that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

Section (5) Exhibiting Obscene Live Conduct to a Minor

It is unlawful for a person knowingly to engage in or participate in, manage, produce, sponsor, present or exhibit obscene live conduct or conduct involving a state of nudity or sexual conduct, sexual excitement or sadomasochistic abuse to a minor.

Section (6) Displaying Obscene Materials Generally

It is unlawful for a person knowingly to permit or authorize the public display of any obscene items, explicit sexual material, or material depicting nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

Section (7) Removing Obscene Materials From Public Display

It is unlawful for a person knowingly to fail to promptly remove from public display, from property in his possession or under his control, any explicit sexual material, obscene item or material that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

Section (8) Nude Conduct.

It is unlawful for a person knowingly to, voluntarily, and intentionally appear in public or in a public place or in a place open to the public or open to public view in a state of nudity, or to employ, encourage, or procure another person to so appear.

Section (9) Obscene Live Conduct.

It is unlawful for a person knowingly to, voluntarily, and intentionally engage in an act of obscene live conduct in a public place or a place open to the public or open to public view, or to employ, encourage, or procure another person to so appear.

Section (10) Exceptions to the Application of the Ordinance.

A. Nothing contained in Sections 2, 3, 4, 5, 6 and 7, of this ordinance shall be construed to apply to:

(1) The purchase, distribution, exhibition, or loan of any material by any library, school, or institution of higher learning, supported by public appropriations;

responsive to prevailing standards in the adult community in the City of Cushing, State of Oklahoma, as a whole with respect to what is suitable material for minors, and (c) lacks serious literary, artistic, political, or scientific value for minors.

4. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of (a) the character and content of any material described herein which is reasonably susceptible to examination by the defendant; or, if applicable, (b) the age of a minor, provided, however, that an honest mistake shall continue to excuse a defendant from liability hereunder if the defendant made a reasonable, bona fide attempt to ascertain the true age of such minors.

5. "Material" means any book, magazine, newspaper, or

other legal entity.

13. "Public display" means any material that is visible on a billboard, viewing screen, theater marquee, newsstand, display rack, window, show case, display case or other similar display area that is visible from a public street, sidewalk, park or other place of which the public has unrestrained access or from the property of others.

13. "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in under garments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

14. "Sexual conduct" means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

15. "Sexual excitement" means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Section (2) Production, Publication, Sale, Possession, Etc. of Obscene Items

It is unlawful for a person knowingly to:

(1) Prepare any obscene item for the purpose of sale or distribution; or

(2) Print, copy, manufacture, produce or reproduce any obscene item for the purpose of sale or distribution; or

(3) Publish, sell, rent, lend, transport in intracity commerce, distribute, or exhibit any obscene item or explicit sexual material, or to offer to do any of these things; or

(4) Have in his possession with intent to sell, rent, lend, transport, or distribute any obscene item.

Section (3) Distributing Obscene Material to Minors

It is unlawful for a person knowingly to distribute obscene items or explicit sexual material or material that depicts nudity, sexual conduct, sexual excitement, or sado-masochistic abuse to a minor.

Section (4) Displaying Obscene Items to Minors.

It is unlawful for a person

(2) The purchase, distribution, exhibition, or loan of any work of art by any museum of fine arts, school or institution of higher learning supported by public appropriations;

(3) The purchase, distribution, exhibition or loan of any material to a minor by his parent or legal guardian.

B. Nothing contained in Section 8 and 9 of this ordinance shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, show or performances as a form of expression of opinion, communication, speech, ideas, information, drama, or art, as differentiated from commercial or business advertising, promotion or exploitation of nudity or obscene live conduct for the purpose of advertising, promoting, selling or serving products or services or otherwise advancing the economic welfare of a commercial business or business enterprise such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall.

Section (11) False Representation

No person shall falsely represent that he is the parent, guardian, or spouse, of a minor, or furnish to any minor any identification or other document purporting to show that the holder is eighteen years of age, or over, or married, for the purpose of enagling such minor to obtain any material or gain admission to any performance which is harmful to minors.

SECTION 2: That for the preservation of the public health, peace and safety an emergency is hereby declared to exist by reason whereof this Ordinance shall be in full force and effect from or after its passage, approval and publication.

PASSED AND APPROVED this 1st day of November, 1976.

A.C. Gilliam,
Chairman
Board of Commissioners

Attest:

Maxine Kautz
City Clerk

J. Stewart Arthurs
City Attorney

Legal Notice

Notice of hearing

Published in The Cushing Daily Citizen October 23 and November 4, 1976 two (2) times.

NOTICE OF INTENT TO USE GROUND WATER

GROUND WATER
APPLICATION NUMBER 76-
792

TO WHOM IT MAY CONCERN:

Notice is hereby given that Jimmie E. Anderson, Route No. 2, Cushing, Oklahoma under the authority given in Oklahoma State law, Title 62, Section 1020.7, filed an application on September 13, 1976 with the Oklahoma Water Resources Board for a Temporary Permit for the withdrawal of 80 acre-feet of ground water per calendar year for the purpose of Domestic and Commercial (20 acre-feet) and Irrigating 40 acres of land (60 acre-feet)

Acres dedicated to this application are located in: SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 5, Township 17N, Range 6E1M, Payne County which land overlies the Vanoss and Ada Formations ground water basins(s). Wells to be located: (one proposed well) Approximate Center of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 5, Township 17N, Range 6E1M, Payne County.

Pursuant to 75 O.S. 1971, Sec. 309 and 82 O.S. supp. 1972, sec. 1020.8, a hearing will be held by said board on the 18th day of November, 1976, at its offices at 9:30 a.m. Any interested person has the right to file a protest five days prior to the hearing and may appear at the hearing and show cause, if any, why approval should not be granted.

DINNER PARTY? . . .

We have the facilities to handle your next meeting, banquet, or dinner party, also family reunions and Christmas parties. We have the finest surroundings. at-

STATE OF KANSAS

E. RICHARD
(DICK) BREWSTER
REPRESENTATIVE FIFTY-FIRST DISTRICT
SHAWNEE COUNTY
5334 S. W. WANAMAKER
TOPEKA, KANSAS 66610



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: HOUSE JUDICIARY
MEMBER: ENERGY AND NATURAL RESOURCES

3-16

March 14, 1978

Legislative Coordinating Council
Statehouse
Topeka, Kansas 66612

RE: HCR 5085 - Interim Study - Products
Insurance Pricing

Gentlemen:

Your attention is respectfully directed to the above numbered Resolution, which requests that an interim study be authorized for the purpose of studying the rate making practices of products liability insurance carriers. That Resolution is the result of a number of years and many, many hours of study of the products liability situation. We have been bombarded with evidence that products liability premiums are increasing at more than substantial rates, and very little, if any evidence, that an increase in the number of tort claims or in the size of judgments is responsible for these increases. In addition, there is some evidence that these rate making practices are the result of panic pricing at best, simply because the insurance industry itself does not have sufficient data upon which to base reasonable rates.

With those facts in mind, and keeping in mind, the extremely complicated and complex nature of the insurance industry itself, it would be my desire to ask the Council to grant full investigatory powers, including the power of compulsory process for the purposes of completing this study, to the special interim committee assigned this charge.

Legislative Coordinating Council
March 14, 1978
Page two

In addition, I would respectfully request the committee be authorized to engage special counsel for purposes of conducting this study. I would, of course, like to chair the committee myself, and respectfully request such authorization from the Council.

If you have any questions or desire any further explanation or discussion, please do not hesitate to advise me.

Thank you very much.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Brewster", written in a cursive style.

E. RICHARD BREWSTER
Representative
51st District

mng