

**SIN CITY KENTUCKY:
NEWPORT, KENTUCKY'S VICE HERITAGE AND
ITS LEGAL EXTINCTION, 1920-1991**

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A Thesis Approved on

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DEDICATION

I dedicate this thesis to my father, David Williams, and my grandmother, Mae Nestheide, both of whom gave me outstanding role models and always reminded me to further my education.

I also dedicate this to the following:

Former Campbell County Attorney Paul Twehues and the members of his office, and the men and women of the Newport Police Department and the troopers of the “Thin Grey Line,” the Kentucky State Police, whose dedication to duty and willingness to sacrifice never ceased to amaze this former prosecutor. Their hard work at an often-thankless job on the front lines made Campbell County a better place to live.

Last, but by no means least, I dedicate this to my wife, Melissa Williams.

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got me into the program; Melissa's help, patience, sacrifices, and encouragement got me to finish it.

ABSTRACT

SIN CITY KENTUCKY: NEWPORT, KENTUCKY'S VICE HERITAGE AND ITS LEGAL EXTINCTION, 1920-1991

Michael L. Williams

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This thesis is an examination and analysis of the role of law enforcement in the transformation of a city's downtown from one dominated by sleazy strip bars and prostitutes to one of family entertainment. The focus is on the police and prosecutors; however, a substantial portion of the thesis discusses the role of Newport, Kentucky's, City Commission. The thesis chronicles Newport's vice history from early Prohibition through the early 1990s and the impact of city government upon anti-vice efforts becomes evident, but law enforcement that paved the way.

The approach is chronological. Newport's transformation was an evolutionary process. Elected officials influenced the city's vice problems, but state legislative changes and United States Supreme Court cases also had a part in the course of anti-vice efforts. Changes in the law and court cases often gave city officials and law enforcement direction in the regulation and prosecution of illegal vices.

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¹ United States Constitution, Amendment I.

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INTRODUCTION

In 2008, Newport, Kentucky, is a Campbell County city only a few square miles in area with a population of approximately 18,000. First impressions might be that Newport is a family-oriented community with a downtown of small independent shops and eateries, but it is the riverfront sets the city apart. There, on the Ohio River shore, Newport on the Levee occupies a fifteen acre tract and offers a panoramic view of the Cincinnati, Ohio, skyline. Two Ohio River bridges, one of which is devoted only to foot or bicycle traffic, lead to the Levee where one finds a forty million dollar Aquarium, a Barnes and Noble Bookstore, multiplex theaters, restaurants and taverns, and assorted shops occupy the Levee and its immediate vicinity. Newport On The Levee is a major tourist attraction in Northern Kentucky where large crowds are the rule rather than the exception throughout the year. One local journalist described Newport as the “envy of the region.”¹

A stroll along downtown’s two major traffic arteries into and out of Newport, York Street (one-way south) and Monmouth Street (one-way north), reveals almost nothing reminiscent of over six decades when Newport was neither family friendly nor peaceful. Upon a closer look, one may notice two Monmouth Street, adult bars, the Brass Bull and the Brass Mule. The Bull and Mule sit opposite each other in the 600 block of

¹ David Wecker, “Newport: Envy Of The Region,” Kentucky Post, September 7, 2004, 1K.

Monmouth Street. The clubs' neon signs, darkened windows, and prohibitions to enter if "under 21" reveal them to be sexually oriented adult nightclubs. The two nightclubs are the surviving remnants of a time when Newport was Greater Cincinnati's "Sin City." The Mule and Bull are in stark contrast to other Monmouth Street businesses and to the attractions at Newport On The Levee.

From early Prohibition through the early 1980s, Newport was Cincinnati's "adult playground," the "Sin City" of the Midwest. These monikers reflected downtown attractions that, over the decades of Sin City, included illegal gambling, strippers, brothels, and in-bar prostitution. Newport was once a twentieth century boomtown with a border town raunchiness. Crowds came across the Ohio River bridges from Cincinnati conventions, business meetings, and sporting events to enjoy Newport's unique attractions, almost all found within the city's central business district, an area less than a square mile. Gambling was illegal in Kentucky,² but, from the 1920s through 1961, it and other illegal vices brought crowds and revenues. During the casino era, visitors enjoyed fine dining, New York and Hollywood quality floor shows, big band dancing, and could try their luck in the gambling parlors. Despite gaming's illegality and the presence of an organized crime syndicate that controlled the industry, local society did not perceive gambling as "real crime." The same tacit acceptance of illegal activities that protected Prohibition's bootleggers and their illegal liquor³ also gave sanctuary to Newport's illegal gaming industry and to the vice enterprises that followed. Historian Robert Gioielli observes that "casinos were . . . an accepted part of the Northern

² But for bingo and horseracing, gambling remains illegal in Kentucky.

³ In this thesis, the term "liquor" refers to all forms of alcoholic beverages such as whiskey, wine, beer, and so on.

Kentucky landscape [as] . . . legitimate, illegal operation.”⁴ Local society’s upper crust, political figures, and local leaders of industry and law enforcement had few qualms about patronizing local casinos, but Newport had a less upscale and seamier side as well.

Locally owned and smaller “bust-out joints” offered gambling; however, bust-out gambling was usually fixed. The seedier bust-outs, home to live nude entertainment and prostitution, were not where well dressed couples in search of elegance tended to frequent. Downtown was also place where the “oldest profession” thrived. Near to Newport Police headquarters were over a dozen brothels, some of which operated day and night. Brothel business was brisk, especially during popular sporting events and conventions.

Within Newport’s central business district (CBD) clothiers, restaurants, grocers, jewelers, and other mainstream stores competed for gaming patrons’ money, and, from grocers to barbershops, nearly all had at least one gaming device on site. Former Newport City Commissioner (1965-1975) Charles Sarakatsannis, a Newport resident during the boomtown years, and his brother Art operated a popular “chili parlor” near Ninth and Monmouth Street. Their Crystal Chili often remained open around the clock to accommodate the gaming crowds. For Newport’s economy, gaming generated revenues in excess of one hundred million dollars, not including the revenues generated by patrons’ spending in the many mainstream shops and restaurants situated among the casinos and clubs.

⁴ Robert Gioielli, “Suburbs v. Slot Machines: The Committee of 500 and the Battle over Gambling In Northern Kentucky,” Ohio Valley History 5, no. 2 (Summer 2005): 64, footnote 10.

Newport's upscale gaming⁵ years ended in 1961, the result of citizen efforts to change from Sin City. Two informal factions, the liberals and the reformers, struggled over the direction their city would take after 1961. Reformers wanted a community not dependent upon illegal vice and attractive to mainstream businesses. The reform faction was "convinced that . . . vice and corruption in Newport had scared away corporations that had seriously considered relocating or opening . . . in Campbell County."⁶ The liberal faction was just as convinced that Newport ought to exploit the city's unique brand of entertainment for the revenues liberals were sure to come.

Local tradition is that the 1961 reform efforts brought a "cleanup of Newport."⁷ Instead, this thesis contends that characterizing 1961 efforts as the "cleanup of Newport," oversimplifies, mischaracterizes, and obscures how Newport changed from Greater Cincinnati's adult playground to the family oriented community that welcomed the New

⁵ Beyond the scope of this thesis is the problem of small gambling operations of a "backroom" nature. Nowhere near the scale of the casinos and gambling clubs through 1961, the local Commonwealth Attorney, Frank Benton, III, and his assistants battled these small gambling operations throughout the 1960s and early 1970s.

⁶ Robert Gioielli, "Subhurbs v. Slot Machines: The Committee of 500 and the Battle over Gambling In Northern Kentucky," Ohio Valley History 5, 2 (Summer 2005): 70.

⁷ Thomas Daykin, "'Blue Ribbon Example Of Urban Development,'" Milwaukee Journal Sentinel, October 20, 2002, 1D; Ray C. Hall, "Howling At The Moon," Courier-Journal Magazine, February 3, 1991, 6-9; Michelle Cottle, "The Making Of A Crusader," New Republic, March 15, 1999, 16; Dan Hassert, "Liquor Outlets In Newport Decline 25%," Kentucky Post, January 14, 1993, 1K; Tom Uhlman, "Newport At Night," Kentucky Post, March 2, 1996, 1K; George Strichorchuk, "City That Provided Sin In Cincinnati Is Being Cleaned Up," Wall Street Journal, November 26, 1985, 1; Eric Harrison, "A Once Rollicking City Cleans Up, While Some Disgruntled Bar Operators Say It's A Sin," Los Angeles Times, November 27, 1989, 4, also appearing in San Francisco Chronicle, December 10, 1989, 4, and in the Seattle Times, January 22, 1990, F8; Tom Hundley, "Boom Alters Face Of Kentucky's Sin City," Chicago Tribune, April 25, 1989, 6; David Wecker, "Before There Was Vegas, There Was Newport," Cincinnati Post, September 4, 2004, A1; David Wecker, "Newport: Envy Of The Region," Cincinnati Post, September 7, 2004, A1; Hank Messick, Razzle Dazzle (Covington, Kentucky: For The Love Of Books Publishing, 1995), found in "Author's Note," no page number.

Millennium. Furthermore, this oversimplification reveals a lack of appreciation for the depth to which vice, as an industry, was entrenched in Newport.

This is no criticism of reformers' remarkable efforts during the latter 1950s and early 1960s. Furthermore, this thesis does not intend to trivialize the importance of reformers' successful campaign to end the illegal gaming industry. Yet, contrary to local tradition, the 1961 reform efforts neither changed nor reformed that which originally spawned Sin City and its image and reputation. Gaming's exit meant significant population drops, losses of mainstream businesses, and substantial revenue losses for city government and the private sector alike, but "sin" stayed. Instead of a downtown cleansed of the Sin City taint, there evolved a central business district industry of strip bars, B-girls, nude entertainment, and in-bar prostitution. The brothels were gone; prostitution was not. Instead place of plush casinos with quality entertainment were smaller adult bars with gaudy facades. Instead of carpeted lavish casinos, floor shows, hostesses and cocktail waitresses were B-girls circulating in the darkened interiors of strip bars and plying their "trade." Along the downtown streets were neon enticements for "Girls-Girls-Girls," "Live Nudes," and similar encouragements.

The coming of a sexually oriented adult entertainment industry, and the relative ease of its coming, supports a contention that Sin City was more than the casinos, brothels, and strip bars. Gambling in almost all forms was illegal in Kentucky, as was prostitution, whether in brothels or in bust-outs and strip bars. Yet, more than the casinos and brothels, Sin City meant a willingness on the part of enough public officials to ignore the rule of law for ill-gotten economic and political gains. Illegal vice did not force itself onto the Newport landscape and community leaders never sought a public referendum on

the matter. The same tacit acceptance that had sustained the gaming industry for over four decades also provided a sanctuary to the sexually oriented adult entertainment industry and the prostitution the adult bars harbored. But Newport's acceptance did not apply to all vice forms. In 1970, a pornographic bookstore and a pornographic theater became additions to the city's vice repertoire, but the relationship between pornography and the city evolved into one of love-hate.

By 1980, one needed to be older than sixty to recall a time when adult entertainment, gaming or otherwise, did not dominate Newport's economic, political, and cultural life. For most of Newport's citizens, and whether they liked or disliked them, the adult industries had always been part of the community landscape.⁸ The post-1961 adult entertainment industry extended Sin City's life for more than two additional decades, but no evidence exists that the majority, or even a sizeable minority, of Newport's citizens patronized or accepted what Sin City represented. Sin City, before and after gambling, prospered because outsiders brought money to indulge themselves in diversions not available in the mainstream.

More than local custom and tradition sustained Newport as Sin City. Unlike gambling, the nude entertainment, B-girls, and pornography were not patently or necessarily illegal in Newport or elsewhere. Understanding the evolution of Sin City requires remembering that twenty-first century laws, social customs, political correctness, and societal views on sexually oriented entertainment differ from those of the twentieth century's Sin City years. For example, the proliferation of pornography on the World Wide Web may have desensitized a population that, in the 1970s, would have found

⁸ Former Campbell County Attorney Paul Twehues interview, April 2, 2006; former Newport City Commissioner and Mayor, Steve Goetz interview, April 25, 2006.

graphic sex only by visiting “dirty bookstores,” and by attending “dirty movie theaters.” In the 1970s, there was no internet to disseminate graphic depictions of sex⁹ Also, the current availability of casino gambling and its incorporation into the mainstream might make Newport’s reformers of 1961 seem preposterous. Viewing Newport’s many transitions from Prohibition through the New Millennium necessitates remembering that appreciating history means, at least to some degree, a consideration within the context of “then” not “now.” No matter how offensive mainstream society found adult entertainment during the decades between 1920 through 2000, adult businesses generally enjoyed, constitutional protections to operate. Newport’s strip bars were legitimate enterprises and legally entrenched. Owners enjoyed panoply of rights protecting them from mainstream society’s detest for sexually oriented adult entertainment. Nevertheless, adult business owners’ rights ran headlong into mainstream concerns about community morals, quality of life, and about potential adverse economic impacts to the surrounding vicinity. To explain why Newport citizens could not simply impose upon their elected officials to eliminate offending businesses by mere passage of local laws, this thesis analyzes the legal protections afforded to adult businesses during the Sin City years.

A true reform effort in Newport needed to overcome political corruption, to win over an often ambivalent public skeptical of reform promises, and to find ways of piercing adult businesses’ façade of legitimacy. Ridding Newport of vice’s domination required exposing the vice lurking behind that façade and employing legal measures to end it. A true vice cleanup also needed to overcome the City Commission whose majorities had long favored and protected vice, both legal and illegal. This thesis will

⁹ Thomas C. Mackey, Pornography On Trial (Santa Barbara, Colorado: ABC-CLIO, Inc., 2002), 4-6 (“Pornography As Sex, Sex As Pornography”).

analyze the power and influences Newport city government could and did exert over the local criminal justice system. Newport could not lose the playground image through traditional weapons of economic boycotts and formal complaints. Such measures had limited value because adult entertainment businesses' profits did not depend upon local citizens and constitutional principles protected adult owners' from local government's arbitrariness. A true reform required legal and social pressures not previously available in Newport and Campbell County.

Present day Newport is evidence that reform happened, but the metamorphoses was more complex than merely eliminating gambling in 1961. Newport did not become the "envy of the region"¹⁰ through normal political processes of elections and reform legislation. Law enforcement, prosecutors and police, who functioned within an independent judicial system was lacking before 1978. Throughout the Sin City years, prohibitions against illegal vice existed, but without supportive city government, local anti-vice ordinances were meaningless testaments to past good intentions. After 1978, the local vice industry found that there had emerged individuals who considered the law more than a collection of words. Men, not laws, had governed Sin City. During the early 1980s, an aggressive Campbell County Attorney and the determination of the Kentucky State Police proved the linchpin of Newport's transfiguration from Sin City to "envy of the region."

This thesis is not about a corrupt community or a city with a corrupt population and police force. Labeling an entire community and its institutions because of the actions of a minority is both unfair and, in a historical perspective, misleading. Hank Messick's

¹⁰ David Wecker, "Newport: Envy Of The Region," Kentucky Post, September 7, 2004, 1K.

1995 Razzle Dazzle¹¹ _description of Newport as a “corrupt city”¹² with an “air of decay”¹³ and a “hell hole,” though certainly dramatic and image provoking, mischaracterizes the city and the majority of police and citizens. No evidence exists that the majority of Newport’s citizens supported illegal vices or that anything more than a minority of Newport Police were ever corrupt, but, apparently, the lure to indulge in sensational rumors and innuendoes may overcome the importance of verifiable facts. Evidence does exist that, for over sixty years, several elected and appointed officials ignored vice laws, but there is more evidence that Newport’s rank and file police, when permitted to do their jobs, proved effective against illegal vice and in the eventual dismantling of Sin City. Yet, law enforcement alone did not bring about Sin City’s demise. The eventual cleanup of Newport was a function of independent law enforcement, timely United States Supreme Court decisions, and the evolution of Newport’s “neighborhood councils” whose citizen members simply had enough. These elements opened the way for reform legislation, successes in economic development, and social reform.

There are many references to state and federal court decisions and litigation herein. Though written by a lawyer, this thesis is not a legal memorandum or a lawyer’s brief. To remove the adult industry’s grip upon downtown Newport, law enforcement (police and prosecutors) undertook actions that led to courtroom battles over constitutional rights and the guilt or innocence of those accused of crimes. Newport’s circumstances meant anti-vice efforts necessarily led to court litigations and to hearings

¹¹ Hank Messick, Razzle Dazzle (Covington, Kentucky: For The Love Of Books Publishing, 1995).

¹² Messick, found in Preface, no page number.

¹³ Messick, Razzle Dazzle, 44.

before licensing authorities. Without discussing legal principles and court cases, it is impossible to provide a comprehensive explanation how Newport evolved from Sin City to the region's "envy." To maintain a proper historical perspective, the cited legal authorities correspond to the prevailing law at the time of the time period under discussion

Chapter I chronicles Newport's evolution into Sin City from Prohibition through 1961. During this period, Newport accepted illegal vice into the community and became dependent upon its financial rewards. From the latter 1930s through the 1940s, Sin City was a cash cow for an organized crime syndicate, the Cleveland (Ohio) Syndicate. By the 1950s, Newport had become a magnet for gamblers and bookmakers from around the nation and was a miniature version of what Las Vegas (Nevada) was becoming or had become. Newport's gaming industry ended only after local and national media attention left Kentucky's Governor with no options except to end gaming industry.

Chapters II and III describe the aftermath of 1961 and the rise of the city's sexually oriented adult entertainment industry of strip bars and in-bar prostitution. Within these two chapters is an explanation of how the law protected adult businesses and afforded them needed facades of legitimacy. Chapter III describes pornography's arrival in Newport and grand jury investigations that revealed how little the local vice front had changed since 1961. Yet, concurrent with the growth of Newport's newest adult industry were signs -- subtle ones at first -- that vice would no longer enjoy free and unchallenged reign in Newport. Though specters of corruption and sleaze hovered years after the purported cleanup of 1961, an increasing number of citizens and officials had tired of the Sin City status quo. Chapter IV discusses the 1976-77 City Commission

term, the first term for City Commissioner (and future mayor) Irene Deaton. Like Charles Sarakatsannis before her, Commissioner Deaton challenged the role of adult entertainment in Newport and the trashy image it projected. It was during 1976-77 that pro-reform momentum began to build.

Chapter V describes a “first” for Newport since the town became Sin City, a reformer majority on Commission. During 1978-79, Newport had brief glimpse of what might be accomplished if city government was sensitive to community needs and supportive of aggressive law enforcement. Unfortunately, it was only a glimpse. In 1980-81, the city suffered through a horrendous period when a liberal Commission majority threatened to strengthen adult entertainment’s grip upon the downtown, but the times and local citizenry had changed. The community had grown intolerant of Newport’s playground image and those who sustained it. Changes in Kentucky’s judicial system and the state’s system for prosecuting cases enabled law enforcement to act despite a pro-vice city government. A Newport’s cleanup then began in earnest.

Chapter VI describes the events of 1980-1981 and the beginning of what became a decade long anti-vice effort that dismantled Sin City. In a manner not practical during the early 1960s, the Kentucky State Police came to Newport and proved that the unchecked adult entertainment industry was vulnerable to aggressive police and prosecutors. After Newport Police initiatives during 1978-79, a pro-adult entertainment City Commission majority would not support anti-vice work by its own Police Department. Fortunately for those who wanted Sin City to disappear, the Kentucky State Police brought its resources to bear. Within two years, downtown pornography was no more and law enforcement was conducting ongoing anti-prostitution operations. The

momentum of these first two years of the campaign carried forward through the remainder of the 1980s and into the 1990s. For reasons that are unknown, the adult industry never took heed of law enforcement's relentlessness and determination to compel compliance with the law or to compel offending businesses to close. For the owners and operators of the adult clubs and pornography businesses, the consequences of their collective recalcitrance were devastating to their businesses. The industry disappeared.

Chapters VII and VIII describe the combined anti-vice efforts during an uninterrupted succession of reformer City Commissions from 1982 onward and law enforcement's continuing anti-vice efforts. After 1982, nude dancing ended in Newport as an available form of entertainment. When Newport entered the New Millennium, the city was no longer Cincinnati's adult playground. Except for the Brass Bull and Brass Mule, Sin City was gone.

The scope of this thesis does not permit a complete discussion of all that contributed to Newport's transformation. For instance, from 1982 through the latter 1990s, Newport's first ever Economic Development Director, Laura Long, worked diligently to encourage new businesses and economic development to the riverfront and the downtown, her task made more difficult because of the city's image. Laura Long, Finance Director Phil Ciafardini, and a few others exploited economic opportunities on behalf of Newport and the result is a family oriented community bearing no resemblance to Sin City.

This thesis speaks at some length about citizen groups. The contributions of Newport's nine neighborhood councils and the Newport Citizens Advisory Council

toward the elimination of Newport's sexually oriented adult industry after 1976 were substantial. There is much more to their story in the development of Newport than this thesis can relate. Further still, there is the impact of the local media. During the turbulent period of 1980-1981, local reporters made certain the public knew how their elected officials were performing their duties. Local newspapers' exposure of illegal vice and its extent during the 1960s inspired grand jury probes and Charles Sarakatsannis's persistence in challenging Newport's Police Chief to address it. This scope of this thesis does not permit discussing all the persons and groups who were so important in Newport's transformation in as much depth as their contributions deserve.

The organization of this thesis is chronological rather than topical. The content proceeds from Prohibition, through the 1930s through 1950s, and then in shorter segments of time thereafter. Reliance upon the accounts of newspaper journalists from the Cincinnati Enquirer and the Kentucky Post is substantial because reporters such as Bertram Workum, Jeff Gutsell, John C. K. Fisher, and others with the local press provided eyewitness accounts. Most court records of the obscenity and prostitution trials no longer exist. Accounts of newsmen and the recollections of prosecutors and state and local police provide the bulk of eyewitness accounts of Newport's transformation. As was one of the part-time Assistant County Attorneys, I recall much of what took place after the mid-1970s, but cite to news reporters and other eyewitness accounts rather than my own recollections serve as sources.

Further still, this thesis is not a discussion about morality; that is, the morality of pornography, of gambling, or even of prostitution. Never did police or prosecutors seriously believe that anti-vice efforts could eliminate all traces of all vice from Newport.

Law enforcement's anti-vice work from 1978 was an effort to remove adult entertainment's downtown domination, not a moral crusade in which law enforcement became instruments to impose the mainstream's moral standards. There is evidence of serious economic consequences for a central business district dominated by sleazy strip bars. That religious and moral issues were of great concern to segments of the local population did not drive police and prosecutors. The adult business owners became chronic lawbreakers and law enforcement stepped forward to end it and, in the process, paved the way for Newport to become what it is in 2008.

Newport does not now identify with its vice heritage, and there is a diversity of opinions why this is so. In Thomas Purvis' Bicentennial History of Newport¹⁴ there is little discussion about the role of law enforcement efforts and no discussions about the two years of obscenity litigation by State Police, Newport Police, and the Campbell County Attorney's office that ended in Newport pornography.¹⁵ The contributions of the Kentucky State Police were indispensable to Newport's shedding the Sin City image, and, from latter 1981 onward, local police were also unrelenting in their efforts to eliminate prostitution as a factor in Newport life. Purvis devotes much attention; and appropriately so, to the economic development efforts that eventually inspired Kentucky

¹⁴ Thomas L. Purvis, Ed., Newport, Kentucky: A Bicentennial History (Newport, Kentucky: Otto Zimmerman and Sons, Co., Inc., 1996).

¹⁵ Purvis relates that the "Cinema X finally closed its doors on February 2, 1982," but there are no acknowledgements of the Kentucky State Police and Newport Police investigations and raids, or Paul Twehues' seven convictions of the theater's corporations and Tom Hollis, Jr. There is an acknowledgement of the "federal efforts" that took the theater's "owner" "all the way to the [United States] Supreme Court which ruled for the [theater's owner]." Federal authorities lost that appeal and a second appeal, and the theater's business continued as before. Purvis, Bicentennial History, 266.

Post writer David Wecker to identify Newport as the “envy of the region.”¹⁶ Most journalists’ retrospectives focus upon Commission legislation such as the Anti-Nudity Ordinance of 1982 and the economic development efforts, all of which were indispensable factors in Newport’s transformation, but these retrospectives do not share what had to happen in achieving those remarkable results. This thesis is an effort to explain what went before.

On the matter of the 1961 reform effort, author Hank Messick wrote that with “gambling and vice eliminated, the entire northern Kentucky area boomed. New industry moved in . . . even a university was built just east of the Beverly Hills Country Club . . . [yet] . . . no one in authority wanted to credit the upsurge in economic activity to the elimination of gambling.”¹⁷ Messick relates no other developments in Greater Cincinnati that accounted for Newport’s remarkable changes, nor does he mention the anti-vice efforts that began in 1978. Hank Messick’s Razzle Dazzle overstates the nexus between the 1961 reform effort and Newport’s loss of the Sin City cloak. That there was a reform *effort* in 1961 is accurate. That Newport was *reformed* in the 1960s is inaccurate. Messick’s claims of vice having been “eliminated” in Newport and Campbell County as a direct result of the 1960s reform efforts does not survive scrutiny. Interviews with former Deputy United States Marshall Bill Von Strohe, former City Commissioner Charles Sarakatsannis, and lifelong Campbell County resident Charles Melville, and others whose recollections appear in this thesis relate that the end of gambling did not end the vice problems in Newport. Messick is correct that “no one in authority” credits the

¹⁶ David Wecker, “Newport: Envy Of The Region,” Kentucky Post, September 7, 2004, 1K.

¹⁷ Hank Messick, Razzle Dazzle (Covington, Kentucky: For The Love Of Books Publishing, 1995), 197.

1961 reform effort and gaming's demise for present day Newport. "No one" does because the claim is not correct. The evidence is otherwise.

Strip bars and a Newport on the Levee would not have been able to coexist. Newport became family friendly and respectable, the envy of the region, because law enforcement destroyed adult entertainment's domination of downtown Newport and then eliminated entrenched adult entertainment as a factor in Newport's future economy and culture. The following pages describe how that occurred.

CHAPTER I:

NEWPORT BECOMES SIN CITY

Situated at the confluence of the Ohio and Licking Rivers in Northern Kentucky's Campbell County, the City of Newport fronts the Ohio River directly across from Cincinnati, Ohio. Founders named the community after the sea captain who piloted Virginia's first Jamestown settlers. Incorporated during the 1790s, Newport's economic development through the nineteenth century benefited by its proximity to Cincinnati, a thriving commercial center and the "Queen City" of the Midwest.¹⁸ Despite respectable economic and cultural development within the Greater Cincinnati region, early twentieth century Newport took a dramatically different path than surrounding communities.

Identified with vice and official corruption, Newport became the Midwest's "Sin City." With the moniker came the image and reputation of a "wide open town." From Prohibition through the fifties decade, illegal gambling, prostitution, and nude entertainment made Newport a twentieth century boomtown and "Cincinnati's playground."¹⁹

¹⁸ Jack Wessling, A History Of Campbell County, Kentucky, unpublished manuscript, collection in Campbell County Library, Fort Thomas Branch, Ft. Thomas, Kentucky, 2-3; Jim Reis, Pieces Of The Past (Covington, Kentucky: The Kentucky Post, 1988), 103-04; Thomas L. Purvis, "Newport, Kentucky: Its Economic And Social Evolution, 1795-1995," Northern Kentucky Heritage, 8, no. 1 (Fall/Winter 1995): 1-21; Thomas L. Purvis, ed., Newport, Kentucky: A Bicentennial History (Newport, Kentucky: Otto Zimmerman and Sons, Co., Inc., 1996), 53-56, 81-82, 84, 114-117.

¹⁹ Terry Flynn, "Cincinnati's Sin City: In Newport Ever Vice Was Available For A Price, And The Sky Was The Limit," Cincinnati Enquirer, July 29, 2003; Time

Tolerance for Prohibition's bootlegging and local acceptance of other illegal enterprises made Newport a haven for legal and illegal forms of entertainment as bribery and blackmail protected growth of the city's prostitution and gaming industries. Corruption of enough well placed officials helped create a border town of casinos, gambling clubs, brothels, bookmakers, gangsters, and strippers. This chapter describes Newport's evolution into Sin City through 1961. The chapter's final section describes the gaming industry's demise at the instigation of reform groups, but losing gaming did not end vice's domination of Newport. Forty years of illegal vice in the city's central business section and hundreds of millions of dollars it generated made gambling and prostitution part of the community's fabric. Newport was not ready for true reform in 1961.

Early Vice: The Barracks' Prohibition and Early Sin City

America's Prohibition did not introduce vice problems to Newport. During 1805-1807, the United States Army built a small military installation on the riverbanks at Newport's northwestern corner. What is now Newport and Greater Cincinnati was then part of the western frontier. America's westward expansion brought travelers down the Ohio River, and not all of those travelers upright solid citizens. Prostitutes and gamblers travelled the river and were more than willing to separate the soldiers from their pay.²⁰ Around Newport's present day West Third Street was a vice-ridden part of town called

Magazine, "Sin Center," May 26, 1961, 49; Monroe Fry, "Cross Section: USA: Sin Town," Esquire, May 1957, 84; James A. Maxwell, "Kentucky's Open City," Saturday Evening Post, March 26, 1960, 42.

²⁰ Cincinnati: A Guide To The Queen City And Its Neighbors (Cincinnati, Ohio: Wiesen-Hart Press, 1943), 16, 161; Nathaniel S. Shaler, The Autobiography of Nathaniel Southgate Shaler (Boston, Massachusetts: Houghton Mifflin, 1909), 27-28; see, Bill Davidson, "The Great Kentucky Scandal," Look, October 24 1961, 88.

the “Temptations of Taylor Street.”²¹ Remaining “practically underground” despite the Barracks and the Temptations, vice never became a force in Newport’s “moral or social climates.”²² America’s Prohibition era changed that.

Cincinnati’s post-World War I crackdowns drove much of the Queen City’s illegal businesses into Northern Kentucky. A portion went to Kenton County, but most went to Newport where it prospered. Cincinnati enjoyed mainstream prosperity, but visitors to the Queen City found only a short walk separated them from Newport’s special attractions. Newport’s nightlife depended upon Cincinnati’s business visitors, conventions, and sporting events.²³

The Volstead Act²⁴ brought Prohibition, but Americans’ thirst for alcoholic beverages did not disappear. Bootleggers filled the demand. Liquor was a vice that the country tolerated, and Greater Cincinnati, including Newport, was no exception.²⁵

²¹ Today, the area would encompass portions of west Third and west Second Streets.

²² Purvis, Bicentennial History, 68-69, 205, 208; Robert Gioielli, “Suburbs v. Slot Machines: The Committee of 500 and the Battle over Gambling In Northern Kentucky,” Ohio Valley History 5, no. 2 (Summer 2005): 62-63.

²³ Cincinnati: A Guide To The Queen City And Its Neighbors (Cincinnati, Ohio: Wiesen-Hart Press, 1943), 533; Fred J. Cook, The Corrupted Land: The Social Morality Of Modern America (New York: Macmillan Publishing, 1966), 290-291; Purvis, Bicentennial History, 208, 248; Hank Messick, Syndicate Syndicate Wife, (New York City: MacMillan Company, 1968; Belmont Tower Books, 1973), 134; Purvis, Northern Kentucky Heritage, 17.

²⁴ Andrew Sinclair, Prohibition: The Era of Excess (Boston, Massachusetts: Little Brown, 1962), 5-6.

²⁵ Sinclair, 165-166, 177; Irving Fischer and H. Bruce Brougham, The Noble Experiment (New York City: Alcohol Information Committee, 1930), 25, 90-91, 84-197; Mark Haller, “Bootleggers As Businessmen: From City Slums To City Builders Law; in David E. Kyvig, Alcohol, and Order: Perspectives on National Prohibition (Westport, Connecticut: Greenwood Press, 1985), 139-159; Humbert S. Nelli, “American Syndicate Crime: A Legacy of Prohibition,” in David E. Kyvig, Law, Alcohol, and Order: Perspectives on National Prohibition (Westport, Connecticut: Greenwood Press, 1985), 123-126; T. Henry Walnut, “The Power Of Money,” in Lamar T. Bernan, Ed., Selected

Cincinnati was home base for one of Prohibition's biggest bootleggers, German immigrant and Cincinnati resident George Remus, the face of bootlegging in Greater Cincinnati.²⁶ Remus amassed tens of millions as a bootlegger and spent some of his millions to bribe officials, at least until he went to federal prison. Syndicate Wife's Hank Merrick credited Remus with teaching "law enforcement officials ... to hold out their hands ... spending over twenty million dollars for protection."²⁷ Illegal gaming and brothel prostitution thrived alongside illegal booze as Newport became the region's Sin City. Remus helped spawn a tradition of corruption that protected Newport's gaming and prostitution industries for decades.

Newport's evolution into lawlessness was not discreet. On March 6, 1926, a local newspaper, the Kentucky Post, wrote of a "... laxity in law enforcement such as never

Articles On Prohibition (New York: H. W. Wilson, 1924), 129-131. Note: the term "liquor" is a term used herein that includes all forms of alcoholic beverages.

²⁶ Remus v. United States, 291 F. 513 (6th Cir. 1923), cert. denied, 263 U.S. 717 (1924) (crime of maintaining "nuisance"); United States v. Remus, 12 F.2d 239 (6th Cir., 1926); Southern Surety Co. v. Motlow, 61 F.2d 464 (6th Cir., 1932) (background of Remus transactions); Andrew Sinclair, Prohibition: The Era of Excess (Boston, Massachusetts: Little, Brown, 1962), 185, 222, 410; Howard Lee McBain, Prohibition: Legal And Illegal (New York: Macmillan Publishing, 1928), 121 (discussion of legal issues relating to Volstead Act; cites United States v. Remus); Hank Messick, Syndicate Syndicate Wife, (New York City: MacMillan Company, 1968; Belmont Tower Books, 1973), 17-19; Ray C. Hall, "Howling At The Moon," Courier-Journal Magazine, February 3 1991, 6-9; George Strichorchuk, "City That Provided Sin In Cincinnati Is Being Cleaned Up," Wall Street Journal, November 26 1985, 1; Gioielli, 62-63; Cincinnati: A Guide To The Queen City And Its Neighbors (Cincinnati, Ohio: Wiesen-Hart Press, 1943), 126-127; Thomas H. Pauly, "Gatsby As Gangster," Studies In American Fiction 21, no. 2 (1993): 225 (analysis of F. Scott Fitzgerald's The Great Gatsby and the inspirations provided by the experiences of George Remus).

²⁷ Cincinnati: A Guide To The Queen City And Its Neighbors (Cincinnati, Ohio: Wiesen-Hart Press, 1943), 533; Fred J. Cook, The Corrupted Land: The Social Morality Of Modern America (New York: Macmillan Publishing, 1966), 290-291; Purvis, Bicentennial History, 208, 248; Hank Messick, Syndicate Syndicate Wife, (New York City: MacMillan Company, 1968; Belmont Tower Books, 1973), 134; Purvis, "Newport, Kentucky: Its Economic And Social Revolution, 1795-1995," 17. Some vice operations went into Covington, Newport's neighboring city to the east in Kenton County.

existed before . . . every branch of [Newport's and Campbell County's] law enforcement body has succumbed to the reign of gambling . . .” Naming the Commonwealth Attorney, the Campbell County Sheriff, and the Newport Police Chief, the article claimed that “large scale bribery” and “bag money” provided “motivation to ignore the law.”²⁸ Days later, the Post described Newport’s “reputation as a hangout for crooks and murderers . . . and . . . if any crime [was] committed within a radius of 100 miles, [police] immediately look[ed] to Newport for the guilty person.”²⁹

Corruption also infected the local justice system. A local attorney and Campbell County Circuit Judge became embroiled in court confrontations over “bawdy houses” (brothels), but only rarely did grand jurors indict for vice crimes. In one instance when a Campbell County grand jury indicted for a vice related matter, the indictee never faced trial, and afterwards voters elected him to office.³⁰ During the 1930’s and 1940’s Newport caught the attention of a few state government officials who filed “nuisance abatement actions” in an effort to end the illegal gaming industry. The efforts did not succeed.³¹ The published Kentucky Court of Appeals’ opinions expose law

²⁸ Purvis, Bicentennial History, 205-209, citing Kentucky Post, March 3, 1926; Gioielli, 62-63; Messick, Syndicate Wife, 18.

²⁹ Purvis, Bicentennial History, 206-207, citing Kentucky Post, March 6, 1926 (“Knife fights in gambling halls and shootings in bordellos became a routine staple . . .”).

³⁰ Purvis, Bicentennial History, 208-209, citing Kentucky Post articles: March 3, 1926, January 27, 1927, (“ . . . the citizens of Newport [who are] responsible for placing in office men who do not enforce the law.”), June 22, 1929, October 9, 1930; and, January 29, 1931; Gioielli, 69.

³¹ Nuisances are uses of property that are illegal or a property’s use that endangers the health, safety, or welfare of the community. See, Gray v. Ayres et al., 37 Ky. 375 (Ky. App., 1838); Lee v. Macht, 235 Ky. 509 (Ky., 1930); Hall v. Com. ex rel. Schroering, 505 S.W.2d 166 (Ky., 1974) (Jefferson County, Kentucky, prosecutor’s civil action to close store selling sexually oriented adult magazines.); Chambers v. Com., ex rel. Twehues, 723 S.W.2d 868 (Ky. App., 1986) (Nuisance action to abate prostitution).

enforcement's impotency in matters of vice.³²

Along with illegal gaming and “bawdy houses,” open lawlessness invited competition among gamblers and racketeers that, in turn, led to violence. During the latter 1920's Newport's Mayor and City Commission agreed on a need to purchase “Tommy Guns” and an armored car.³³ Purvis blames Prohibition for Newport's deterioration into a city dominated by vice.³⁴ Former Campbell County Circuit Judge Fred Warren considered the circumstances of the Great Depression, once remarking that Newport “abandoned morals to survive the [Great] Depression.”³⁵ By the early 1940's, the gaming industry dominated Newport's economic, social, and cultural life. The city was “wide open,” a twentieth century boomtown with a border town raucousness that offered casinos, brothels, and strip bars with B-girls who offered more than overpriced drinks.³⁶

Not all in Newport or Campbell County approved Newport's circumstances of open lawlessness. Members of the Newport Ministerial Association were vocal opponents of Newport's circumstances, but the group held little sway amidst the prosperity shared by mainstream merchants alongside casinos and gambling clubs. The gaming industry helped the city's budget, provided employment. Grocers, jewelers, clothiers, and downtown eateries all profited from gambling patrons. Some stores and

³² Lester v. Commonwealth, 250 Ky. 277, 62 S.W.2d 469 (1933).

³³ Purvis, Bicentennial History, 207, citing Kentucky Post, September 23, 1928, 1.

³⁴ Purvis, Bicentennial History, 205.

³⁵ Charles Etsinger, “Judge Warren Blasts Newport, County Peace Officers,” Cincinnati Enquirer, January 9, 1973; Nancy E. Moncrief, “We Must End Vice and Slayings,” Kentucky Post, January 9, 1973, 1K.

³⁶ B-girls, “bar girls,” were female employees who solicited drinks from patrons. Sometimes called “mixers,” B-girls were frequent added attractions in adult bars. In this essay, the term B-girls appear.

restaurants often remained open around the clock to accommodate heavy crowds.³⁷

Sin City Evolves

Gambling's success attracted the attention of organized crime.³⁸ Members of what became the Cleveland (Ohio) Syndicate earned their fortunes by Prohibition era bootlegging out of Canada, through Cleveland, and then to American markets.³⁹ The Syndicate, comprised of Jewish gangster Moe Dalitz,⁴⁰ Morris Kleinman, Sam Tucker, and Louis Rothkopf took an interest in Newport during the latter 1930s when organized crime was strengthening its control of the nation's gambling.⁴¹ By the mid-1940s, the Syndicate owned or controlled Newport's gaming.⁴² Through the 1940s, Newport's

³⁷ Purvis, Bicentennial History, 208-209, citing Kentucky Post, January 27, 1927, 4; Charles Sarakatsannis interview, November 15, 2006.

³⁸ Fred J. Cook, The Corrupted Land: The Social Morality Of Modern America (New York: Macmillan Publishing, 1966), 290-291; Mark H. Haller, "Bootleggers as Businessmen: From City Slums to City Builders," found in David E. Kyvig, Ed., Law, Alcohol, And Order: Perspectives On National Prohibition (Westport, Connecticut: Greenwood Press, 1985), 147-148; see, Robert J. Kelly, Encyclopedia Of Organized Crime: From Capone's Chicago To The New Urban Underworld (Westport, Connecticut: Greenwood Press, 2000), 91 (Moe Dalitz).

³⁹ Mark H. Haller, "Bootleggers as Businessmen: From City Slums to City Builders," found in David E. Kyvig, Ed., Law, Alcohol, And Order: Perspectives On National Prohibition (Westport, Connecticut: Greenwood Press, 1985), 147-148; see, Robert J. Kelly, Encyclopedia Of Organized Crime: From Capone's Chicago To The New Urban Underworld (Westport, Connecticut: Greenwood Press, 2000), 91 ("Moe Dalitz"); Herbert S. Nelli, Law, Alcohol: Perspectives on National Prohibition, David E. Kyvig, Ed. (Westport, Connecticut: Greenwood Press, 1985), 126-127, 130, 147.

⁴⁰ Nicholas Gage, Henry Etzkowitz, and Peter Schwab, Eds., Is America Necessary? Liberal and Socialist Perspectives of United States Political Institutions (St. Paul, Minnesota: West Publishing, 1976), 276-277.

⁴¹ Herbert S. Nelli, "American Syndicate Crime: A Legacy of Prohibition," found in Law, Alcohol: Perspectives on National Prohibition, David E. Kyvig, Ed. (Westport, Connecticut: Greenwood Press, 1985), 130.

⁴² Herbert S. Nelli, "American Syndicate Crime: A Legacy of Prohibition," found in Law, Alcohol, and Order: Perspectives on National Prohibition, David E. Kyvig, Ed. (Westport, Connecticut: Greenwood Press, 1985), 147-148.

gaming industry flourished, but not without some violence.⁴³

Attempts by Kentucky's Attorney General to stop gambling and compel enforcement of the anti-vice laws were unsuccessful.⁴⁴ Attorney General Hubert Meredith initiated nuisance abatement actions to close illegal businesses and to compel enforcement of gaming laws by Campbell County and Newport officials. During the early 1940s, Meredith filed a "petition against numerous parties seeking to abate an alleged series of public nuisances, consisting of widespread operation of gambling houses and other violations."⁴⁵ Due to allegations that Campbell County Circuit Judge Ray L. Murphy had some involvement with illegal gambling enterprises, a Special Judge heard the case. Special Judge John L. Vest observed that it " . . . staggers the human mind to comprehend . . . the extent of depravity and utter disregard of the existence of all law, semblance of law, that are set forth in the [Meredith lawsuit]." Attorney General

⁴³ Messick, Syndicate Syndicate Wife, 21-23; Whitfield v. Commonwealth, 278 Ky. 111, 128 S.W.2d 208 (1939); Whitfield v. Commonwealth, 265 Ky. 640, 97 S.W.2d 565 (1936); Fillhardt v. Schmidt, 291 Ky. 668, 165 S.W.2d 155 (1942). Note: both Whitfield cases arose out of the arson of Southgate, Kentucky's Beverly Hills Supper Club during the 1930s.

⁴⁴ Sam Tucker v. Commonwealth, ex rel. Attorney General, 229 Ky. 820, 187 S.W.2d 291 (1945)(nuisance abatement action to compel officials to enforce Kentucky gaming laws in Newport and Campbell County); Commonwealth ex rel. Meredith v. Murphy, 295 Ky. 466, 174 S.W.2d 681 (1943) (Kentucky Attorney General suit to enjoin Campbell County Circuit Judge Ray L. Murphy from presiding over nuisance cases when Judge Murphy was one of those the suit alleged was aiding and abetting illegal gambling in Newport and Campbell County).

⁴⁵ Commonwealth ex rel. Meredith v. Murphy, 295 Ky. 466, 174 S.W.2d 681 (1943) (" . . . [ninety-nine] county and city officers are defendants . . . charged in substance with conspiring with and aiding and abetting their co-defendants in maintaining the nuisances. . . . [A Circuit Judge issued] an ex parte motion issued a restraining order on [September 20, 1943] temporarily enjoining the defendants and directing the sheriff of Campbell County and other peace officers to forthwith enforce all laws of the Commonwealth, particularly those condemnatory of gaming, and to enter upon the described premises and seize all equipment and contrivances generally used in gaming, especially slot machines, roulette wheels, and other named devices . . . ").

Meredith's partial success in the case did not end illegal gaming.⁴⁶

In another civil action during the mid-1940s, Newport "citizen and taxpayer," Frank Bierle, brought suit in Campbell County Circuit Court to compel Newport Commissioners' adoption of an ordinance taxing slot machine operators and bookmakers. The suit presented the courts with a bizarre dilemma. If Bierle succeeded, Newport would be taxing illegal operations, thus implying that officials knew of the bookmaking and slot machines and were not acting to stop them.⁴⁷ Tax proponents claimed the new ordinance would generate revenues in excess of \$400,000. Circuit Judge Ray L. Murphy dismissed the suit, but the estimated tax revenues provides some insight into the amount of money illegal gaming generated.⁴⁸

The Kentucky Court of Appeals upheld Judge Murphy's dismissal of the Bierle suit, finding that the slot machines and bookmaking operations were illegal and, consequently, immune from state or local taxation. The Court took notice of Newport's reliance upon "illicitness" as a revenue source. The opinion cautioned that dependency upon revenue earned by unlawful means would lead to "an insidious yearning for the welfare of such illicitness ... [and would] eventually supersede normal desire on the part of the city officials for regular law enforcement ... Where a city's treasure is found there may its heart be found." The warnings were overdue. Newport had long been reliant upon illegal enterprises and city officials had already lost the "normal desire ... for

⁴⁶ For a more detailed discussion of Attorney General Meredith's suit and the behind the scenes intrigue that let up to the filing of the action, see Messick, Syndicate Wife, 27-29 ("after the raids, the good citizens of Newport had a chance to express their sentiments [about the Meredith suit and its allegations] . . . Five defendants won nomination to public office in the city's primary election.").

⁴⁷ Kentucky Revised Statutes (KRS) 436.230; KRS 436.490.

⁴⁸ Beierle v. City of Newport, 305 Ky. 477, 204 S.W.2d 806 (1947).

regular law enforcement.” The Bierle Court explained that “. . . Pittsburgh’s [Pa.] heart is in its steel industry, Detroit’s in its auto industry, Reno’s in its divorce industry; [therefore,] their treasures lie there ... [and] their hearts do likewise.” The Court warned that in Newport’s “age old battle between dollars and decency the latter must prevail if [people in Newport] ever are to see the golden age of a Pericles rather than the fiddling of a Nero amidst the burning embers of a decadent Rome.”⁴⁹ Newport chose the fiddler.

The published Court of Appeals opinions prove that state officials had knowledge of Newport’s circumstances as early as the latter 1930s and 1940s, and perhaps even sooner. The two Whitfield cases discuss arson-murder (of a child) at the Beverly Hills Supper Club and other reported cases discuss Newport’s illegal businesses.⁵⁰ The gaming industry’s continued existence until the early 1960s suggests the extent of political protection afforded Newport’s illegal industries.

Kentucky’s prohibitions of gambling and the presence of the Cleveland Syndicate did not deter crowds from visiting Sin City’s casinos, brothels, and strip bars.⁵¹ By the end of the 1940’s, Newport was home to seven casinos, eight gambling clubs, several bust-out joints, and a number of handbook operations. The “flagship” of the casinos was

⁴⁹ Bierle, 807-808.

⁵⁰ Sam Tucker v. Commonwealth, ex rel. Attorney General, 229 Ky. 820, 187 S.W.2d 291 (1945)(nuisance abatement action to compel officials to enforce Kentucky gaming laws in Newport and Campbell County); Commonwealth ex rel. Meredith v. Murphy, 295 Ky. 466, 174 S.W.2d 681 (1943) (Kentucky Attorney General suit to enjoin Campbell County Circuit Judge Ray L. Murphy from presiding over nuisance cases when Judge Murphy was one of those the suit alleged was aiding and abetting illegal gambling in Newport and Campbell County).

⁵¹ Purvis, Northern Kentucky Heritage, 17; Messick, Syndicate Syndicate Wife, 26; Gioielli, 63; interview with former United States Marshall Bill Von Strohe, February 21, 2007.

the Beverly Hills Supper Club in neighboring City of Southgate.⁵² The Beverly Hills was a plush showplace. The club offered elegant dining, big band music and dancing, and featured New York and Hollywood entertainment in addition gambling parlors.⁵³

Less glamorous, but lucrative, were the downtown brothels, over a dozen within close proximity of the Newport Police headquarters. The brothels, some complete with a “madam,” did a brisk day and night business.⁵⁴ At the bust-out joints,⁵⁵ strippers, B-girls, and prostitution also brought crowds.⁵⁶ If the Court of Appeals observations in Bierle were correct, that an “age old battle” between “dollars and decency” waged in Newport, then “dollars” reigned victorious as Sin City entered the 1950’s. Newport’s economic

⁵² The Beverly Hills Country Club opened in the mid 1930s, but arson burned the club in 1936, killing the caretaker’s five year-old daughter. The prevailing belief has always been that agents of organized crime’s Cleveland Syndicate wanted ownership and control and perpetrated the arson. Though gambling remained illegal in Kentucky, governors from some Midwestern states attended Beverly Hills’ grand re-opening in 1937. In 1977, the Beverly Hills Supper Club burned during a crowded Saturday night, killing more than 160 people (“Great Beverly Hills Supper Club Fire”). See also, Messick, Syndicate Syndicate Wife, 33 (discussion of Beverly Hills and Kenton County’s Lookout House, both of which “featured the best talent of Hollywood and New York as attractions to draw the suckers to the gambling tables . . .”).

⁵³ Gioielli, 63; Purvis, Bicentennial History, 208; Bill Von Strohe interview, February, 21, 2007; former Newport City Commissioner Charles Sarakatsannis interview, November 15, 2006.

⁵⁴ Former Newport Police Detective (retired) Al Garnick interview, May 24, 2006.

⁵⁵ In his Summer 2005 Ohio Valley History journal article, historian Robert Gioielli succinctly explains the concept of a “bust-out” [or “bust-out joint”]: “. . . usually smaller and seedier [establishments], containing only a few tables and some slot machines. Club owners here often rigged the games so that a patron could not get ‘out’ until they had been busted.” Gioielli, 63.

⁵⁶ Purvis, Bicentennial History, 248-252; Messick, Syndicate Wife, 19-23; Gioielli, 63; Messick; Campbell County resident Charles Melville interview, September 1, 2007; Purvis, Northern Kentucky Heritage, 17-18; Bill Von Strohe interview, February, 21, 2007. Note: An estimated two hundred to three hundred prostitutes worked in Newport, more during Cincinnati sporting events and conventions.

well being remained affixed vice's prosperity and talk of reform was not popular.⁵⁷

During the early 1950's, Newport attracted the attention of Tennessee Senator Estes Kefauver's Sub-Committee on Organized Crime in Interstate Commerce. During its probe of organized crime, the Committee held hearings in several American cities. Some Newport officials testified, albeit some of them less than truthfully. Newport Police Chief George Gugel claimed that neither he nor "his men ever found" gambling. Campbell County Commonwealth Attorney William Wise, in office since the early 1940's, told Kefauver that gaming had been "around" in Newport and Campbell County before the early 1940's but that grand juries would not indict.⁵⁸ The Committee did not accept denials by Newport and Campbell County officials that they either knew nothing about gambling's pervasiveness or that they had put forth their best efforts to abate the illegal activities. Kefauver's Final Report included that "Newport's gaming operated so openly that the casual visitor would gain the impression gambling was legal in Kentucky."⁵⁹ In his Ohio Valley History article, historian Robert Gioielli opines that

⁵⁷ Newport License Administrator Michael Whitehead interview, March 9, 2007; Purvis, Bicentennial History, 208-209 (citing "the Kentucky Post, January 29, 1931; June 22, 1929; October 9, 1930); Gioielli, 69; Purvis, Bicentennial History, 208 (citing the "Kentucky Post, March 3, 1926, 1"); Terry Flynn, "Cincinnati's Sin City: In Newport Every Vice Was Available For A Price, And The Sky Was The Limit," Cincinnati Enquirer, July 29, 2003.

⁵⁸ Wise and Circuit Judge Ray Murphy entered office in the early 1940s. Messick, Syndicate Wife, 105-106.

⁵⁹ United States Senate Special Committee To Investigate Organized Crime in Interstate Commerce, Kefauver Committee Special Report, Aug. 31, 1951 (Washington D.C.: United States Government Printing Office, 1951), 42-52, Gioielli, 62-63, 68-69, 75; Gary Potter and Matthew DeMichelle, "Sin City Revisited: A Case Of The Official Sanctioning Of Organized Crime In An Open City," paper presented at the Academy of Criminal Justice Systems meeting, New Orleans, La., March 2000, 22; Purvis, Bicentennial History, 254-55; Messick, Syndicate Wife 18-20; Robert Gioielli, "Suburbs v. Slot Machines," Ohio Valley History 5, no. 2 (Summer 2005): 61-84; Reis, Pieces Of The Past, 104; Charles Sarakatsannis interview, November 15, 2007; Bill Von Strohe

gambling was so intertwined in “Campbell County’s social scene” that “gamblers mixed openly with public officials and mainstream business owner.” Casinos were, Gioielli observed, such “an accepted part of Northern Kentucky’s landscape that locals considered them “legitimate illegal operations.” Most, Gioielli noted, saw “talk of reform” as a “naïve attempt to unseat the most powerful forces” in the city and county.⁶⁰ Yet, gaming was not invulnerable.

Though Newport vice seemed invulnerable to laws and law enforcement, but there was an organized opposition that began percolating among the ranks of religious groups during the latter 1950s. Notwithstanding earlier rumblings of reform groups, Newport’s illegal industries had little cause for concern. With so much money flowing into the downtown economy, gaming and other vice appeared secure. During the latter 1950s, the sense of security was deceptive because circumstances were changing.⁶¹

interview, February 21, 2007; Charles Melville interview, September 1, 2007; Gregory Stricharchuk, “City That Provided The Sin In Cincinnati Is Being Cleaned Up,” Wall Street Journal, November 26 1985, 1; Steve Ramos, “Everyone Was On The Payroll At That Time,” City Beat (Newport, Kentucky), January 6 – January 12, 2000, 1; Terry Flynn, “Old Days Of Newport,” Cincinnati Enquirer, July 29 2003, B1; Purvis, Bicentennial History, 255; Gioielli, 68-69, citing Gary Potter and Matthew DeMichelle, “Sin City Revisited: A Case Of The Official Sanctioning Of Organized Crime In An Open City,” paper presented at the Academy of Criminal Justice Systems meeting, New Orleans, La., March 2000; Kefauver, 42; James A. Maxwell, “Newport: Kentucky’s Open City,” Saturday Evening Post, March 26, 1960, 22.

⁶⁰ Purvis, Bicentennial History, 256-257; Gioielli, 64, 66, referencing footnote 10 at 82.

⁶¹ United States Senate Special Committee To Investigate Organized Crime in Interstate Commerce, Kefauver Committee Special Report, Aug. 31, 1951 (Washington D.C.: United States Government Printing Office, 1951), 42-52, Gioielli, 62-63, 68-69, 75; Purvis, Bicentennial History, 254-55; Messick, Syndicate Syndicate Wife 18-20; Robert Gioielli, “Suburbs v. Slot Machines,” Ohio Valley History 5, no. 2 (Summer 2005): 61-84; Jim Reis, Pieces Of The Past, 104; Charles Sarakatsannis interview, November 15, 2006; Bill Von Strohe interview, February 21, 2007; Charles Melville interview, September 1, 2007; Gregory Stricharchuk, “City That Provided The Sin In Cincinnati Is Being Cleaned Up,” Wall Street Journal, November 26, 1985, 1; Steve

Newport had been profitable for the Cleveland Syndicate, but Sin City's attractiveness had faded by the latter 1950s. Organized crime syndicates were finding other venues such as the Bahamas, Las Vegas, Florida, and, until Fidel Castro intervened, Cuba⁶² more receptive to gambling.⁶³ The timing of the Syndicate's declining interest was fortuitous because Newport's gaming era was near at hand.

Reformers And Reform

In 1957, a group of Newport Protestant lay church members formed the Social Action Committee (SAC) whose goal was to gather evidence of illegal businesses and give the material to Commonwealth Attorney William Wise. Fed up with Newport's image and state of lawlessness, SAC hoped Wise would present the evidence to a grand jury. Impatient with Newport's image as a morally corrupt community, the group wanted change. Organized under the sponsorship of the Newport Ministerial Association the group became proactive to expose how adult entertainment and illegal vice had corrupted

Ramos, "Everyone Was On The Payroll At That Time," City Beat (Newport, Kentucky), January 6 – January 12, 2000, 1; Terry Flynn, "Old Days Of Newport," Cincinnati Enquirer, July 29, 2003, B1; Purvis, Bicentennial History, 255; Gioielli, 68-69, citing Gary Potter and Matthew DeMichelle, "Sin City Revisited: A Case Of The Official Sanctioning Of Organized Crime In An Open City," paper presented at the Academy of Criminal Justice Systems meeting, New Orleans, La., March 2000; Kefauver, 42; James A. Maxwell, "Newport: Kentucky's Open City," Saturday Evening Post, March 26, 1960, 22, 82-86.

⁶² Pre-Fidel Castro era. Note: movie fans may recall a Cuban setting in the movie hit "Godfather II" when the Hyman Roth character acknowledged representatives from American crime syndicates in attendance at his birthday celebration. One of the towns mentioned was Newport.

⁶³ Russell R. Elliot, History of Nevada (Lincoln, Nebraska: University of Nebraska Press, 1987), 329, 332-334; Denise Van Hermann, The Big Gamble: The Policies of Lottery and Casino Expansion (Westport, Connecticut: Praeger Publishers, 2002), 21-22; Selwyn Raab, Five Families: The Rise, Decline, and Resurgence of America's Most Powerful Mafia Empires (New York: St. Martin's Press, 2005), 84-87.

Newport and damaged the city's image and reputation.⁶⁴ Unfortunately for SAC's hopes, Circuit Judge Ray L. Murphy and prosecutor Wise preferred and protected the status quo. Neither Murphy nor Wise offered help or provided any assistance to SAC members.⁶⁵ SAC's entreaties to the City Commission also went for naught.⁶⁶ City Manager Ralph Mussman tried to further SAC's goals but he paid a price for his efforts. During the latter 1950's, Mussman directed city licensing inspectors and Newport Police to begin enforcing gaming and prostitution laws. Shortly thereafter, the City Commission fired him.⁶⁷

Ignored or opposed by local officials, the Social Action Committee had few other options. There were two other Campbell County law enforcement agencies with countywide jurisdiction, but SAC could not depend upon either of them. One was the Campbell County Sheriff's Department. When SAC formed, Norbert Roll was County Sheriff. The other agency with countywide jurisdiction was the Campbell County Police Department. The County Police Chief was an appointed position and Harry Stuart held the office. Neither the Sheriff nor the County Police were investigating or enforcing state gaming laws, each for a different reason. County Police operated under the control of the

⁶⁴ Bill Davidson, "The Great Kentucky Scandal," Look, October 24 1961, 88; James A. Maxwell, "Newport Kentucky's Open City," Saturday Evening Post, March 28 1960, 42; Messick, Syndicate Syndicate Wife, 118; Monroe Fry, "Cross Section: USA: Sin Town," Esquire, May 1957, 84.

⁶⁵ Gioielli, 64-67; Purvis, Bicentennial History, 258, 260-261; Messick, Syndicate Syndicate Wife, 27-28, 124, 134-136; Messick, Razzle Dazzle, 70-71, 81, 84, 86, 101. See also, Commonwealth ex rel. Meredith v. Murphy, 295 Ky. 466, 174 S.W.2d 681 (1943).

⁶⁶ Newport City Commission Minutes: April 5, 1959, March 22, 1960, November 22, 1960.

⁶⁷ Gioielli, 68-69; Kefauver Report, 42-52; Purvis, Bicentennial History, 255, 260; Messick, Syndicate Wife, 146, 176-181; Messick, Razzle Dazzle, 99-106.

county's elected legislative body, the Campbell County Fiscal Court.⁶⁸ The County Judge, the chief elected executive officer on Fiscal Court, had directed Chief Stuart to refrain from law enforcement in Newport until requested by Newport Police, a request that never came.⁶⁹ Sheriff Roll had no such excuse. The office of County Sheriff was an elected position and Roll had discretion to investigate illegal gaming and other vices at his discretion, but he would not publically acknowledge illegal gaming existed in the jurisdiction. The Sheriff maintained this façade through his own 1960 criminal nonfeasance trial. With Judge Ray L. Murphy presiding, prosecutor Wise's weak effort led to Roll's acquittal.⁷⁰

SAC could not turn to the Kentucky State Police. That option existed only if Kentucky's Governor ordered State Police intervention, and Governor A.B. "Happy" Chandler (1955-1959) did not do so. Chandler explained that Newport's "people had a right to have it dirty."⁷¹ Though shunned by the legal system and city officials, SAC members continued gathering evidence and making futile appeals to Judge Murphy, to prosecutor Wise, and to Newport's City Commission.⁷²

⁶⁸ Three Commissioners and the Campbell County [Fiscal Court] Judge. The term "County Judge" on the "Fiscal Court" were not judicial offices or bodies. The County Judge was the chief executive of the Fiscal Court.

⁶⁹ Messick, Syndicate Wife, 146-147; Hank Messick, Razzle Dazzle (Covington, Kentucky: For The Love Of Books Publishing, 1995), 179; Purvis, Bicentennial History, 260; George W. Robinson, Ed., Public Papers Of Governor Bert T. Combs, 1959-1963, (Lexington, Kentucky: University Press of Kentucky, 1979): "Executive Order: Removal of [Campbell County Police Chief] Harry Stuart from Public Office, January 20, 1962."

⁷⁰ Purvis, Bicentennial History, 260; Messick, Syndicate Wife, 179; Messick, Razzle-Razzle Dazzle, 99-106.

⁷¹ Messick, Syndicate Wife, 190; Gioielli, 71; Purvis, Bicentennial History, 260.

⁷² Newport City Commission Minutes: April 5, 1959, March 22, 1960, November 22, 1960; Purvis, Bicentennial History, 260; Messick, Syndicate Wife, 190; Messick, Razzle Dazzle, 69; 99-106.

Reformers were optimistic about Governor Chandler's successor, Bert T. Combs (1959-1963). Governor Combs seemed more receptive to reformers' concerns, but he initially expressed reluctance to interfere in a "local matter." Combs offered only to "study" the matter.⁷³ Meanwhile, another Campbell County reform group appeared in early 1961.⁷⁴

The new group, the Committee of 500 (the 500), believed that Newport's and Campbell County's economic outlooks were poor if dependency upon illegal gambling continued. Most members were not Newport residents, but many in its leadership had business backgrounds and experience. Members understood that gaming industry's prosperity was not a reliable indicator of future economic growth. Because gambling was illegal, the industry was vulnerable and could disappear instantly if political leadership changed at the city or county levels. The Committee concluded that Newport's image and reputation would continue to discourage mainstream investment; therefore, the group set out to eradicate illegal gambling and oust officials who refused to fulfill their sworn duties.⁷⁵

Scandal: The George Ratterman Incident And Gaming's Demise

1961 was a year for local elections, and the office of Campbell County Sheriff was available. The Committee of 500 decided to back reform candidates for Sheriff and for Newport's City Commission.⁷⁶ For Sheriff, the 500 endorsed former University of Notre Dame and Cleveland Browns quarterback George Ratterman. In 1961 Ratterman

⁷³ Messick, Syndicate Wife, 173-174, 189-191.

⁷⁴ Messick, Syndicate Wife, 190-191; Gioielli, 66-69; Purvis, Bicentennial History, 260-261; David Wecker, "Before There Was Vegas, There Was Newport," Cincinnati Post, September 4, 2004, A1.

⁷⁵ Interview with former Newport Economic Development Director, Laura Long, April 4, 2006; Purvis, Bicentennial History, 260-261; Gioielli, 75-76.

⁷⁶ Messick, Razzle Dazzle, 108-109; Gioielli, 71-72.

was an attorney and investment counselor living in the affluent neighboring community of Fort Thomas with his wife and children. Ratterman's opposition, Newport politician Johnny Peluso and Al Howe, had more name recognition, but not for long.⁷⁷

Ratterman was the race's "underdog," but gaming interests were unwilling to assume even the slightest risks of a reformer being Campbell County's Sheriff. According to local tradition, conspirators lured Ratterman to a meeting and laced his drinks with chloral-hydrate [knockout drops]. When the drugs had their desired effect, the men took Ratterman to Newport's Tropicana Club, a nightclub operated by co-conspirator Tito Carinci. Shortly thereafter, and acting on a "tip," Newport Police found the still stuporous Ratterman in the company of Tropicana stripper, Juanita Hodges, whose stage name was April Flowers. The police arrested Ratterman on morals charges and cited him to trial in Newport's Police Court where prosecutors were city government appointees.⁷⁸

The blackmail attempt did not have the result conspirators intended. Ratterman continued in the race, but now he had the name recognition and overwhelming public sympathy, at least outside Newport. Ratterman's history as a college and professional athlete, Newport's colorful history, and allegations of a sex scandal attracted local and national news.⁷⁹ The blackmail plot backfired for several reasons, not the least of which

⁷⁷ Purvis, Bicentennial History, 261; Gioielli, 67, 73; Messick, Syndicate Wife, 191-192; Cincinnati Enquirer, "Ratterman Files Petition In Campbell County Race," (no author), April 5, 1961, 1.

⁷⁸ Messick, Syndicate Wife, 192-198; Gioielli, 73-74; Purvis, Bicentennial History, 261-262. Note: Prior to 1978, many Kentucky cities had "city courts" or "police courts" to handle traffic and misdemeanor cases that arose within city limits. A discussion of this system appears in a later chapter.

⁷⁹ John L. McClellan, Crime without Punishment (New York City: Duell Sloan and Pearce, 1962), 253-254;); Bill Davidson, "The Great Kentucky Scandal," Look, October

was a blood test that proved the drugs in Ratterman's system. When the case came before Newport's Police Court, a reluctant judge and prosecutor agreed to dismiss Ratterman's criminal case.⁸⁰ The much publicized event brought a groundswell of support for Candidate Ratterman and the reformer cause; however, most of the support was outside Newport's city limits. The incident and its extensive publicity prompted Governor Combs to send State Police and the Office of Attorney General into Campbell County.⁸¹ The Governor also used his executive powers to order licensing agencies and utility providers to review licenses and stop services if an establishment offered illegal gambling. In the matter of officials not performing their duties, Combs began inquiries into whether he should invoke Kentucky law and initiate ouster proceedings against some or all of the individuals.⁸²

24, 1961, 88; Time Magazine, "Sin Center," (no author), May 26, 1961, 49; Time Magazine, "Can Protestants Unite?," (no author), May 29, 1961, 41; Cincinnati Post, "Newport 1961: The Year Everything Changed," (no author), April 24, 2004, A6. See, United States v. Lester, 363 F.2d 68, 70-72 (6th Cir., 1966).

⁸⁰ Purvis, Bicentennial History, 261-262; Gioielli, 67, 73; Messick, Syndicate Wife, 191-192.

⁸¹ Purvis, Bicentennial History, 263-264; Gioielli 73-74; Messick, 192-203; Bill Davidson, "The Great Kentucky Scandal," Look, October 24 1961, 88; Time Magazine, "Can Protestants Unite?," (no author), May 29 1961, 41; Time Magazine, "Sin Center," May 26, 1961, 49.; Cincinnati Post, "Newport 1961: The Year Everything Changed," (no author), April 24 2004, A6; Purvis, Bicentennial History, 263; Messick, Syndicate Wife, 193-203; Messick, Razzle Dazzle, 116-133.

⁸² George W. Robinson, Ed., Public Papers Of Governor Bert T. Combs, 1959-1963, (Lexington, Kentucky: University Press of Kentucky, 1979): "Executive Orders on Charges of Failure to Enforce the Law, June 7, 1961"; "Executive Order: Removal of [Newport Police Chief] George Gugel from Office, October 10, 1961"; "Executive Order: Removal of [Campbell County Sheriff] Norbert Roll from Office, December 7, 1961"; "Executive Order: Removal of [Campbell County Police Chief] Harry Stuart from Public Office, January 20, 1962"; Governor Bert Combs, Executive Orders Nos. 61-442, 61-443, 61-444, and 61-445, cited in Gioielli 74-76, 83, at fn. 49; Messick, 202-03. See also, Robert Sidell, et al. v. Edward G. Hill, Special Judge [for Campbell County], 357 S.W.2d 318 (1962); Leroy Fredericks, v. Bert T. Combs, Governor, and George Gugel, Police Chief, v. Bert T. Combs, Ky., 354 S.W.2d 506 (1962);

Through much of the summer and early fall of 1961, state officials conducted investigations, held public hearings, and presented evidence of corruption to Campbell County grand jurors. Stories of bribes, prostitution, brothels and their “madams,” and illegal gaming appeared almost daily in national and local media.⁸³ To insure integrity, a Special Judge and Special Prosecutor led the Campbell County grand jury investigations. Harlan County Circuit Judge Ed Hill presided as Special Judge and local attorney, Frank Benton, III, acted as Special Prosecutor.⁸⁴

Hearings and testimony exposed the seamier side of Newport and the corruption that kept it that way. Testifying she had more than a passing familiarity with the local power structures, local brothel “madam” Hattie Jackson described the “payoff system” that “kept the casinos and brothels in business.” Jackson told of Police Chief George Gugel and Detective Upshire White receiving from \$100 to \$150 per week from “each of the major clubs [and that] some of the policemen had interests in the clubs or brothels.”⁸⁵ The titillating stories exacerbated Newport’s sleazy image and reputation.⁸⁶

In September 1961, the special grand jury issued indictments and criminal charges against several elected and police officials. Jurors issued over two hundred separate felonies and misdemeanors charges, mostly concerned with bribery and obstruction of justice. Indictees included Newport Police Chief George Gugel, Chief of Detectives Leroy Fredericks, the Newport City Manager, and all but one of Newport’s Board of

⁸³ Bill Davidson, “The Great Kentucky Scandal,” Look, October 24 1961, 88; Time Magazine, “Can Protestants Unite?,” (no author), May 29 1961, 41; Time Magazine, “Sin Center,” May 26, 1961, 49.

⁸⁴ Purvis, Bicentennial History, 263-265; Gioielli, 75-77; Bill Davidson, “The Great Kentucky Scandal,” Look, October 24, 1961, 88; Messick, Razzle Dazzle, 192-193.

⁸⁵ Gioielli, 75 (footnote 50, citing “Hattie Jackson, ouster proceeding testimony, John Breckenridge Papers, box 163, folder 2”).

⁸⁶ Gioielli, 75.

Commissioners. The grand jury censured but did not indict Commonwealth Attorney Wise. Both he and Circuit Judge Ray L. Murphy avoided criminal charges.⁸⁷

George Ratterman won the Sheriff's election, but the reformer cause suffered when Newport's incumbent Commissioners retained their seats.⁸⁸ The pending indictments did not sway Newport voters. The failure to elect a reformer majority to the City Commission doomed a true reform in 1960s Newport.⁸⁹ The indictments did not result in convictions of consequence and Newport's city government remained intact and out of jail. Co-conspirator Tito Carinci won acquittals or dismissals in his state and federal trials for his involvement in the attempted blackmail of George Ratterman, but lawyer and co-conspirator Charles Lester did not share Carinci's good fortune in court.⁹⁰ A federal jury convicted Lester for his role and he served a federal prison sentence.⁹¹ In the ouster actions, Governor Combs ordered Chief Gugel, Leroy Fredericks, Campbell County Sheriff Roll, and Campbell County Police Chief Harry Stuart from public

⁸⁷ Commonwealth of Kentucky, ex rel., John B. Breckinridge, Attorney General v. William J. Wise, Campbell County Commonwealth Attorney, Ky., 351 S.W.2d 493 (1961); Commonwealth of Kentucky, ex rel., John B. Breckinridge, Attorney General v. Ray L. Murphy, Campbell Circuit Judge, 17th Judicial District, Ky., 351 S.W.2d 513 (1961); Commonwealth of Kentucky, ex rel., John B. Breckinridge, Attorney General v. William J. Wise, Campbell County Commonwealth Attorney, Ky., 351 S.W.2d 491 (1961).

⁸⁸ Jason G. Shearer, "Urban Reform in Sin City: The George Ratterman Trial and the Election of 1961 in Northern Kentucky," The Register Of The Kentucky Historical Society 98 (Autumn 2000): 343-365 (cited in Gioielli, 81, footnote 3).

⁸⁹ Purvis, Bicentennial History, 263; Messick, Razzle Dazzle, 172, 175.

⁹⁰ Purvis, Bicentennial History, 263; Messick, Syndicate Syndicate Wife, 234-235; Messick, Razzle Dazzle, 196-197.

⁹¹ United States v. Lester, 363 F.2d 68, 70-72 (6th Cir., 1966); Purvis, Bicentennial History, 262-266; Gioielli, 75-77; Bill Davidson, "The Great Kentucky Scandal," Look, October 24, 1961, 88; Messick, Razzle Dazzle, 192-193; Kentucky State Bar Association v. [Attorney] Charles E. Lester, Jr., Ky., 437 S.W.2d 958 (1968). Note: Tito Carinci developed some legal problems with Internal Revenue Service during 1962 and 1963 and a federal court convicted the former Tropicana Club operator of tax code violations and sentenced him to three years; United States v. Maius, et al., 378 F.2d 716 (6th Cir., 1967).

office.⁹² During Sheriff George Ratterman's four years in office⁹³ the casinos, gambling clubs, and the brothels disappeared. Gaming was no longer a Newport industry, but gambling's departure also meant the losing the big spending crowds.⁹⁴ Newport's boomtown days were over. The city's problems with vice were not.

Over four decades from the early 1920s, Newport was the Midwest's Sin City and identified with corruption, prostitution, strip bars, and illegal gaming, but the boomtown economy discouraged serious reform efforts. When the boom ended, reformers hoped Newport and Campbell County would experience an economic rebirth and a new image. The hopes never materialized, at least not as a consequence of 1960s reform efforts. What some termed a cleanup and reform was neither. A wide gulf existed between the end of gambling and a reformed or "cleaned up" Newport. Vice came and prospered because enough Campbell County and Newport officials were willing to permit it for personal financial or political gain. After 1961, some of the most visible symptoms of Sin City were gone, but vice remained and so did the tolerance and acceptance for what originally led to the Sin City moniker. More than empty casinos and the absence of

⁹² Chief Gugel and Leroy Fredericks resigned before conclusion of the Governor's ouster proceedings, but Combs insisted that the ouster orders issue anyway. Gioielli, 75; Purvis, Bicentennial History, 264. In 1963 Governor Combs pardoned Harry Stuart and Norbert Roll, George W. Robinson, Ed., Public Papers Of Governor Bert T. Combs, 1959-1963, (Lexington, Kentucky: University Press of Kentucky, 1979): Executive Orders issued December 21, 1963, 346, 484. See, George W. Robinson, "Executive Orders on Charges of Failure to Enforce the Law, June 7, 1961"; "Executive Order: Removal of [Newport Police Chief] George Gugel from Office, October 10, 1961"; "Executive Order: Removal of [Campbell County Sheriff] Norbert Roll from Office, December 7, 1961"; "Executive Order: Removal of [Campbell County Police Chief] Harry Stuart from Public Office, January 20, 1962"; Governor Bert Combs, Executive Orders Nos. 61-442, 61-443, 61-444, and 61-445, cited in Gioielli 74-76, 83 at fn. 49.

⁹³ (1962-1966). The Kentucky Constitution prohibited the Sheriff from serving more than one term.

⁹⁴ Messick, Razzle-Razzle Dazzle, 197; Gioielli, 74-77.

brothels had to happen before Newport was “cleaned up.” Over two decades would pass before Newport understood what “cleaned up” meant. Meanwhile, in 1961, Newport was about to deal with the aftermath of a boomtown’s demise and the consequences of an incomplete reform effort.

CHAPTER II:

CONSEQUENCES OF REFORM: STRIP BARS, B-GIRLS, PROSTITUTION

This chapter explores the aftermath of the 1961 reform campaigns. Not long after gaming's demise, there evolved in downtown Newport a sexually oriented adult entertainment industry that prospered through the decade of the 1970s. Those adult businesses that survived reform's efforts and George Ratterman's crackdown on illegal gambling became the strip bars of Newport's new nightlife and sustained the city as Cincinnati's playground.

Exactly when the 1961 reformers realized that Newport was neither reformed nor cleaned-up is uncertain.⁹⁵ George Ratterman's anti-gaming efforts produced results. Casinos and brothels disappeared, but Newport did not change as reformers expected or hoped. The city's economy had been dependent upon the gaming crowds, but, when the crowds suddenly stopped coming, Newport's mainstream economy suffered a serious downturn. Furthermore, not all vice went away.

The 1960's reform efforts ignored the less conspicuous bust-out joints. B-girls and nude entertainment along downtown's York and Monmouth Streets survived and continued, catering to mostly male crowds interested in live nude shows and B-girls at the growing number of such establishments within the central business district. In these

⁹⁵ See, discussion of grand jury report in Newport City Commission Minutes: November 22, 1960.

establishment, prostitution thrived.⁹⁶

For all their good intentions to clean up Newport's image and reputation, reformers in 1961 faced practical and insurmountable barriers to a true cleanup. For a number of reasons, and not all of them related to official corruption, adult businesses weathered police crackdowns, restrictive zoning, and other regulatory efforts. The city's legal system, political climate, and protections afforded by state and federal constitutions preserved Newport as Sin City. This chapter explains how several factors combined to facilitate the evolution and growth of Newport's next adult industry. Vice had not left Newport, but had only changed its appearance.

Bust-Outs And The Vestiges Of Vice

Instead of a vice-free downtown Newport kept its sleazy reputation and image. Crowds still came, but the throngs were not the well-dressed couples attracted to casinos and clubs, elegant dining, ballroom dancing, and quality floorshows. The new industry attracted men who wanted to see women undress and perhaps enjoy the company and intimacies provided by B-girls inside poorly lighted strip bars.⁹⁷ The establishments offered strippers who performed on makeshift stages, and, when not performing, mingled with patrons and solicited drinks. Scantly clad, nude, or partially nude, dancers and B-girls promoted drink purchases. For the more expensive drinks⁹⁸ the women might offer sexual acts at darkened tables and booths where strategic lighting provided a brief modicum of privacy. In some bars, makeshift bedrooms provided the privacy.⁹⁹ In the

⁹⁶ Bill Von Strohe interview, February 21, 2007.

⁹⁷ The majority of the adult bars were on Monmouth Street and side streets immediately off Monmouth. References to Newport's "strip" are references to the Monmouth Street area.

⁹⁸ \$15-\$20 and upwards, depending upon the year and the establishment.

⁹⁹ The Jai Alai club at 9th and York streets was example

“drinks-for-sex” scheme, drink prices determined the sex acts, the locations, and number of participants.¹⁰⁰

Names of the several adult bars varied, but places such as the Pink Pussycat, the Spotted Calf, and the Galaxie Club shared a “sameness.” All tended to have gaudy outside facades, darkened windows, and sexually enticing neon messages that produced a carnival-like collage of moving lights along Monmouth where most of the strip bars (adult bars) were situated. Newport’s small central business district became a brightly lit setting of adult bars and shrinking numbers of mainstream businesses.¹⁰¹ Historian Robert Gioielli observed that reform only chased away the “largest” vice peddlers and gaming’s economic void “became an issue” in the 1963 local elections. At mid-decade, the Committee of 500 “looked hard to find the business growth that had occurred since 1961 [but] none of it was as large as [the 500] had hoped.”¹⁰² The surviving adult businesses continued the Sin City tradition as well as contributing to the town’s tacky image and seedy reputation.¹⁰³

Sheriff Ratterman kept true to his campaign promises. He conducted an intensive

¹⁰⁰ Former Kentucky State Police Detective (retired) interview, April 4, 2006, must remain unnamed; Kentucky State Police Detective (retired) Hobart Strange, testimony at public hearing before Campbell County Fiscal Court on adult business licensing ordinances, December 20, 2006; former Newport Police Detective and Captain, Al Garnick interview, May 24, 2006; Former Newport Police Chief Rick Huck interview, March 23, 2006.

¹⁰¹ Charles Sarakatsannis interview, November 15, 2006; Gioielli, 78-79.

¹⁰² Cincinnati Enquirer, January 6, 1963, 4G; Gioielli, 79, citing: letter of Ralph Mussman to Henry Hosea, Jr., January 4, 1962 and Memo, “New And Expanding Industry In Campbell County,” December 4, 1962;

¹⁰³ Robert Gioielli, “Suburbs v. Slot Machines: The Committee of 500 and the Battle over Gambling In Northern Kentucky,” Ohio Valley History 5, no. 2 (Summer 2005): 79; Thomas L. Purvis, ed., Newport, Kentucky: A Bicentennial History (Newport, Kentucky: Otto Zimmerman and Sons, Co., Inc., 1996), 265; Calvin Trillin, “Newport: Across The River - Still Sinning,” The New Yorker, March 27, 1976, 114.

anti-gaming effort throughout his four year term, but his anti-vice focus was upon gambling and its stubborn remnants. The reform groups became less proactive and, by the latter 1960s, had little involvement. The Committee of 500, most of whom did not live in Newport, considered its “goals accomplished” if the “vestiges of vice remained safely within [Newport] and did not attract national attention.”¹⁰⁴ This tactic acceptance of vice condemned Newport to endure two more decades of Sin City. Adult entertainment became a Newport problem.¹⁰⁵ Newport’s other problem was the economy.

The Post-Reform Economy

Despite the industry’s illegal nature, gaming put money into the local economy. When casinos left, so did revenues. “For Sale” signs became commonplace throughout the central business district and empty storefronts were in abundance.¹⁰⁶ The City’s population shrank from over 33,000 in 1960 to less than 20,000 by 1980. Retail firms dropped from 389 in 1963 to 352 in 1967. By 1972, the number was 290. Service businesses’ numbers shrunk from 191 in 1963 to 156 in 1967. Arguably, America’s shift to suburban homes and shopping centers accounted for some of Newport’s economic troubles, but not all.¹⁰⁷ Reform never “really succeeded” in attracting the promised new

¹⁰⁴ Gioielli, 79.

¹⁰⁵ Former Newport Captain and Detective (retired) Al Garnick interview, May 24, 2006; Hank Messick, Razzle Dazzle (Covington, Kentucky: For The Love Of Books Publishing, 1995), 197; Gioielli, 74-77.

¹⁰⁶ Sarakatsannis interview, November 15, 2006.

¹⁰⁷ Gioielli, 77-79; Purvis, 266, 268-270, 274; Messick, Razzle Dazzle, 178-179; Bill Von Strohe interview, February 21, 2007; former Newport City Commissioner Charles Sarakatsannis interview, November 15, 2006; Memo by former Newport City Manager Ralph Mussman, January 4, 1962, Northern Kentucky Archives: Newport Collection, Box 1, Folder 3 (cited in Gioielli, 84, fn 63); Cincinnati Enquirer, January 6, 1963, G4; Interview with Newport's former Economic Development Director, Laura Long, April 4, 2006; David Wecker, “Casinos Do Not Go Quietly Into The Night,” Kentucky Post,

business investment. The city remained “what it always had been: Cincinnati’s entertainment district.” In the post-gaming years, the good crowds belonged to the “topless bars,” with more such bars to come.¹⁰⁸

Not Mainstream U.S.A.

Reformers’ hopes for Newport’s transformation from Sin City to “mainstream U.S.A. were unrealistic.¹⁰⁹ Newport was not responsive to outsiders converging upon the town, destroying the downtown economy, and leaving the city to cope with the aftermath by itself. Changing Sin City was more complex than ending gaming. Five decades of vice industries’ domination of the downtown culture and economy could not so quickly reverse itself. By 1970, for anyone younger than the age of fifty, a Newport not dominated by illegal vice was an abstract concept. Legal or illegal, Newport’s economy had been grounded in the lucrative gambling industry and reformers brought forth nothing substantive to fill the void. Worse, by the latter 1960s, the reform groups so active in 1961 had become mostly inactive and left Newport to fend alone.

Political Factors

In the post-gaming years of the 1960s, Newport’s city government showed no discernible signs of reforming or an inclination to do so. Reformers’ unsuccessful 1961 bid to unseat incumbent Commissioners left in office a city government unprepared or

September 6 2004, 1K; Michele Cottle, “The Making Of A Crusader,” The New Republic, March 15 1999, 16; Burgess Doan, Developer, testimony at Newport Public Hearing, November 5 1990; Interview With former City Commissioner and City Mayor, Steve Goetz, April 25 2006; Cincinnati Enquirer, “Clamp On Gambling May Cost Newport,” (no author), December 2 1961; Margaret Josten, “Newport: Neither Ghost Town Nor Boom Town,” Cincinnati Enquirer, January 6 1963, G4 (also appeared in Courier-Journal, January 6 1963, 8); Margaret Josten, “Is Now-Sinless Newport a Ghost Town? Opinions Differ,” The Courier-Journal, January 6, 1963, 8.

¹⁰⁸ Gioielli, 79.

¹⁰⁹ See, for example, discussion of grand jury report in Newport City Commission Minutes: November 22, 1960.

unwilling to restrict adult entertainment or to abate in-bar prostitution. The 1962-1963 Commissioners were the same elected officials who were comfortable with illegal vice's downtown dominance before and during the 1961. Not even their pending indictments inspired the City Commissioners to change. Furthermore, the adult bars were lawfully licensed establishments and enjoyed a number of legal and constitutional defenses against local government interference.

As a business licensing authority, the City of Newport had a great deal of discretion in the regulation of all businesses, but only if officials chose to exercise it. Since the adult bars had liquor licenses, officials had even more regulatory authority. Despite this authority, and notwithstanding an awareness of in-bar prostitution, elected officials carried on, refusing to acknowledge or take action against it. The local press, on the other hand, was not so resistant to expose that the "oldest profession" was active in downtown Newport in the form of "sex-for-drinks." Yet, adult bar owners had no reason to fear officials' cracking down and were not seriously concerned about the occasional prostitution arrest by individual police officers. Instead, bar owners feared what was unlikely; that is, an intensive and comprehensive anti-vice effort using undercover investigations and aggressive prosecutions. So long as the bars did not draw undue attention to the illegal activities, Newport's adult businesses operated with a minimum of interference.¹¹⁰

Liberals And Reformers

By the mid-1960's, two informal factions stood opposed to each other over the role of Newport's sexually oriented adult entertainment industry. Reformers opposed adult entertainment, contending that the distribution of adult bars throughout the central

¹¹⁰ William Von Strohe interview, February 21, 2007.

business district discouraged mainstream businesses and investment.¹¹¹ Reformers were certain that potential mainstream entrepreneurs and mainstream shoppers would avoid a downtown that featured strip joints and crowds of men seeking out strippers and prostitutes, all sharing the same sidewalks and streets.¹¹² Those in the liberal faction did not agree.

Liberals perceived adult entertainment as an important source of needed revenues. Adult bars brought crowds interested in Newport's unique attractions, and Cincinnati's conventions and sporting events provided a steady customer base.¹¹³ Liberals feared that ending or restricting adult businesses would discourage the crowds and reduce city revenues. The size and frequency of the nighttime crowds bolstered the liberal position; therefore, post-1961 Commissioners tended to ignore reformers' calls for crackdowns.¹¹⁴ Strip bars worried little, if at all, about local citizens sentiments concerning adult entertainment. The adult industry prospered because crowds from elsewhere came to Newport, and so long as the out-of-town money came, local mainstream sensibilities were largely inconsequential. So long as liberals held a Commissioner majority, adult business owners and operators were almost infallible. The two factions never resolved

¹¹¹ Steve Goetz interview, April 25, 2006; Bill Von Strohe interview, February 21, 2007.

¹¹² Laura Long interview, April 4, 2006; former Newport City Manager and Finance Director Phil Ciafardini interview, April 1, 2007; Campbell County, Kentucky, Fiscal Court records, transcript of Newport Public Hearing, November 5, 1990: testimony of Marge Waganlander, former co-owner of Lanlor Office Products on Monmouth Street; transcript of testimony of real estate developer, and Burgess Doan, associate with economic consultants, Duncan & Associates, on studies conducted relating to community effects due to presence of sexually oriented businesses.

¹¹³ Gioielli, 79; Newport License Administrator and Liquor Administrator Michael Whitehead interview, March 9, 2007; Bill Von Strohe interview, February 21, 2007.

¹¹⁴ Steve Goetz interview, April 25, 2006; Bill Von Strohe interview, February 21, 2007.

their differences or compromised their respective positions.¹¹⁵

Institutions Protect Adult Entertainment

During the 1960's, local institutions played no small role in the evolution of Newport's sexually oriented adult entertainment industry. The City Commission exerted substantial influence over the city's criminal justice system. That influence protected adult businesses. Prior to 1978, Newport's criminal justice system and the City Commission were not independent of each other, a circumstance advantageous to adult bar owners. Many Kentucky cities had their own City Court, sometimes called a Police Court, that had jurisdiction to hear misdemeanor and traffic cases that arose within city limits.¹¹⁶ Newport had a Police Court over which a Police Judge presided and city voters elected the Judge.¹¹⁷ The system was vulnerable to political influences. Police Court prosecutors were City Commission appointees who served at the sole discretion of the Board majority. If enough Commissioners were displeased by a prosecutor's priorities or his handling of cases, the Board could find another. Combined with the City Commission's control over Newport Police appointments, promotions and demotions,

¹¹⁵ Sarakatsannis interview, November 15, 2006; Michael Whitehead interview, March 9, 2007.

¹¹⁶ Prostitution and prostitution related cases, many drug offenses liquor violations were misdemeanors within the Police Judge's jurisdiction. Kentucky also had "County Courts" (to be differentiated from the County's Fiscal Court and Fiscal Court Judge, an administrative body and post). Circuit Court handled felony criminal cases, those offenses addressed by grand juries and a Commonwealth Attorney. Felonies were offenses that carried potential penalties of over a year incarceration. Fines for felonies differed depending upon whether a defendant was a human being or a corporation and will not be discussed herein. Other matters over which the Police Court had jurisdiction are not relevant to this thesis. This system of police courts and county courts existed through 1977, after which time a new court system went into effect.

¹¹⁷ City Police Judges did not have to be attorneys.

budget and disciplinary matters, the role of elected officials cannot be overstated.¹¹⁸

Anti-vice efforts could not happen without at least the Commissioners' implicit approval; therefore, rank and file police could not expect to further their careers by anti-vice initiatives if Commissioners favored or protected adult bars. In felony matters, the situation was different.

After 1963, Campbell County's felony case management changed because Fred Warren replaced Judge Ray L. Murphy's and Commonwealth Attorney Bill Wise lost his post to Frank Benton.¹¹⁹ After 1963, Campbell County's two Circuit Judges were Paul Stapleton and Fred Warren. They, along with Commonwealth Attorney Frank Benton, III, brought integrity to the Circuit Court and to the county's grand jury process.

Legal and Constitutional Factors: How the Law Protected Helped Lawbreaking

Not all impediments to a Newport cleanup were related to local corruption or the Police Court system. Prostitution within the adult bars was illegal, but the adult bars were not. B-girls and stripping were not necessarily illegal and the adult bars held city issued business and alcoholic beverage licenses. Whether a Commission majority was liberal or reformer, officials could not lawfully suspend or revoke licenses without good legal cause, and mainstream opposition to sexually oriented adult businesses was not sufficient. So long as the private or commercial uses of one's property did not become a public nuisance; that is, a threat to the health and welfare of the community,¹²⁰ adult

¹¹⁸ An example of the potential for improper influences was the George Ratterman episode.

¹¹⁹ Purvis, 265; Gioielli, 74-77; Messick, Razzle-Razzle Dazzle, 197.

¹²⁰ See, Commonwealth v. Phoenix Amusement Co., 241 Ky. 678 (1931) ("A 'common nuisance' per se is any act, or omission, or use of property or thing, which is of itself hurtful to the health, tranquillity, or morale, or outrages the decency, of the community, [a] violation of public rights, and includes intangible injuries from public exhibitions which pander to vicious tendencies and draw disreputable members of

business owners had constitutional protections to the use and enjoyment of their property without unreasonable and arbitrary government interference.¹²¹

Once licensed, adult businesses enjoyed constitutionally “vested property rights” to continue; that is, Newport could not take away business licenses or close an establishment without some valid legal basis and without affording owners due process of law.¹²² The law did not forbid regulation of businesses, but regulations needed to be reasonable, not arbitrary; that is, have a legitimate governmental purpose. A “legitimate governmental purpose,” did not include disapproval of an enterprise’s sexually oriented nature. A valid exercise of the state’s police powers was one that advanced the public welfare and was not for the unconstitutional suppression of unpopular opinions, speech,

society.”); see also, Cox v. Commonwealth, 140 Ky. 65 (1910) (considered a “common nuisance” that a black man and white woman had sexual relations, notwithstanding they did so in privacy of their home and not in view of the public); Nuchols v. Commonwealth, 312 Ky. 171, 226 S.W.2d 796 (1950).

¹²¹ Liggett Co. v. Baldrige, 278 U.S. 105, 111-112 (1928); Treigle v. Acme Homestead Assn., 297 U.S. 189, 197 (1936); Berman v. Parker, 348 U.S. 26 (1954); Burstyn v. Wilson, 343 U.S. 495 (1952); Jacobellis v. State of Ohio, 378 U.S. 184, 195 (1964); Adams v. Newark Theater Co. v. City of Newark, 354 U.S. 931 (1957); Breard v. City of Alexandria, 341 U.S. 622 (1951); Feiner v. People of State of New York, 340 U.S. 315 (1951); Kovacs v. Cooper, 336 U.S. 77 (1949); Chaplinsky v. New Hampshire, 315 U.S. 568 (1942); Cox v. New Hampshire, 312 U.S. 569 (1941); Manual Enterprises, Inc. v. Day, 370 U.S. 478 (1962). Obscenity cases discussing the First Amendment and Freedom of Expression: Bantam Books v. Sullivan, 372 U.S. 58, 65 (1963); Jacobellis v. State of Ohio, 378 U.S. 184, 195 (1964); Freedman v. State of Maryland, 380 U.S. 51, 52 (1965); Ginzburg v. United States, 383 U.S. 463 (1966); Mishkin v. New York, 383 U.S. 502 (1966); Book Named “John Cleland’s Memoirs Of A Woman Of Pleasure” v. Attorney General of Commonwealth of Massachusetts, 383 U.S. 413 (1966); see also, Chemline Inc. v. City Of Grand Prairie, Texas, 364 F.2d 721 (5th Cir., 1966). Note: cases named here are close in time and reflect the state of constitutional law at the federal level as reflected by the United States Supreme Court. The law reflected in the cited cases may have changed significantly through present day; however, these cases discuss the state of First Amendment law at a time when Newport confronted adult entertainment issues during the 1960s.

¹²² Michael Whitehead files: opinion by former Kentucky Attorney General Frederick J. Cowan expressed in letter to former Newport City Solicitor and City Manager, James Parsons; Newport City Commission Minutes: April 17, 1989.

or expression.¹²³ That local government could not arbitrarily legislate away the “viable use” of one’s property was a constitutional protection afforded to adult bars as well as mainstream businesses.¹²⁴

A local government’s right, perhaps even obligation, to abate public nuisances for the public’s protection was a simple enough concept; however, complexities arose if nuisance allegations affected forms of speech and expression. The constitutional boundaries between legitimate government regulation and unlawful official restraints upon free speech and expression frequently became blurred. Before 1977, Newport’s zoning codes did not have separate zoning regulations for sexually oriented establishments. The absence of regulations meant officials had no guidelines. The issue of sexually oriented businesses evoked (and still evokes) widely divergent opinions and a panoply of intense emotions.¹²⁵ An absence of guidelines to help lawmakers navigate the complexities of First Amendment issues raised the potential for officials’ unconstitutional arbitrariness in decision-making on such issues. State and local laws and regulations existed for alcoholic beverage licensees,¹²⁶ but liquor law enforcement was often inconsistent or non-existent. When state or local regulation of alcoholic beverages delved into speech and expression, officials’ problems became compounded.¹²⁷ In the

¹²³ Roth v. United States, 354 U.S. 476 (1957); United States v. O'Brien, 391 U.S. 367 (1968); . Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); see also, California v. LaRue, 409 U.S. 109 (1972).

¹²⁴ Kingsley international Pictures Inc., v. Regents of University of State of New York, 360 U.S. 684 (1959).

¹²⁵ See, Thomas C. Mackey, Pornography On Trial (Santa Barbara: ABC-CLIO, Inc., 2004), 1-10.

¹²⁶ The holder of an alcohol beverage license, a “licensee,” was not necessarily the same as the owner of a bar or other establishment in which liquor was sold.

¹²⁷ Michael Whitehead interview, May 9, 2007. See also, California v. LaRue, 409 U.S. 109, 118 (1972) (confrontation between rights to free speech and expression in adult

absence of regulations applicable to Newport's adult bars, the businesses were, in the eyes of the law, legitimate enterprises that enjoyed constitutional protections from mainstream biases against sexually oriented entertainment.¹²⁸ The constitutional protections, the absence of local regulations for adult entertainment, and a supportive City Commission helped make the local adult entertainment industry become well entrenched, legally and otherwise, in Newport's downtown landscape.

Another protection for Newport's adult businesses stemmed from practical problems related to proving illegal activities in a court of law or before a licensing authority. Prostitution in adult bars was no secret, but knowledge of an unlawful activity was not enough to make arrests or to close down businesses. Before imposition of civil or criminal sanctions, courts and licensing authorities needed articulable evidence before them. Solicitation for prostitution was a misdemeanor; therefore, police needed to observe the offense or a private party needed to file a formal complaint. In theory, but highly improbable for obvious reasons, a patron whom a B-girl solicited for sex could file a complaint. The only effective way to make a case for prostitution was through undercover police work. Wearing civilian attire, circulating within Newport's growing number of adult bars, and playing the role of potential customers enabled police to observe illegal solicitations.¹²⁹ With the proper proof, courts and licensing boards had a

bars with rights of state liquor authorities to regulate sexually oriented behavior in alcohol licensed businesses).

¹²⁸ See, Atlantic Coast Line, R.R. v. Goldsboro, 232 U.S. 548, 558 (1914); Liggett Co. v. Baldridge, 278 U.S. 105, 111 (1928); Treigle v. Acme Homestead Association, 297 U.S. 189, 197 (1936); Morey v. Doud, 354 U.S. 457(1957); Schad v. Mount Ephram, 452 U.S. 61 (1981); Mr. B's Bar And Lounge, Inc., v. City Of Louisville, 630 S.W.2d 564 (Ky., 1981).

¹²⁹ Former Kentucky State Police Detective (retired) interview, March 14, 2006 (name withheld upon request); interview with former Newport Police Detective Al

legal basis to act. If police or licensing administrators proved bar owners used the premises for prostitution, then state or local public nuisance laws might close the businesses or take other disciplinary measures.¹³⁰ Years before the 1961 reform effort, Newport had ordinances prohibiting the use of property for prostitution.¹³¹ Chapter 233 of Kentucky's Revised Statutes (KRS 233.010 et seq.) provided for abatement of "houses of prostitution," and Chapter 233 actions were available to public officials and private complainants alike.¹³² Notwithstanding the number of available laws, without enforcement, the laws and regulations were useless. During the post-George Ratterman years, Newport city government undertook no comprehensive anti-vice effort.

Garnick, May 24, 2006; interview with former Newport Police Chief, Rick Huck, March 23, 2006. See, KRS 529.020: "A person is guilty of prostitution when he engages or agrees or offers to engage in sexual conduct with another person in return for a fee."

¹³⁰ City of Somerset v. Sears, 313 Ky. 784, 233 S.W.2d 530 (Ky. App. 1950); Reynolds v. Community Fuel Co., 309 Ky. 716, 218 S.W.2d 950 (Ky. App., 1949); Nally & Gibson v. Mulholland, 399 S.W.2d 293 (1966). The choice of cases cited herein was based upon the opinions' dates. When possible, only those case that Kentucky's appellate courts reported, or those cases whose facts developed, during the period discussed at any point within this essay appear as citations of authority.

¹³¹ Blain McLaughlin, Ed., Ordinance And Municipal Laws for City of Newport, Effective, July 1, 1939 (Newport, Kentucky: H. Otto Printing Company, 1939); Wesley Bowen, ed., Ordinance and Municipal Laws for City of Newport, Kentucky, Effective August 1, 1959 (Newport, Kentucky: Otto Printing Company, 1959), see Ordinance Nos. 646 (prohibiting prostitution and lewdness, \$10-\$500, five days to 12 months "or both"), 749 (occupying or using any business or place for prostitution and lewdness), 1299 ("bathing in river or otherwise to indecently and obscenely expose their person . . ."), 936 (unlawful for prostitutes to "visit or frequent places with beverages or retail drink licenses."), Kentucky Revised Statutes, Chapter 233 (Abatement of House of Prostitution).

¹³² Kentucky Revised Statutes, Chapter 233 (Abatement of House of Prostitution); KRS 233.010 ". . . any building, erection or other place used for the purpose of lewdness, assignation or prostitution. It includes the ground upon which the building stands, and all improvements upon that ground"; KRS 233.020 "House of Prostitution a Nuisance -- To be enjoined and abated . . . Any person who erects, establishes, continues, maintains, owns, occupies, leases or subleases a house of prostitution shall be guilty of a nuisance, and the house of prostitution, the furniture, fixtures, musical instruments and all other contents of the house of prostitution are declared a nuisance, and shall be enjoined and abated as provided by this chapter."

Consequently, in-bar prostitution went on. Yet, the status quo attracted some challengers.

1965-1969: Challenges to Status Quo

During the latter half of the 1960's, newspapers reported on downtown prostitution and the ease of finding it, but Newport's Police Department's command did not order sustained anti-vice efforts. For the most part, Newport officials refused to acknowledge a vice problem.¹³³ Charles Sarakatsannis, who served on the Commission from 1965 to 1975 was an exception. In his first term on the Board, Sarakatsannis made clear his conviction that downtown vice, and officials' protection of it, was a serious matter. Sarakatsannis, concerned about Newport's police chiefs' apparent lack of efforts to deal with illegal vice, doggedly called upon the Police Chief and Commission majorities to confront the problem. Sarakatsannis made vice a frequent Board issue.

A teacher in the Cincinnati Public School system and a Salmon P. Chase Law School graduate, Sarakatsannis questioned Police Chiefs' commitment, or lack thereof, to eradicating illegal vice. The Sarakatsannis family owned and operated Crystal Chili on Monmouth between Ninth and Tenth. During the gambling era, Crystal and the other small downtown businesses benefitted from the gambling crowds, frequently staying open around the clock. After gambling's demise, Charles and brother Art observed Monmouth Street's evolution into a series of strip bars and a steadily shrinking number of downtown mainstream businesses. Convinced that illegal vice thrived through officials' cooperation and, perhaps, bribery, Sarakatsannis sought and won a Commission seat in

¹³³ Charles Sarakatsannis interview, November 15, 2006; Bruce Hadley, "Gambling and Prostitution are Back, Police are Told," Kentucky Post, September 14, 1966, 1K; Charles Etsinger, "On the Line: Stop Bust Out Revival," Cincinnati Enquirer, September 14, 1966, A2; Newport City Commission Minutes: September 30, 1968.

1965.¹³⁴ As a Commissioner, Charles Sarakatsannis questioned why news reporters had such ease in finding illegal activities, including prostitution, when Police Chief Ed Gugel repeatedly claimed police officers could not.¹³⁵

During the latter 1960s, Commonwealth Attorney Frank Benton, III, initiated an investigation into prostitution's grip on the downtown. Agents from Kentucky's regulatory board for alcoholic beverage sales, the Alcoholic Beverage Control Commission Board (ABC Board), visited over a dozen adult bars and found extensive prostitution activities, a fact every rank and file Newport officer already knew.¹³⁶ Newport's Mayor had received complaints about prostitution activities,¹³⁷ and, before leaving office, Sheriff George Ratterman warned of prostitution's downtown growth, but the Police Chief and Commission majority considered the information unworthy of belief.¹³⁸ Notwithstanding the ABC agents' findings and continuing news stories about ongoing prostitution, a 1968 Campbell County grand jury found insufficient evidence for

¹³⁴ Sarakatsannis interview, November 15, 2006.

¹³⁵ Charles Sarakatsannis interview, November 15, 2006; Bruce Hadley, "Gambling and Prostitution are Back, Police are Told," Kentucky Post, September 14, 1966, 1K; Charles Etsinger, "On the Line: Stop Bust Out Revival," Cincinnati Enquirer, September 14, 1966, A2; Carl West, "Reveal Undercover Vice Probe," Kentucky Post, November 19, 1968, 1K; Cincinnati Enquirer, "Vice Charge Triggers Tempers in Newport Board," (no author), October 1, 1968, 20; Cincinnati Enquirer, "Gambler's Comeback? Chief Says No," Kentucky Post, October 15, 1968, 1K.

¹³⁶ Carl West, "Reveal Undercover Vice Probe," Kentucky Post, November 19, 1968, 1K; Cincinnati Enquirer, "Vice Charge Triggers Tempers in Newport Board," (no author), October 1, 1968, 20; Cincinnati Enquirer, "Gambler's Comeback? Chief Says No," Kentucky Post, October 15, 1968; interview with former Newport Police Chief Ricky Huck; interview with former Detective and Captain Al Garnick; interview with former United States Marshall William Von Strohe; interview with Charles Melville.

¹³⁷ Newport City Commission Minutes: November 25, 1964; Newport City Commission Minutes: September 7, 1966.

¹³⁸ Cincinnati Enquirer, "Prostitution Invading Bars, Ratterman Says," (no author), May 18, 1965, 1A; see also, Newport City Commission Minutes: April 5, 1959; Newport City Commission Minutes: March 22, 1960; Newport City Commission Minutes: November 22, 1960.

prostitution related indictments. The jurors' failure to find enough evidence was by no means a sign that Newport was free of a vice problem. The grand jurors also discovered that adult bar owners received advance knowledge of the investigation.¹³⁹ The ABC Board cited a few bars, but Chief Gugel persisted in his denials.¹⁴⁰

When the 1960s ended, Newport was still suffering from gaming's demise and the losses of mainstream businesses. Gambling's demise created new problems and exacerbated old ones as Newport kept its sleazy image and reputation, all of which served to deter new mainstream businesses and investment into the central business district. Furthermore, the town remained vexed by officials' non-action to correct the problems that brought about the 1961 reform efforts in the first place. As Newport entered the decade of the 1970s, the city's night life still attracted crowds into the strip bar and B-girl still offered their special forms of companionship to patrons with enough cash. Newport remained Cincinnati's playground.

¹³⁹ Cincinnati Enquirer, "Prostitution Target Of Campbell Jury," (no author), May 7 1968; Charles Etsinger, "No Evidence of Prostitution," Cincinnati Enquirer, May 18, 1968; Frank Weikel, (no title), Cincinnati Enquirer, September 20, 1968; Cincinnati Enquirer, "Prostitution Target Of Campbell County Jury," (no author), May 7, 1968; Charles Etsinger, "No Evidence Of Prostitution," Cincinnati Enquirer, May 18 1968.

¹⁴⁰ Al Garnick interview, May 24, 2006; Steve Goetz Interviews; Kentucky State Police (retired) Detective interview, March 14, 2006; Charles Sarakatsannis interview, November 15, 2006; Cincinnati Enquirer, "Vice Charges Trigger Tempers On Newport Board," (no author), October 1, 1968, A20; Kentucky Post, "Special Cops Clearing Newport Of Bad Guys," (no author), February 4, 1969; Jack Hicks, "Northern Kentucky: A Study In Paradox," Cincinnati Enquirer, June 21 1970.

CHAPTER III:

CORRUPTION, PROSTITUTION, AND DÉJÀ VU: (1970-1975)

Newport's image continued its decline into the 1970s, but Newport's Police Chief and the majority of Commissioners persisted in denying illegal vice was a problem in the downtown. Commissioner Charles Sarakatsannis continued to challenge the Chief's denials, but Sarakatsannis was in the minority. The issue continued to fester until state and federal grand juries issued a series of indictments against public officials and nightlife figures during 1972-1974. The charges proved that the specter of corruption still hovered over the town nearly a decade after George Ratterman. Indictments only added to Newport's poor image and, when no convictions resulted in the Campbell County Circuit Court cases, there was little cause for optimism that ways of the past were changing. Further still, more was coming to further bolster Newport's claim as Sin City.

In 1970, pornography made its appearance on Monmouth Street in the form of two businesses, an adult bookstore and an adult movie theater. Notwithstanding Newport's five decade acceptance of brothels, gambling, and nude entertainment, officials' response to pornography was hostile and aggressive. The chapter analyzes the grand jury probes and indictments on vice matters and the community's response to porn's introduction into the heart of the central business district.

Cinema X And Adult Bookstore: Harry Mohny Brings Pornography To Newport

In October 1970, an adult bookstore, Monmouth Street Novelty and Bookstore (Bookstore), opened in the 600 block of Monmouth Street. During December 1970, an adult movie theater, the Cinema X, opened in the 700 block. The two locations on Monmouth Street put pornography into the epicenter of Newport's central business district. A non-Newport resident, Stanley Marks was the licensee of record for both businesses, but Marks was not the true owner of either. That dubious distinction belonged to Harry Virgil Mohney, a large volume Midwestern porn distributor from Durand, Michigan.¹⁴¹

Harry Virgil Mohney operated dozens of massage parlors, peepshow operations, strip bars, adult bookstores, and adult theaters in several states, including Michigan, Kentucky, Ohio, Indiana, and Illinois.¹⁴² In the latter 1960s and early 1970s, Mohney litigated obscenity cases in Jefferson County, Kentucky, related to his downtown bookstore.¹⁴³ As other major porn distributors of his time, Mohney operated within a complex network of corporate alter egos created to confuse and confound law enforcement, especially the Internal Revenue Service (IRS).¹⁴⁴ Mohney's network of interlocking corporations resembled a pyramid whose apex was in Durand at Mohney's

¹⁴¹ Charles Etsinger, "Authorities Move Quickly . . . One Arrested In Newport Pornography Raid," Cincinnati Enquirer, October 16, 1970, 1K; Al Garnick interview, May 24, 2006; Gary W. Potter, The Porn Merchants (Dubuque, Iowa: Kendall Hunt Publishing Company, 1986), 30-32.

¹⁴² Gary W. Potter, The Porn Merchants (Dubuque, Iowa: Kendall Hunt Publishing Company, 1986), 30-32.

¹⁴³ Hall v. Commonwealth, ex rel Schroering, Jefferson County Commonwealth Attorney, Ky., 505 S.W.2d 166 (1974).

¹⁴⁴ See, for example, Potter's discussion of porn distributor Rueben Sturman's corporate empire, The Porn Merchants, 125-144.

Modern Bookkeeping Services (MBS), the network's nerve center¹⁴⁵ Before Mohney's network extended into Newport, he and his companies had already been frequent litigants of pornography issues in several jurisdictions.¹⁴⁶ If having porn on Newport's streets was

¹⁴⁵ Campbell County Attorney Justin Verst interview, May 3, 2006; former Assistant Campbell County Attorney and former Campbell County Circuit Judge (retired) William Wehr interview, April 27, 2006; Gary Webb, "Who Is Behind The Cinema X," Kentucky Post, November 22 1980, 1K; See, United States v. Mohney, et. al., 723 F.Supp. 1197 (United States District Court, Eastern District, Michigan, 1989); also see, United States v. Stanley Marks, et al., 520 F.2d 913 (6th Cir., 1975) for an analysis of evidence that linked Mohney to the Cinema-X; U.S. Department of Justice, Attorney General Edwin Meese, Attorney General's Commission on Pornography – Final Report: July 1986, Vol. II (Washington, D.C.: Government Printing Office, 1986), 1046, 1052-53, 1212-1238, 1929 (hereinafter, "Meese" or "Meese Commission,"); United States v. Mohney, 949 F.2d 1397 (6th Cir. 1992); Caroline Rand Herron, Michael Wright, and Daniel Lewis, "The FBI Switches From Politics To Pornography," New York Times, February 17 1980, E4; Gary W. Potter, The Porn Merchants (Dubuque, Iowa: Kendall-Hunt Publishing Company, 1986), 21-22; Epic Schlosser, Reefer Madness: Sex, Drugs, and Cheap Labor In The American Black Market (New York and Boston: Noughton-Mifflin Company, 2003), 156-60; Meese Report, Appendix V, Department of Justice Report, "Organized Crime Involvement In Pornography," June 8 1977; United States v. Harry Virgil Mohney, et al., 509 F.Supp. 127 (U.S. District Court, Miami, Florida, February 19, 1981) (The cases against almost all of the defendants in the "Miporn" sting operation were dismissed, U.S. v. DiBernardo, 775 F.2d 1470 (11th Cir., 1985); U.S. v. DiBernardo, 880 F.2d 1216 (11th Cir., 1989)). For more information about Harry Mohney and his porn empire, an operation not dissimilar from other large scale porn distributors at the time, see Chris Isom, "Harry Mohney Has Proven The Old Adage: Sex Sells," Star Tribune, (Minn.), August 19 1996, 9B; Susan Sward and Bill Wallace, "Porn King Moves Into North Beach," San Francisco Chronicle, 13 August 1997, 9A. Mohney started the national chain of Deja Vu mens' clubs, see Langlois, et al., v. Déjà Vu, Inc., 984 F.Supp. 1327 (1997)(United States District Court, W.D. Washington); State of Minnesota, Office of Administrative Hearings for the City of Minneapolis, In Re: The Matter of the Application of Jimellie Management, Inc. for an On-Sale Liquor License, Class A, for the Premises at 424 Hennepin Avenue South, Minneapolis, Findings Of Fact And Conclusions Of Law And Memorandum, Case No. 7-2101-8368-6, February 17 1994; Jennifer Robison, "Strip Club Bids Bring \$80 Million," Knight Ridder Tribune Business News (Washington, D.C), January 24 2006, 1; M. L. Elrick, "Some Detroit Civic Leaders Object To Strip Club Proposal," Knight Ridder Tribune Business News (Washington, D.C.), July 9 2003, 1; Scott Calvert, "Hustler Publisher Larry Flynt Puts Name Behind Baltimore Gentleman's Club," Knight Ridder Tribune Business News (Washington, D.C), July 15 2003, 1.

¹⁴⁶ Gary Webb, "Who Is Behind The Cinema X," Kentucky Post, November 22 1980, 1K; United States Department of Justice, Attorney General Edwin Meese, Attorney

not disconcerting enough, Mohny's business transactions unavoidably involved dealings with organized crime syndicates.¹⁴⁷

In 1970, Marks's businesses were not Northern Kentucky's only experience with pornography. In the Kenton County City of Ludlow, authorities prosecuted the Ludlow Cinema for showing the sexually explicit "Thar She Blows" and "Sex Lives of Romeo and Juliet." The Ludlow porn cases ended when theater owners agreed to never again show pornographic films¹⁴⁸. Stanley Marks opened the Newport businesses a month later.

Newport Responds: Raids And Federal Court

Newport's bookstore opening was ill timed. In 1970, President Richard Nixon's Commission on Obscenity and Pornography raised the ire of anti-porn groups because of a less than aggressive stance about pornography's alleged harm.¹⁴⁹ Cincinnati lawyer

General's Commission on Pornography – Final Report: July 1986, Vol. II (Washington, D.C., 1986) (hereinafter, "Meese" or "Meese Commission," or Final Report)' Harry Mohny v. State of Indiana, 257 Ind. 394, 276 N.E.2d 517 (1971); Stroud v State, 257 Ind. 204, 273 N.E.2d 842 (1971); Harry Mohny v. State of Indiana, 261 Ind. 56, 300 N.E.2d 66 (1973). Mohny and Geraghty v. State of Indiana, 157 Ind. App. 454, 300 N.E.2d 678 (1973); Allen Stroud v State of Indiana, 261 Ind. 58, 300 N.E.2d 100 (1973); State of Indiana, ex rel Thomas J. Blee v. Mohny Enterprises, 154 Ind. App. 244, 289 N.E.2d 519 (1972); City of Mishawaka, Indiana, et al. v. Harry V. Mohny, et al., 156 Ind. App. 668, 297 N.E.2d 858 (1973), rehearing denied September 6 1973; Hall v. Commonwealth, ex rel Schroering, Jefferson County Commonwealth Attorney, Ky., 505 S.W.2d 166 (1974).

¹⁴⁷ Gary Webb, "Who Is Behind The Cinema X," Kentucky Post, November 22 1980, 1K; Potter, Porn Merchants, 21-33, 145-160.

¹⁴⁸ Sigman Byrd, "Thar She Blows – Smack Into Court," Kentucky Post, March 14 1970; Mike Ferrell, "Two Blazing Movies Make Quite A Show At Ludlow," Kentucky Post, September 2 1970; Jim Reis, "Adult-Only Cinema X Opened In State Theatre's Wake - Theater Led Two Lives," Kentucky Post, February 26 1996, 4K.

¹⁴⁹ Report On The [President's] Commission For Obscenity And Pornography, (New York; Bantam Books, 1970); Roger A. Soenksen, "The 1970 Commission On Obscenity And Pornography," in Christine M. Miller and Bruce C. McKinney, ed., Government Commission Communication (Westport, Connecticut: Praeger Publishers, 1993), 103-122; William B. Lockhart, "Corruption Of Morals: The Underlying Issue Of The Pornography Commission Report," Law And Social Order (1971): 189-243, 197; Doris M. Felman, "Demise Of The Bottomless Bar," Pepperdine Law Rev. 1 (1973): 129-137,

Charles Keating founded the national militant anti-porn group, Citizens for Decent Literature (CDL), during the latter 1950s.¹⁵⁰ Keating served upon the Commission and, at President Nixon's request, formulated the dissent to the Commission's majority report. Marks and his businesses represented what Keating and CDL believed evil and depraved.¹⁵¹

Keating and CDL gained support in Greater Cincinnati through CDL and through his association with Cincinnati-Hamilton County Prosecutor Simon Leis. During the 1970's, Keating and Leis waged a vigorous and well publicized campaign against adult

134; Notes And Comments: "Something Old, A Little Bit New, Quite A Bit Borrowed, But Nothing Blue," Maryland Law Review 33 (1973): 421, 429, 450-451; William B. Lockhart, "The Findings And Recommendations of the Commission on Obscenity and Pornography: A Case Study of the Role of Social Science in Formulating Public Policy," Oklahoma Law Review 24 (1971): 209-224; Weldon T. Johnson, "Pornography Report: The Epistemology, Methodology, And Ideology," Duquesne Law Review 10 (1971-1972): 190, 193-198; Harry M. Clor, "Science, Eros, And The Law: A Critique Of The Obscenity Commission Report," Duquesne Law Review 10 (1971-1972): 63-72; Editor's Note, "Comments: Obscenity-A Change In Approach," Loyola Law Review 18 (1971-1972): 319; Edwin Tobolosky, "Obscenity: A Continuing Dilemma," Southwestern Law Journal 24 (1970): 827, 837; Publishers Weekly, "Court Enjoins Publication Of Obscenity Report," (no author), September 21, 1970, 37. See also, Report of Charles H. Keating, Jr., Commissioner, September 30, 1975.

¹⁵⁰ John H. Houchin, Censorship Of The American Theatre In The Twentieth Century (Cambridge, England: Cambridge University Press, 2003), 221; David Corn, "Dirty Bookkeeping: Charles Keating's Porno Library," New Republic, April 2, 1990, 14 ("members needed to be at least twenty-five, with a family, and with church affiliation . . . people who can handle [explicit] material over an extended period of time without being adversely affected . . . By 1967, [the organization had] more than 300 chapters nationwide.").

¹⁵¹ David Corn, "Dirty Bookkeeping: Charles Keating's Porno Library," New Republic, April 2, 1990, 14 ("For those who believe in God, in His absolute supremacy, . . . in the dignity and destiny which He conferred upon the human person, [and] in the moral code that governs sexuality . . . no [other] argument against pornography should be necessary . . . "); Charles Keating, Jr. filed an amicus curiae brief before the United States Supreme Court in Memoirs v. Massachusetts, 383 U.S. 413 (1966); State ex rel Keating v "Vixen", 35 Ohio St 2d 215, 218-219; 301 NE2d 880, 882 (1973); David Wells, "Mapplethorpe Show Bumps Into a City's Legacy of Conformity Law," Los Angeles Times, April 23, 1990, 1; Publishers Weekly, "Court Enjoins Publication Of Obscenity Report," (no author), September 21, 1970, 37.

entertainment in Hamilton County. A special Leis target was a Magoffin County (Kentucky) native, pornographer and founder of Hustler magazine, Larry Flynt. During the 1970s, Leis prosecuted Flynt on obscenity charges and litigated First Amendment issues.¹⁵² Leis's other targets were Stanley Marks and any of his business affiliations.¹⁵³ Such were Greater Cincinnati's anti-porn sentiments during the early 1970s.

During September 1970, Campbell County Circuit Judge Paul Stapleton charged his grand jury to investigate rumors that "Cincinnati interests" were planning to distribute pornography in Campbell County. Not long thereafter, an undercover Newport officer purchased three sexually explicit books at Marks's Bookstore.¹⁵⁴ Over the next several days, Newport Police raided the Bookstore, seized over five thousand items and charged Marks and employees with distribution of obscenity.¹⁵⁵ Marks responded with a federal lawsuit to stop alleged violations of his civil rights, including First Amendment

¹⁵² Larry Flynt's courtroom confrontations, including those with Leis and Keating, were portrayed in the 1996 movie, The People vs Larry Flynt. The film included the actor James Cromwell who played the role of Charles Keating. See, Laura Kipnis, Bound And Gagged: Pornography And The Politics Of Fantasy In America (Durham, North Carolina: Duke University Press, 1999), 124-126; Brian McNair, Striptease Culture: Sex, Media and the Democratization of Desire (London, England: Routledge Publishing, 2002), 71.

¹⁵³ William S. Barton Co., 45 Ohio App.2d 249, 344 N.E.2d 342 (1975); State v. Cornett, 32 Ohio App.2d 211, 288 N.E.2d 393 (Hamilton County Court of Appeals, 1972); The State of Ohio, ex rel. Charles Keating v. A Motion Picture Film Entitled "Vixen" et al., 35 Ohio St.2d 215, 301 N.E.2d 880 (1973)(nuisance abatement action filed by citizen to stop exhibition of allegedly obscene film); Stanley Marks v. Simon Leis, Jr., Hamilton County Prosecutor, 421 U.S. 940 (1975).

¹⁵⁴ Charles Etsinger, "Authorities Move Quickly: One Arrested in Newport Pornography Raid," Cincinnati Enquirer, October 16 1970, 1B; Al Garnick interview, May 24, 2006. The three publications were Sex for Schoolgirls, World of Love and Sex, and Too Much.

¹⁵⁵ Al Garnick interview, May 24, 2006; Nancy Moncrief, "It's Too Much For Police," Kentucky Post, October 19, 1970 1K; Nancy Moncrief, "Opened Again – Police Raid Bookstore Once Again," Kentucky Post, October 19, 1970, 6K; ; Kentucky Post, "Five Million Dollar Bookstore Suit Claims Harassment," (no author), October 30, 1970, 1K.

protections.¹⁵⁶ Federal District¹⁵⁷ Judge Mac Swinford presided over the Marks's litigation.

Marks's suit had merit. Newport had chosen a strategy of raids and inventory confiscations in hopes that Marks would close his businesses and leave Newport. In other words, Newport was harassing Marks and the strategy had serious constitutional flaws. Tactics of confiscations, store closures, and prosecutions of Marks and his employees amounted to a form of censorship or “prior restraint” of sexually oriented publications. Former Newport Detective Al Garnick remembers city officials’ desire to rid Newport of the Bookstore (and later the Cinema X Theatre). Garnick recalls that when police were not otherwise busy, it was time to “hit the Bookstore.”¹⁵⁸

The First Amendment¹⁵⁹ And Pornography

Marks’s inventory was sexually explicit, but sexual explicitness did not

¹⁵⁶ United States Constitution, Amendment I: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”; Near v. Minnesota ex rel. Olson, 283 U.S. 697 (1931) (five-to-four majority voided a law authorizing the permanent enjoining of future violations by any newspaper or periodical once found to have published or circulated an “obscene, lewd and lascivious” or a “malicious, scandalous and defamatory” issue); Bantam Books v. Sullivan, 372 U.S. 58, 70 (1963); Winters v. New York, 333 U.S. 507, 510 (1948); Marcus V. Search Warrant, 367 U.S. 717, 729 (1961) (“The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression. For the serious hazard of suppression of innocent expression inhered in the discretion confided in the officers authorized to exercise the power. . . . For the use of these warrants implicates questions whether the procedures leading to their issuance and surrounding their execution were adequate to avoid suppression of constitutionally protected publications. ”).

¹⁵⁷ Any federal lawsuits that involved Campbell County matters went to the United States District Court for the Eastern District of Kentucky, Covington Division. Federal District Judge Mac Swinford presided in the Covington Division.

¹⁵⁸ Interview with former Newport Police Detective, Al Garnick, May 24, 2006.

¹⁵⁹ United States Constitution, Amendment I.

necessarily mean the materials were criminally obscene.¹⁶⁰ The United States Supreme Court considered published materials, including sexually explicit publications, “presumptively protected” by the United States Constitution’s First Amendment.¹⁶¹ Law enforcement was constitutionally constrained from seizing books, magazines, and films merely because of sexual content. This did not mean the Constitution prohibited enforcement pornography laws, but only that law enforcement refrain from arbitrarily confiscating vendors’ inventories. Prior to seizing presumptively protected materials, police needed judicial approval in a warrant, and only after the judicial officer examined either the materials or a police officer’s descriptive affidavit. Police were not to be the arbiters of a material’s obscenity.¹⁶²

When Newport began the raids and seizures tactics, officials had not first obtained the needed “prior judicial review.” If police suspected materials were

¹⁶⁰ Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Jenkins v. Georgia, 418 U.S. 153 (1974); Roth v. United States, 354 U.S. 476, (1957); California v. LaRue, 409 U.S. 109, 118 (1972); Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 4-6.

¹⁶¹ Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964); Marcus v. Search Warrants, 367 U.S. 717 (1961); Lee Art Theatre, Inc. v. Virginia, 392 U.S. 636, 637 (1968); United States v. Thirty-seven (37) Photographs, 402 U.S. 363 (1971); Kingsley Books, Inc. v. Brown, 354 U.S. 436, 440 -442 (1957); Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 -71 (1963); New York Times Co. v. United States, 403 U.S. 713, 714 (1971)

Courts will scrutinize any large-scale seizure of books, films, or other materials presumptively protected under the First Amendment to be certain that the requirements of A Quantity of Books and Marcus are fully met . . . Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity. . . . Bantam Books, Inc. v. Sullivan, 372 U.S., at 70.”

See Near v. Minnesota, 283 U.S. 697 (1931).

¹⁶² Marcus v. Search Warrants of Property, 376 U.S. 717 (1961); Bantam Books v. Sullivan, 372 U.S. 58, 67 (1963) (“Our insistence that regulation of obscenity scrupulously embody the most rigorous procedural safeguards, Smith v. California, 361 U.S. 147 (1959); A Quantity of Books v. Kansas, 387 U.S. 205, 209-212 (1964); Lee Art Theatre v. Virginia, 392 U.S. 636, 637-638 (1968).

criminally obscene, then officers needed to have a judge review the publications before, not after, a confiscation. This protocol protected vendors from unlawful seizures of sexually oriented materials based solely upon a city official's or police officer's evaluation.¹⁶³ It was for a judicial officer to assess suspected materials in the context of obscenity's legal definition and not indulge visceral responses to publications that the reviewing officer may find repugnant. Absent a pre-seizure judicial review, Judge Swinford admonished against future warrantless raids.¹⁶⁴

In December 1970, the Cinema X adult movie theater opened for business. The first movie was "Naked Under Leather," a film with relatively mild sexual content.¹⁶⁵ Not long thereafter, hard core adult films became the regular film fare.¹⁶⁶ On January 28,

¹⁶³ Marcus V Search Warrants, 367 U.S. 717, 732-733 (1961 ("[There] must be a procedure prior to seizure" designed to focus searchingly on the question of obscenity . . . [that] . . . cannot be confided to law enforcement officials without greater safeguards.")). See also, Lee Art Theatre, Inc. v. Virginia, 392 U.S. 636, 637 (1968)

¹⁶⁴ Cincinnati Enquirer, "Judge Denies Dismissal Of Obscenity Charges," (no author), May 5, 1971. Shortly after the raids began, Federal Judge Mac Swinford directed Newport to refrain from further warrantless raids.

¹⁶⁵ Also titled "Girl On A Motorcycle," (1968), starring 1960s and 1970s pop singer Marianne Faithful; DVD Release Date: 1999. First released with R rating, but European version was "X rated."

¹⁶⁶ Jim Reis, "Adult-Only Cinema X Opened In State Theatre's Wake - Theater Led Two Lives," Kentucky Post, February 26 1996, 4K. In 1971, when authorities contemplated the Cinema-X in Newport, Kentucky courts had not yet provided a definition of "hard core." Later in the same year, the Court of Appeals decided Smith v. Commonwealth, 465 S.W.2d 918 (1971), in which the Court drew upon the United States Supreme Court Justice Mr. Potter Stewart's concurring opinion in Jacobellis v. Ohio, 378 U.S. 184, 84 S.Ct. 1676, 1683, that the Justice could not define "hard core pornography," but, he wrote: "I know it when I see it." Kentucky's Smith case explores in graphic detail the type of on-screen sexual conduct that convinced the Court of Appeals to find obscenity. "Pornography" and "obscenity," or "obscene," are not synonymous under Kentucky law. "Obscene" is a legal term that indicates depiction of sexual behavior exceeding allowable limits under the law. "Pornography" is the "depiction of erotic behavior intended to cause sexual excitement." Merriam-Webster's Dictionary and Thesaurus (2006). Pornography may not be illegal; however, "obscene" refers to materials that meet statutory criteria to be in violation of the law.

1971, Newport Police targeted the Cinema X and the movie “He And She.” Unlike the early Bookstore raids, police had a warrant. Newport Police raided the theater again in May, again with a warrant, confiscated more films, and filed more obscenity charges¹⁶⁷

Marks's Bookstore – License Revoked

In addition to raid and confiscation tactics, Newport decided to exercise its options as the occupational licensing authority. Commissioners alleged Marks's Bookstore constituted a “public nuisance” and initiated license revocation proceedings.¹⁶⁸

¹⁶⁷ Records of former Newport and Campbell County Police Officer (retired) Joan Volpenheim: “Police Report No. 83365,” dated January 28, 1971, referencing search warrant no. 19108; “Police Report 84052,” dated May 25, 1971, referencing search warrant and seizure of materials from Cinema X Theatre on May 25, 1971. Officers viewed the film ahead of time and executed an affidavit describing the film’s contents in sufficient detail for a judge to find the needed probable cause . Former officer Volpenheim posed as the “wife” with a male officer in order to get into the theater without detection of her law enforcement status on January 28, 1971. Jack Hicks, “Reviews of Controversial Film Are Mixed: Is It Boring or Shocking?” Kentucky Post, February 3, 1971, 3K; Nancy E. Moncrief, “He and She Too Sexy For Police,” Kentucky Post, January 29, 1971, 1K; Al Garnick interview, May 24, 2006. See, Crecelius v. Commonwealth of Kentucky, 502 S.W.2d 89, 92 (Ky., 1973) (officer’s specific affidavit sufficient to establish probable cause for a search warrant to issue).

¹⁶⁸ Nash v. Commonwealth; 225 Ky. 268, 8 S.W.2d 387 (1928); Palmer v. Commonwealth, 154 Ky. 175 141 S.W.2d 936 (1931); City of Corbin v. Hays; 244 Ky. 33, 112 S.W.2d 681 (1932); Cheek v. Com. ex rel. Harrington; 271 Ky. 464 (1938) (inviting and permitting lewd men and women to congregate for immoral purposes and to drink, swear, fight, and use lewd, boisterous, foul, insulting, and threatening language); Tucker v. Com. ex rel. Atty. Gen.; 299 Ky. 820, 821-822, 187 S.W.2d 291 (1945) (alleged gambling . . . evil disposed persons of both sexes congregate on the premises, engage in gambling and drinking which constitutes a public nuisance); Tabor v. Com. ex rel. Peterson; 303 Ky. 810, 194 S.W.2d 501(1946) (Bowling Green brothel; Pauline’s); Nuchols v. Com.; 312 Ky. 171, 226 S.W.2d 796, 798 (1950) (A common or public nuisance . . . is a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency, or morals of the citizens at large); resulting either (a) from an act not warranted by law, or (b) from neglect of a duty imposed by law.”); Frederick v. Bert Combs, Governor of Kentucky, 354 S.W.2d 506, 508 (1962) (appeals from ouster proceedings during 1961 intervention by Governor Combs; a single bawdy house is a public nuisance, and not just a neighborhood problem); Hall v. Commonwealth, 505 S.W.2d 166 (1974) (Mohny arrested and litigated civil and criminal cases . . . sale of

Hearings began in June 1971 and ended on July 8 when Commissioners found the store a public nuisance.¹⁶⁹ The Board's official "Findings and Conclusions," included that Marks's store "disseminated materials . . . harmful or potentially harmful and was obnoxious to the moral and general welfare of Newport's citizens and in violation of Kentucky pornography laws Kentucky Revised Statutes [KRS] 436.101(5)."¹⁷⁰ The Board ordered the license revoked and the store closed. There was added drama when Commissioner Paul Baker claimed he had rejected a \$500 bribe offer not to appear at the final vote on closing the Bookstore. Baker would not name the "messenger."¹⁷¹

allegedly obscene materials as "public nuisance" . . . reversed on Mohny's behalf by Court of Appeals).

¹⁶⁹ Bob Fogarty, "It's Drama ... To Be Continued," Kentucky Post, June 26, 1971, 1K; Commissioners Resolution No. R-71-50; Newport City Commission: Minutes, May 12 1971; Ordinance No. 1390, Section 20, codified under Newport Code of Ordinances as Section 110.20. Newport's Ordinance No. 110.20 prohibited the "sale and distribution of obscene materials within city limits."

¹⁷⁰ Newport City Commission Minutes: "In Re: Stanley Marks, Findings And Conclusions," November 16, 1970. Commissioners concluded that Marks sold and distributed materials that:

depicted and exposed pictorial and graphical scenes of fornication, sodomy, fellatio, cunnilingus,...the exposed male and female sexual organs being caressed both orally and manually and which said publications predominately appealed to the prurient interest of persons, patently offensive to prevailing standards in the community of Newport as a whole with what is suitable material for publication and is utterly without redeeming social value." Newport City Commission

Minutes: July 8, 1971: "In Re: The Matter of Stanley Marks";

Nancy Moncrief, "I Would Like to Have Thrown Up ... Pure Filth," Kentucky Post, June 10, 1971, 1K; Cincinnati Enquirer, "Who's Minding the Store," (no author), June 15, 1971, C1; Bob Fogarty, "It's Drama ... To Be Continued," Kentucky Post, June 26, 1971, 1K; Cincinnati Enquirer, "Nuisance Hearings Drag On," (no author), June 30, 1972; David L. Bauer, "Say Bookstore A Nuisance," Kentucky Post, June 29, 1971, 5K; Cincinnati Enquirer, "Captain Jones Testifies At Nuisance Hearings," (no author), June 29, 1971; David L. Bauer, "Newport Shuts The Door on Bookstore," Kentucky Post, July 9, 1971, 1K.

¹⁷¹ Cincinnati Enquirer, "Baker Charges Attempt," (no author), July 3, 1971; Bob Fogarty, "Calls \$500 Bribe Offer Insulting," Kentucky Post, July 3, 1971, 1K; David L. Bauer, "Judge Demands Jury Probe of Bribe Attempt," Kentucky Post, July 7, 1971, 1K; Bob Fogarty and David L. Bauer, "Jury Raps Two Newport Officials," Kentucky Post,

Bookstore licensee Stanley Marks never attended the hearings.¹⁷²

The Bookstore did not close as ordered by the Board of Commissioners. After filing an appeal and securing a court order to remain open until the appellate process ended, Marks kept the store operating. Another court order prohibited police from raiding the store on account of a lack of business license.¹⁷³ By the end of 1971, Marks's cases were pending in Kentucky's Court of Appeals, in each of the Campbell Circuit Courts, in the Newport Police Court, and in the local United States District Court.¹⁷⁴ In one of the Circuit Court civil cases, Judge Fred Warren issued a scathing critique of

July 30, 1971, 1K; Cincinnati Enquirer, "Jury Criticizes Baker, Peluso," (no author), July 31, 1971.

¹⁷² Newport City Commission, Hearing Minutes: July 8 1971, "In Re: The Matter of Stanley Marks"; see, Stanley Marks v. The Board of Commissioners for the City of Newport, Kentucky, 504 S.W.2d 338 (1974) (Court upheld Newport's Commissioners revocation of Marks' Bookstore license. The decision ended Marks' Circuit Court litigation for the Bookstore license at 609 Monmouth).

¹⁷³ David L. Bauer, "Newport Shuts the Doors On Monmouth Bookstore," Kentucky Post, July 9, 1971, 2K; Bob Fogarty, "Bookstore Opens and Closes, Opens and ...," Kentucky Post, July 13, 1971, 1K, Cincinnati Enquirer, "Arrest No. 4 Made In Bookstore Fuss," (no author), July 13, 1971, B1; Cincinnati Post, "Bookstore Clerk Wearies of It All," (no author), July 15, 1971; Cincinnati Enquirer, "Police Unrelenting in Bookstore Fight," (no author), July 16, 1971, 14; Cincinnati Enquirer, "Score: 10 Arrests in Bookstore Fight," (no author), July 22, 1971; Cincinnati Enquirer, "Court Enjoins Newport From Bookstore Arrests," (no author), July 21, 1971, 20; Cincinnati Enquirer, "Newport Persists In Arrests," (no author), July 15, 1971, 12; Cincinnati Enquirer, "Newport Bid Against Bookstore Continued," (no author), July 23, 1971, 4; Al Garnick interview, May 24, 2006; Cincinnati Enquirer, "Jury Indicts Newport Bookstore, (no author), September 29, 1971; Kentucky Post, "Porno Case Going Back To Newport," (no author), June 27, 1973, 5K (In mid-1973, an appellate court remanded back to Campbell County Circuit Court findings on a Marks' case because the United States Supreme Court changed the criteria for obscenity. The case was Miller v. California, 413 U.S. 15 (1973), decided June 21, 1973).

¹⁷⁴ Nancy Moncrief, "Rules Store Must Pitch Obscenity," Kentucky Post, August 21, 1971, 1K; Cincinnati Enquirer, "Judge Puts Clamp on Bookstore," (no author), August 21, 1971; Cincinnati Enquirer, "Bookstore in Contempt Says Newport Petition," (no author), September 1, 1971; Cincinnati Enquirer, "Judge Denies Dismissal Of Obscenity Charges," (no author), May 5, 1971; Cincinnati Enquirer, "Jury Indicts Newport Bookstore," (no author), September 29, 1971.

Hollywood Sex Machine, Informal Lovelock, Both Ways and Cuddle Up. Using words in description such as “filth” and “depravity,” Judge Warren wrote that the books’ “creators” should “live long enough to see their children graduate from Obscene U. with a doctorate in Pornography Magna Cum Laude.” Finding the books obscene, Judge Warren ordered them removed from the shelves, but Marks complied only briefly. The books went back on sale.¹⁷⁵

A License Tax And Back To Federal Court

By mid-1972, prosecutors had neither tried an obscenity case against the Bookstore or Cinema X, nor had authorities convinced Marks to close. The city’s next tactic was to use the legislative process by drafting a burdensome occupational license tax ordinance on adult bookstores and theaters.¹⁷⁶ Once again, Newport chose a course fraught with constitutional problems.

Leading up to the ordinance’s passage during May 1972, Newport Police increased raids and arrests at the Bookstore. Police explained that they were only enforcing anti-prostitution and public lewdness laws at the Bookstore’s peepshow booths.¹⁷⁷ During one six day period in April 1972, raids caused five store closures.¹⁷⁸

¹⁷⁵ Nancy Moncrief, “Rules Store Must Pitch Obscenity,” Kentucky Post, August 21, 1971,1; Cincinnati Enquirer, “Judge Puts Clamp on Bookstore,” (no author), August 21, 1971; Cincinnati Enquirer, “Bookstore in Contempt Says Newport Petition,” (no author), September 1, 1971; Al Garnick interview, May 24, 2006.

¹⁷⁶ There were two ordinances, one for movie theaters and the other for operation of bookstores: Newport City Commission Minutes: April 14, 1972, April 17, 1972; Commissioners Ordinance O-1972-12 (theaters); Commissioners Ordinance O-1972-13 (bookstores).

¹⁷⁷ The Bookstore’s peepshow booths, big enough for at least two adults, were regularly sites for sexual activities. Al Garnick interview, May 24, 2006; interview with former Kentucky State Police Detective (Ret.) (name must remain undisclosed), March 14, 2006.

¹⁷⁸ Cincinnati Enquirer, “Bookstore Arrests Spur Judge’s Warning,” (no author), May 23, 1972, 25; Nancy Muncrief, “File \$500 Million Porno Suit,” Kentucky Post, April 26,

Meanwhile, Newport was delaying a decision on Stanley Marks's recent applications for another bookstore license. Officials were awaiting passage of the more restrictive and more costly new ordinance.¹⁷⁹ The Board's actions prompted Marks to file another federal lawsuit and, once again, the suit had merit.¹⁸⁰

Newport's new license ordinance applied only adult theaters and bookstores and were a transparent attempt to deter vendors from marketing sexually oriented materials, an unconstitutional form of censorship and prior restraint.¹⁸¹ The United States Supreme Court did not approve local government's use of police actions or legislation to restrain free speech and expression. "Liberty of the press" under the First Amendment "historically meant" immunity from "prior restraint and censorship,"¹⁸² a protection that

1972, 2; Al Garnick interview, May 24, 2006. For a rendition of the facts surrounding police efforts directed at Marks' new bookstore, see Federal Judge Mac Swinford's opinion in Stanley H. Marks, d.b.a. The Cinema X Theatre, and d.b.a. The Monmouth Street Novelty and Book Store, 721 Vine Street, Cincinnati, Ohio 45202 v. City of Newport, 344 F.Supp. 675, 676-77 (1972) (United States District Court for Eastern District of Kentucky, Covington Division, Hon. Mac Swinford presiding). Police raided on April 21 and closed store on April 22, 24, 25 and 26.

¹⁷⁹ Marks v. City of Newport, 344 F.Supp. 675, 676 (Eastern District, Kentucky, 1972) ("City's refusal was partially motivated by its desire to bring the plaintiff within the application of the new laws to be effective on May 1, 1972.").

¹⁸⁰ 344 F. Supp. 675 (Eastern District Ky. 1972)

¹⁸¹ Frederick F. Schauer, The Law Of Obscenity (Washington D.C.: Bureau of National Affairs, Inc., 1976), 228-234 ("The doctrine of prior restraint is that principle . . . which says that no legal restraint may prevent publication of speech, although criminal or civil actions may result from that speech."); see also, Near v. Minnesota, 283 U.S. 697 (1931).

¹⁸² Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004) 49-54; Near v. Minnesota, 283 U.S. 697, 716 (1931). See also Young v. American Mini Theatres, 427 U.S. 50, 77 (1976):

. . . the central First Amendment concern remains the need to maintain free access of the public to the expression. See, e.g., Kingsley Books, Inc. v. Brown, 354 U.S. 436, 442 (1957); Smith v. California, 361 U.S. 147, 150, 153-154, (1959); Interstate Circuit v. Dallas, 390 U.S. 676, 683-684 (1968); compare Marcus v. Search Warrant, 367 U.S. 717, 736 (1961), and A Quantity of Books v. Kansas,

also applied to sexually oriented materials.¹⁸³ Federal Judge Mac Swinford found the new ordinances' might discourage or prevent the marketing of sexually oriented materials whether or not there was obscenity, a device to impose unlawful prior restraint.¹⁸⁴

Federal Judge Mac Swinford also found the mandated posting of a bond in both ordinances an unconstitutionally burdensome condition designed to discourage sales or exhibition of sexually oriented materials. The ordinances required vendors to post a \$10,000 bond on the condition that licensees neither market nor possess "obscene" materials for sale or exhibition.¹⁸⁵ Under terms of the new ordinance, city officials, not a

378 U.S. 205, 213 (1964), with Heller v. New York, 413 U.S. 483, 491-492 (1973); and cf. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70-71, (1963).

See also, Frederick F. Schauer, The Law Of Obscenity (Washington D.C.: Bureau of National Affairs, Inc., 1976), 231-234.

¹⁸³ Roth v. United States, 354 U.S. 476, 488 (1957) ("portrayal of sex . . . is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press."); Mary M. Katz, "Notes: Theater License Fee Based On Film Content Violates Equal Protection And Free Speech Guarantees," Mercer Law Review, 29: 335-340 (1977-1978); Bantam Books v. Sullivan, 372 U.S. 58, 66 (1963); United States v. O'Brien, 391 U.S. 367 (1968); Marks v. City of Newport, 344 F.Supp. 675 (Eastern District, Kentucky, 1972); Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 49-54. See also, Kingsley International Pictures Corporation v. Regents of the University of New York, 360 U.S. 684 (1957).

¹⁸⁴ Marks v. City of Newport, at 678 ("The ordinances are constitutionally infirm in several respects, but their most conspicuous flaw is that they constitute a prior restraint on the distribution of published matter. The state or its agencies may not attempt to control in advance published matter that is intended for circulation."). See, Bantam Books v. Sullivan, 372 U.S. 58, 70 (1963); Hall v. Commonwealth ex rel. Schroering, Jefferson County Commonwealth Attorney, 505 S.W.2d 166 (Ky., 1974) (Harry Mohney was one of the parties in this case); Freedman v. Maryland, 380 U.S. 51, 57-58. See also, Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 607, 49-51, 54-55.

¹⁸⁵ Newport City Ordinance 110.108:

Every person engaged in the business of conducting a store or shop wherein publications either pictorial or printed are possessed for sale shall pay an annual license tax of \$500.00. . . Each applicant for a license under the provisions hereof shall give bond with corporate surety authorized to transact business in the Commonwealth, to the city in the sum of \$10,000.00 conditioned that such applicant shall not possess therein for sale or sell any pictorial or printed matter

judicial officer, would decide a publication's alleged obscenity.¹⁸⁶ Under the new ordinance scheme, city officials also had discretion to revoke a business license for alleged violations.¹⁸⁷

Judge Swinford decided that some sections of Newport's new ordinance amounted to unconstitutional prior restraint upon the marketing of presumably protected speech and expression and that Newport was attempting to unconstitutionally burden vendors with deciding whether publications were obscene. Noting that the ordinance was "susceptible to multiple interpretations," Judge Swinford found it intolerable that vendors might withhold publications "from the public gaze out of fears that officials might find a particular book or magazine offensive," another example of unconstitutional prior restraint.¹⁸⁸ Judge Swinford ruled that Newport could not enforce the ordinances'

proscribed by [Kentucky Obscenity statute] KRS 436.101, and such applicant for such license shall be deemed by the issuance and acceptance thereof to permit inspection without charge of the premises and its contents by the license inspector of the city or any of its police officers to ascertain the character of all such pictorial or printed matter possessed by applicant or his agent therein. . . Each applicant for such license shall in writing, subscribed and acknowledged, designate the City Clerk as his agent for process in any civil or criminal action in respect to any matter involving such license as may be issued, including, but not limited to, any civil action upon the bond herein required.

Quoted in Marks v. City of Newport, 344 F.Supp. 675, 678 (Eastern District, Kentucky, 1972).

¹⁸⁶ Marks v. City of Newport, at 678; see also, Freedman v. Maryland, 380 U.S. 51, 57-58:

Because the censor's business is to censor, there inheres the danger tht he may well be less responsive than a court – part of an independent branch of government – to the constitutionally protected interests in free expression.

¹⁸⁷ Marks v. City of Newport, 344 F. Supp. 675, 676 (1972)(Eastern District, Kentucky, Covington Division); Ordinance No. 110.108 applied to theaters; No. 110.108(a) applied to bookstores; Marks v. Newport, 344 F. Supp., 678.

¹⁸⁸ Marks v. City of Newport, 678:

The burden of determining what is obscene is shifted to the licensee, and this burden is coupled with the severe penalty of losing \$10,000.00 if the licensee makes the wrong determination. Certainly under such conditions a licensee would

contested sections.

Judge Swinford's ruling was not "carte blanche" permission to market sexually explicit materials without regard for obscenity laws. The Court sympathized with communities' "need to confront the pornographic flood sweeping the land," explaining that the First Amendment was not an "impenetrable barrier" to police and "diligent prosecutors." Swinford explained law enforcement was free to enforce obscenity laws so long as judicial officers had opportunities to review suspected materials prior to seizures.¹⁸⁹

Federal Authorities And Cinema X: 'Deep Throat

A 1973 agreement with prosecutors ended Newport's fight over Stanley Marks's adult bookstore. Marks closed the store and ended his civil litigation pertaining to the Bookstore. Prosecutors agreed to return all seized materials and to the dismissals of all pending criminal cases, including those related to the Cinema X.¹⁹⁰ Newport's City Commissioners was unable to prevent the resolution, but the Board was equally unwilling to adopt a "live and let live" policy toward the theater. Marks's cases cost Newport in

be most reluctant to sell or exhibit any matter which was of a questionable nature, and as a consequence legitimate publications would be kept from the public's gaze.

See also, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); A Quantity of Books v. Kansas, 378 U.S. 205 (1964); Bantam Books v. Sullivan, 372 U.S. 58 (1963); Freedman v. Maryland, 380 U.S. 51 (1965); United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971); Chapman v. California, 405 U.S. 1020 (1972).

¹⁸⁹ Marks v. City of Newport, 680-681.

¹⁹⁰ Mike Palmisano, "Agreement Closes Adult Bookstore," Kentucky Post, May 23, 1973, 1K; Charles Etsinger, "Controversial Newport Bookstore Closes By Mutual Agreement," Cincinnati Enquirer, May 23, 1973, 1; Mike Palmisano, "Newport to Renew Cinema X Fight," Kentucky Post, June 5, 1973, 2K; Kentucky Post, "Cinema X Faces New Fight," (no author), June 30, 1973, 2K; Kentucky Post, "Jury Urges Continued Fight Against Smut," (no author), April 28, 1973, 2K; Newport City Commission Meeting Minutes: June 4, 1973.

excess of \$38,000 in legal fees and other costs.¹⁹¹ Newport Mayor Roland Vories announced that the Board remained committed to closing Cinema X in the future.

The agreement with Campbell County authorities did not end Cinema X's legal problems in Newport. In February 1973, the Federal Bureau of Investigation (FBI) raided the theater and seized the much publicized hard-core porn movie, "Deep Throat."¹⁹² After production costs of \$25,000, the movie was grossing millions by 1973 and achieved some mainstream popularity, but the film's notoriety did not escape the attention of prosecutors.¹⁹³ As described by a New York Judge, the movie's content was similar to Cinema X's usual fare:

The film runs 62 minutes... it is not unique. Many cases dealing with the depiction of the same or similar deviate sexual behavior have been reported, but few have had such a full measure of directed publicity...the film runs from one act of explicit sex into another, forthrightly demonstrating heterosexual

¹⁹¹ Mike Palmisano, "Newport to Renew Cinema X Fight," Kentucky Post, June 5, 1973, 2K; Kentucky Post, "Cinema X Faces New Fight," (no author), June 30, 1973, 2K; Newport City Commission Meeting Minutes; June 4, 1973.

¹⁹² Bob Fogarty, "U.S. Jury To Get X-Rated Film Case," Kentucky Post, March 3, 1973, 2; Howard Raver, "Five Face Contempt Charges In Cinema X Case," Kentucky Post, April 7, 1973, 14; Howard Raver, "Drops Cinema X Contempt Charges," Kentucky Post, April 21, 1973, 6K; Howard Raver, "U.S. Jury Indicts Five In Cinema X Probe," Kentucky Post, April 28, 1973, 1K.

¹⁹³ Western Corp. v. Commonwealth of Kentucky, Ky., 558 S.W.2d 605 (1977); Coleman v. Wilson, N.J. Super. Ch., 302 A.2d 555 (1973); People v. Mature Enterprises, Inc., 343 N.Y.S.2d 934 (1973); United States v. One Reel of Film, 360 F.Supp. 1067 (Mass. 1973), 481 F.2d 206 (First Cir., 1973); Ricciardi v. Thompson, 480 F.2d 167 (7th Cir., 1973); Hamar Theatres, Inc. v. Cryan, 365 F.Supp. 1312 (N.J., 1973); Sanders v. McAuliffe, 364 F.Supp. 654 (Northern District, Georgia, 1973); Inland Empire Enterprises, Inc., v. Morton, 365 F.Supp. 1014 (C.D. Cal., 1973); S.S. Corp. v. Slaton, 204 S.E.2d 155 (Ga., 1974); Dann Gire, 'Inside Deep Throat' Pulls No Punches," Daily Herald (Arlington Heights, Ill.), February 11 2005, 41; Pauline McLeod, "Porn to Pawn; Deep throat Star Harry Reems Reveals How the Porn Film Almost Cost Him His Life," The Mirror (London), June 10 2005, 11; Alison Jones, "US is Going Backwards in Attitude To Sex," Birmingham Post (England), June 22 2005, 10. The movie eventually became one of the highest grossing movies of all time, grossing over fifty million by 1982, and was the biggest motion picture money make ever in the State of Florida. Meese Commission Final Report, Part 4, Chap. 4.

intercourse and a variety of deviate sexual acts, not ‘fragmentary and fleeting’ as to be De minimis as ... here it permeates and engulfs the film from beginning to end. The camera angle, emphasis and close-up zooms were directed... ‘toward a maximum exposure in detail of the genitalia’ during the gymnastics, gyrations, bobbing, trundling, surging, ebb and flowing, eddying, moaning, groaning and sighing, all with ebullience and gusto....There were so many and varied forms of sexual activity one would tend to lose count of them . . . a Sodom and Gomorrah gone wild before the fire¹⁹⁴

An April 1973 federal grand jury indicted Harry Mohny, Stanley Marks and others, including three Mohny companies, for distribution and interstate transport of obscenity.¹⁹⁵ Inspired by the federal proceedings, a Campbell County grand jury recommended a renewal of anti-porn efforts by local officials, underscoring their recommendation by commending Newport Police for earlier efforts against local pornography.¹⁹⁶ Before the October 1973 trial, the FBI raided Cinema X a second time and confiscated “Devil In Miss Jones” and “Anything Goes.”¹⁹⁷ There were no corresponding state prosecutions against Cinema X during this period.

At trial, defense lawyers tried to convince jurors that such movies had “redeeming social value” as a treatment tool in sex therapy.¹⁹⁸ Jurors were unconvinced, finding

¹⁹⁴ Words of Judge Joel J. Tyler, in The People of The State of New York v. Mature Enterprises, Inc., 343 N.Y.S.2d 911, 912 (Criminal Court of the City of New York, New York County, March 1973).

¹⁹⁵ Howard Raver, “U.S. Jury Indicts Five In Cinema-X Probe,” Kentucky Post, April 28, 1973.

¹⁹⁶ Kentucky Post, “Jury Urges Continued Fight Against Smut,” (no author), April 28, 1973, 2K; Mike Palmisano, “Newport to Renew Cinema-X Fight,” Kentucky Post, June 5, 1973, 2K; Newport City Commission Minutes: June 4, 1973; Kentucky Post, “Cinema-X Faces New Fight,” (no author), June 30, 1973, 2K. Newport officers recognized were: Al Garnick, Tom Porter, Robert Schindler, and Jim Bogart.

¹⁹⁷ Howard Raver, “FBI Raids Cinema-X Again,” Kentucky Post, September 22, 1973, 1K.

¹⁹⁸ At trial, Judge Swinford instructed the jury on the elements of the crime, and a jury instruction included the criteria set out by the United States Supreme Court in Miller v. California, 413 U.S. 15(1973): “whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value . . .” Miller, 24, cited in Marks v. United

"Deep Throat" obscene and all defendants guilty.¹⁹⁹ Judge Mac Swinford imposed fines totaling \$72,000 and sentenced the non-corporate defendants, including Harry Mohney and Stanley Marks, to three months incarceration. None of the defendants served sentences.²⁰⁰ The United States Court of Appeals for the Sixth Circuit (in Cincinnati, Ohio) affirmed the convictions,²⁰¹ but the United States Supreme Court reversed and remanded (sent back) the case for a new trial.²⁰² An incorrect jury instruction defining "obscene" led to the reversal and new trial.

The federal prosecutors suffered the misfortune of a United States Supreme Court modification of obscenity's definition between the FBI's February 1973 raid and the "Deep Throat" trial in October of the same year. In June 1973, the Supreme Court

States, 430 U.S. 188, 191 (1977). The Supreme Court ruled the giving of this instruction in error, Marks, 433 U.S., 195-197.

¹⁹⁹ Procedurally, an obscenity trial will have several decisions for jurors to make. In addition to the guilt or innocence considered by juries, the panel must make a finding whether a film, book, or the like was obscene under the criteria provided by the trial judge. An "obscene" finding against a film does not necessarily mean that jurors will find defendants guilty. The obscenity finding is separate. Consequently, if a jury finds the film not to be obscene, defendants need not fear guilty verdicts on charges of showing or transporting an obscene film.

²⁰⁰ Howard Raver, "Linda Lovelace Subpoenaed in 'Deep Throat' Trial," Kentucky Post, October 10, 1973, 3K; Howard Raver, "Deep Throat Artistic, Says Linda," Kentucky Post, October 11, 1973, 2K; Howard Raver, "Jury Sees Deep Throat," Kentucky Post, October 12, 1973, 2K; Howard Raver, "Claims 'Throat' Is Anti-Erotic," Kentucky Post, October 13, 1973, 2K; Terry Miller, "Deep Throat Projectionist, Father of 14, Testifies," Kentucky Post, October 14, 1973, 11K; Howard Raver, "Throat Goes Back to Movies," Kentucky Post, October 17, 1973, 9K; Howard Raver, "Jury Hearing Final 'Throat' Arguments," Kentucky Post, October 18, 1973, 19K; (at one point in closing argument, defense counsel compared "Deep Throat's" literary and artistic value to that of Gene Autry westerns and Walt Disney's "Bambi"); Howard Raver, "Five Found Guilty in 'Deep Throat' Trial," Kentucky Post, October 20, 1973, 2K; United States v. Stanley Marks, et al., 520 F.2d 913 (6th Cir., 1975); Stanley Marks, et al. v. United States, 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977); United States v. Stanley Marks, et al., 364 F. Supp. 1022 (1973)(U.S. District Court, Eastern District, Kentucky, Covington Division, Hon. Mac Swinford).

²⁰¹ United States v. Stanley Marks, et al., 520 F.2d 913 (6th Cir., 1975).

²⁰² Stanley Marks, et al. v. United States, 430 U.S. 188 (1977).

decided Miller v. California,²⁰³ a case that adopted a different legal definition for obscenity. Prior to Miller, and at the time when federal prosecutors brought the "Deep Throat" charges, the 1966 Supreme Court decision in Memoirs v. Massachusetts was the authority for the legal meaning of "obscene."²⁰⁴ When the Cinema X appeals reached the Supreme Court, the majority on the High Court decided that the Memoirs decision, not the Miller opinion, applied in the "Deep Throat" cases of Harry Mohny, Stanley Marks, and the other defendants. Under Memoirs, prosecutors had the heavier burden of proving "Deep Throat" was "utterly without redeeming social value." In Miller, the Supreme Court lessened the burden on prosecutors, requiring only that materials "lacked "serious literary, artistic, political or scientific value."²⁰⁵ A second jury again found "Deep Throat" obscene and the defendants guilty, but, once again, there was a reversal. The Sixth Circuit Court of Appeals found admission of certain evidence merited remand for a new trial. A third trial never took place.²⁰⁶ The retrial never occurred. In 1980, a Federal judge dismissed all pending Cinema X cases.²⁰⁷ But for a few brief interruptions, Cinema X never stopped operating.

Campbell Circuit Court Judges, Grand Juries, And Local Vice

The unity between the Commission and police against Stanley Marks did not

²⁰³ Miller v. California, 413 U.S. (1973). In a 1974 case out of Jefferson County, the Kentucky Court of Appeals acknowledged the Miller v. California obscenity standards as applicable in the Commonwealth. The case was Hall v. Commonwealth ex rel. Schroering, Jefferson County Commonwealth Attorney, 505 S.W.2d 166 (Ky., 1974) (a Harry Mohny case in which he was a defendant).

²⁰⁴ Book Named John Cleland Memoirs of Woman of Pleasure v. Attorney General of Commonwealth of Massachusetts, 383 U.S. 413 (1966)(referenced herein as Memoirs v. Massachusetts); Robert C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 60-64, 67-78.

²⁰⁵ Miller, 413 U.S., 24.

²⁰⁶ United States v. Stanley Marks, et al., 585 F.2d 164 (6th Circuit, 1978).

²⁰⁷ Cincinnati Enquirer, "Judge Drops Old Cinema-X Charge," (no author), April 10 1980, B1.

extend to issues of adult entertainment. Vice had become a frequent Board topic as Commissioner Sarakatsannis insisted vice was a growing downtown problem. Despite numerous news articles describing how readily available and easy to find was Newport's in-bar prostitution, Newport Police Chief Ed Gugel insisted there was no such problem.²⁰⁸ In 1971, Mayor Jack Schmitz considered, but did not implement, bringing the State Police into Newport to investigate vice, but he did not.²⁰⁹ Meanwhile, news stories about in-bar prostitution attracted the attention of Kentucky's Alcohol Beverage Commission.

When agents investigated, they found the prostitution existed and that it showed no signs of slackening.²¹⁰ In early 1972, Campbell County's Circuit Judges took the

²⁰⁸ Newport City Commission Minutes: November 25, 1964 (discussion of "numerous complaints as to prostitutes and prostitution flourishing in some cafes in the City of Newport . . . [Police Chief claims] complaints seem to be exaggerated"); Charles Etsinger, "Vice Charge Triggers Tempers On Newport Board," Cincinnati Enquirer, October 1, 1968, 20; Newport City Commission Minutes: October 5, 1966 (gambling); Newport City Commission Minutes: October 26, 1966 (Commissioner Sarakatsannis's opposition to appointment of Robert Sidell as City Manager, suggesting Sidell had been involved with illegal gaming in the past); Newport City Commission Minutes: September 30, 1968 (citing articles Cincinnati Enquirer columnist Frank Weikel); Donna McKeown, "Special Cops Clearing Newport Of Bad Guys," Kentucky Post, February 4, 1969, 3K (Chief Gugel relates that Newport was a "border town" of 28,000 into which two to three thousand people came each weekend); Clay Wade Bailey, "Where You Can Go," Kentucky Post, August 27, 1970, 1K.

²⁰⁹ Newport City Commission Minutes: October 11, 1971 (discussion about calling Kentucky State Police into Newport to investigate prostitution); Newport City Commission Minutes: November 8, 1971 (Mayor Schmitz's regrets about lack of support for his earlier plan to deal with "smut and prostitution").

²¹⁰ David W. Brown, "Blasts Newport Police Again," Kentucky Post, September 1, 1970, 1K; Charles Etsinger, "Newport Commission Meeting Stormy," Kentucky Post, May 14, 1970, 1K; Jack Hicks, "Northern Kentucky: A Study In Paradox," Cincinnati Enquirer, June 21, 1970, 6K; Mike Ferrell, "City's Fiery Commissioner Waits Fired Up Police Reply," Kentucky Post, September 7, 1970, 1K; David W. Brown, "Angry Chief: Put Up Or Shut Up," September 9, 1970, 1K; Nancy Moncrief, "Newport Cop Defends Friends," Kentucky Post, February 18, 1972, 1K; Cincinnati Enquirer, "Enquirer Starts Investigation of Possible Vice in Newport," (no author), October 5, 1971; Nancy

initiative and instructed their January (Judge Fred Warren) and February (Judge Paul Stapleton) grand juries to investigate Newport vice. Both grand juries issued reports critical of law enforcement's efforts or lack of efforts to deal with prostitution.²¹¹

Citing inadequate investigations and the lack of plans pursue further efforts, Judge Warren's jurors concluded Newport Police Chief Ed Gugel and Campbell County Sheriff Al Howe lacked leadership in combating illegal vice. In his defense, Sheriff Howe claimed his office did not have the needed resources, but grand jurors suggested that Howe seek assistance. Judge Warren's jury found at least fourteen establishments with ongoing prostitution and illegal gambling and further reported that some bars were constructing or had constructed makeshift bedrooms. These rooms had direct access to and from patrons' areas.²¹²

Moncrief, "Newport Asks Probe Aid," Kentucky Post, October 11, 1971, 1; interview with Charles Sarakatsannis, November 15, 2006.

²¹¹ Cincinnati Enquirer, "Warren Puts 'Must' to Probe of Vice," (no author), January 5, 1972; Nancy Moncrief, "Warren Demands Vice Probe," Kentucky Post, January 4, 1972, 1; Nancy Moncrief, "Vice Posse Finds Rooms," January 6, 1972, 1; Editorial, "Newport: No Alternatives – City on Brink of Slipping Back," Kentucky Post, January 8, 1972, 6; Nancy Moncrief, "Continue Vice Probe, But Grand Jury Action Secret," Kentucky Post, January 8, 1972, 1K; Nancy Moncrief, "Jury Calls Newport Club Operators," Kentucky Post, January 13, 1972, 1; Cincinnati Enquirer, "Heat's On Again in Newport," (no author), January 7, 1972; Nancy Moncrief, "Campbell Jury Calls Officials in Vice Probe," Kentucky Post, January 10, 1972, 1K; Nancy E. Moncrief, "17 From Newport Bars Face Jurors," Kentucky Post, January 17, 1972, 1K; Cincinnati Enquirer, "Lawmen Find No Violations in Newport," (no author), January 9, 1972; Cincinnati Enquirer, "Nothing Alarming Occurring, Campbell County Vice Probe Reveals," (no author), January 29, 1972; Kentucky Post, "Sheriff's Office Doesn't Have Time to Surveil All Places," (no author), January 29, 1972, 1K; Nancy Moncrief, "Prostitution: Not So Serious," Kentucky Post, February 9, 1972, 1K; Nancy Moncrief, "Jurors to Keep Perpetual Vigil In Campbell County," Kentucky Post, February 7, 1972, 1K.

²¹² Nancy Moncrief, "Vice Posse Finds Rooms," January 6, 1972, 1; Editorial, "Newport: No Alternatives – City on Brink of Slipping Back," Kentucky Post, January 8, 1972, 6; Nancy Moncrief, "Continue Vice Probe, But Grand Jury Action Secret," Kentucky Post, January 8, 1972, 1K; Nancy Moncrief, "Jury Calls Newport Club Operators," Kentucky Post, January 13, 1972, 1; Cincinnati Enquirer, "Heat's On Again

Judge Stapleton's February 1972 grand jury was no less critical. Jurors noted a lack of leadership and an absence of efforts on the part of Newport Chief Gugel, City Manager Robert Siddell, and Newport's Liquor License Administrator, Harold Eifert, to "clean up Sin City." The jurors concluded that Eifert neglected his duties to investigate liquor license violations. As a remedy, jurors recommended an "open invitation" to the Kentucky State Police.²¹³ The jurors were apparently unaware that State troopers were already at work in Newport.

Working undercover, State Police found evidence supporting what Charles Sarakatsannis and news reporters had been asserting. Prostitution and the sex-for-drinks scheme in the adult bars were widespread. At the Body Shoppe, troopers found a typical sex-for-drinks scenario in B-girls exchanging sex for the purchase of some drink, in this case, a bottle of Champale, a cheap bottled beverage that retailed for less than ten dollars. At the Body Shoppe, the cost was thirty-five dollars, but sex was part of the bargain.²¹⁴ Among the adult bars at which troopers cited B-girls for prostitution were the Body

in Newport," (no author), January 7, 1972; Nancy Moncrief, "Campbell Jury Calls Officials in Vice Probe," Kentucky Post, January 10, 1972, 1K; Nancy E. Moncrief, "17 From Newport Bars Face Jurors," Kentucky Post, January 17, 1972, 1K. See also, Kentucky Post, "The Mystery Doors," (no author), July 7, 1972, 1K (news reporters' investigation of suspicious doorways recently added to a number of bars.

²¹³ Cincinnati Enquirer, "Ouster of Newport Officials Urged," (no author), September 1, 1972; Nancy E. Moncrief, "Get Gugel and Sidell Out: GJ [Grand Jury] Convinced of Corruption," Kentucky Post, September 1, 1972, 1; Charles Etsinger, "Newport Upset Over Firing Request," Cincinnati Enquirer, September 2, 1972; Nancy E. Moncrief, "Baker Fails to Oust Sidell," Kentucky Post, October 10, 1972, 1.

²¹⁴ Cincinnati Enquirer, "Prostitution Charged in KSP Newport Sweep," (no author), November 30, 1972; Charles Etsinger, "City Seeks to Close Newport Trouble Spot," Cincinnati Enquirer, November 29, 1972; Kentucky Post, "Fine Women For Prostitution," (no author), January 5, 1973, 3K; Al Garnick interview, May 24, 2006; Kentucky State Police Detective (retired) interview, March 14, 2006; Charles Etsinger, "Vice Charge Triggers Tempers On Newport Board," Cincinnati Enquirer, October 1, 1968, 20.

Shoppe, the Jai Alai, Midwestern Bar, and Brass Ass nightclubs. Due to an accumulation of violations, the city filed a nuisance abatement action against the bar.²¹⁵

On July 30, 1972, vice problems reached a new level when an unknown assailant shot to death nightlife figure Sampson “Sammy” Eisner.²¹⁶ Married to Callie Blaine Eisner, owner and operator of the Pink Pussycat, a strip bar, Sammy Eisner was prominent in Newport’s nightlife. Officials suspected the murder was part of a power struggle within the adult entertainment community.²¹⁷ Fearing a “state of lawlessness,” Newport Roland Vories obtained State Police help in patrolling Newport streets. Troopers stayed for ten days.²¹⁸ Eisner’s murder remains officially “unsolved.”

December 1972: Indictments

Eisner’s slaying motivated Circuit Judge’s Warren and Stapleton to again charge their grand juries to investigate local vice. Judge Stapleton raised the ire of local officials, especially Commissioner Paul Baker, when the Judge charged jurors to

²¹⁵ Charles Etsinger, “City Seeks to Close Newport Trouble Spot,” Cincinnati Enquirer, November 29, 1972; Newport City Commission Minutes: July 17, 1972.

²¹⁶ Police found Eisner’s body inside 7 East Sixth Street. Eisner had a record, see Sampson “Sammy” Eisner v. United States, 351 F.2d 55 (6th Cir., 1965).

²¹⁷ Newport Police investigation report for case number No. 86574, July 30, 1972, copy provided by former Newport Police Officer Joan Volpenheim; William Von Strohe interview, February 21, 2007; Al Garnick interview, May 24, 2006; Nancy E. Moncrief, “Did Phone Call Set Up Eisner,” Kentucky Post, July 31, 1972, 1K; Jack Hicks, “Newport Club Figure Slain,” Cincinnati Enquirer, July 31, 1972, 1; Sigman Byrd, “Eisner Killing Third Attempt on His Life,” Kentucky Post, August 1, 1972, 1K; Jack Hicks, “Eisner Slaying Reported Third Try,” Cincinnati Enquirer, August 1, 1972, 1; Bill Von Strohe interview, February 21, 2007; Al Garnick interview, May 24, 2006.

²¹⁸ Cincinnati Enquirer, “Newport Police Aid Seen,” (no author), August 2, 1972; Cincinnati Enquirer, “Plea for State Police Aid Planned,” (no author), August 1, 1972; Cincinnati Enquirer, “Vories Calling In State Police,” (no author), August 2, 1972; Nancy E. Moncrief, “State Cops Moving In,” Kentucky Post, August 4, 1972, 1K; Charles Etsinger, “Board Hears Gripes about KSP Presence,” Cincinnati Enquirer, August 15, 1972; Davis W. Brown, “State Police Exit By Agreement,” Kentucky Post, August 17, 1972, 1; Nancy E. Moncrief, “Claim Force 17 Men Shy,” Kentucky Post, August 15, 1972, 1; Cincinnati Enquirer, “Newport FOP Laments Pulling Out of Kentucky State Police,” (no author), August 18, 1972.

determine whether public officials had knowledge of prostitution and illegal gambling.²¹⁹

Despite the Commissioner's upset, Judge Stapleton went forward.

After their respective investigations, and, during December 1972, both grand juries indicted over a dozen public officials, including Paul Baker, and nightlife figures. The indictments' charges ranged from bribery and corruption related charges to possession of stolen property. Both juries indicted Newport Police Night Chief Donald Faulkner for bribery, one of which included nightclub operator Vance Raleigh as a codefendant.²²⁰

Just as the indicted officials of September 1961 succeeded in avoiding convictions, so did the indictees of December 1972.²²¹ Authorities cited a number of reasons for the absence of convictions, including loss of evidence and insufficient proof of guilt. Brass Ass operator Vance Raleigh, a co-indictee of Chief Faulkner, avoided a trial by dying in a downtown Newport gunfight. Raleigh's death made prosecuting Night

²¹⁹ Newport City Commission Minutes: September 11, 1972; Cincinnati Enquirer, "Jury Pursues Probe Asked by Stapleton," (no author), August 15, 1972; Nancy E. Moncrief, "Stapleton Secretly Recalls Grand Jury," Kentucky Post, August 24, 1972, 1K; Nancy E. Moncrief, "Stapleton Tells Jury: Press Corruption Talk," Kentucky Post, August 25, 1972, 1K; Nancy E. Moncrief, "Campbell Jury Calls Two Men in Vice Probe," Kentucky Post, August 30, 1972, 1K; Nancy E. Moncrief, "Baker Charges Judge Acted in Poor Taste," Kentucky Post, August 29, 1972, 1K; Editorial, "Showdown at Newport," Kentucky Post, August 29, 1972, 4K.

²²⁰ Nancy E. Moncrief, "Grand Jury Re-Indicts Faulkner," Kentucky Post, December 29, 1972, 1K; Cincinnati Enquirer, "12 Plead Innocent to Counts in Campbell Jury Indictments," (no author), December 29, 1972, 1. See also, United States v. Donald Faulkner, William E. Wells, and Jerry McLanahan, 538 F.2d 724 (1976), rehearing and rehearing en banc denied August 13, 1976.

²²¹ Liquor Administrator Harold Eifert resigned promptly when the grand jury returned his indictment; Mike Palmisano, "Judge Denies Dismissal in Bribery Trial," Kentucky Post, March 26, 1973, 1K; Mike Palmisano, "Jurors Speak-Mistrial Declared," Kentucky Post, March 27, 1973, 1K; Mike Palmisano, "Eifert Bribery Mistrial Declared," Kentucky Post, August 13, 1973, 1K; Mike Palmisano, "Eifert on Trial for 3d Time," Kentucky Post, October 18, 1973, 2K; Mike Palmisano, "Eifert Bribery Charges Dismissed," Kentucky Post, October 19, 1973, 2K.

Chief Faulkner, in prosecutors' opinions, impractical. Despite the flurry of indictments and trials, Sin City remained almost as before. If there was any change at all, it was to Newport's ever declining image. The December indictments did not succeed in getting convictions, but the publicity did succeed in tarnishing many in the Police Department for the conduct of a few.²²²

²²² Mike Palmisano, "Judge Denies Dismissal In Bribery Trial," Kentucky Post, March 26, 1973, 1; Mike Palmisano, "Matrella Enters A Plea Of Guilty," Kentucky Post, April 1, 1973, 2; Howard Raver, "Charged Schweinifuss After [\$]30,000 Gun Raid," Kentucky Post, March 15, 1973, 2K; Kentucky Post, "Schweinifuss Freed From Stolen Property Charge," (no author), June 2, 1973, 9K; Kentucky Post, "Hung Jury for Schweinifuss," (no author), September 22, 1973, 1K; Larry Osterhage, "Newport Bondsman Jailed for One Year," Kentucky Post, April 30, 1974, 2K; Mike Palmisano, "Judge Denies Dismissal in Bribery Trial," Kentucky Post, March 26, 1973, 1K; Mike Palmisano, "Recommends Freeing Gugel," Kentucky Post, July 11, 1973, 1K; Mike Palmisano, "Gugel Indictment Dismissed," Kentucky Post, July 14, 1973, 1K; John Murphy, "Confident Baker Seeks Re-Election," Kentucky Post, April 3, 1973, 2K; Mike Palmisano, "Baker Attorneys Attack Indictment," Kentucky Post, May 1, 1973, 2K; Mike Palmisano, "Mysteriously Delayed Trial," Kentucky Post, May 6, 1973, 2K; Mike Palmisano, "Baker Trial Resumes Today," Kentucky Post, May 10, 1973, 1K; Mike Palmisano, "Missing Ring Ends Baker Trial," Kentucky Post, May 11, 1973, 1K; Mike Palmisano, "Baker Raps State Police," Kentucky Post, May 22, 1973, 1K; Kentucky Post,; Mike Palmisano, "Our Courts – Jurors Rate Them Sloppy," Kentucky Post, June 22, 1973, 3K; Mike Palmisano, "Dismiss Suit Against Peluso," Kentucky Post, March 16, 1973, 1K; Mike Palmisano, "Judge Calls Peluso Contemptuous," Kentucky Post, March 28, 1973, 1K; Mike Palmisano, "Peluso Runs Again; Hopes People Will Vindicate Him," Kentucky Post, April 5, 1973, 6K; Bertram Workum, "Peluso Off The Hook: Bonds Weren't Stolen," Kentucky Post, June 9, 1973, 1K; Kentucky Post, "Nightclub Vice Charges Dismissed," (no author), July 11, 1973, 2K; Kentucky Post, "Holiday Delays Bribery Trial," (no author), July 18, 1973, 2K; Mike Palmisano, "Assistant Chief May Face Probe By New Grand Jury," Kentucky Post, March 30, 1973, 2K; Mike Palmisano, "Drop Two Counts Against Cop," Kentucky Post, March 29, 1973, 1K; Mike Palmisano, "Says Plenty of Booze At Quiz in Faulkner," Kentucky Post, April 2, 1973, 2K; Mike Palmisano, "Faulkner Bribe Trial Start," Kentucky Post, April 23, 1973, 1K; Mike Palmisano, "Faulkner Dismissal Plea Denied," Kentucky Post, April 24, 1973, 1 K; Mike Palmisano, "Find Faulkner Not Guilty," Kentucky Post, April 25, 1973, 1K; Mike Palmisano, "Holiday Delays Bribery Trial," Kentucky Post, July 18, 1973, 2K; Kentucky Post, "Says Raid May Lead to Arrest," (no author), March 6, 1973, 2K; Mike Palmisano, "Matrella Enters Plea of Guilty," Kentucky Post, April 1, 1973, 1K; Mike Palmisano, "Galaxie Padlock Snags," Kentucky Post, April 10, 1973, 1K; Nancy E. Moncrief, "Loses Plea; Fined 200," Kentucky Post, April 27, 1973, 6K; Kentucky Post, "Matrella Is

Federal Investigations Of Newport Vice And Corruption

The dismissals and acquittals of the December 1972 indictments did not end all law enforcement probes into Newport vice and corruption. Some of the Newport officials who avoided convictions in Campbell Circuit Court managed poorly in the subsequent federal probes. An FBI investigation into activities at Newport's Brass Ass nightclub led to federal indictments in May 1971. Indictees included four Newport officers charged with extortion and conspiracy related crimes. Jurors also indicted several Newport nightclub operators and owners for prostitution related offenses. The indicted Newport officers were Night Chief Donald Faulkner, Patrolman Jerry McClanahan, Captain William E. Wells, and Sergeant Ron Collins. Prosecutors alleged the officers extorted money and non-money items, including cases of liquor, from bar operators in exchange for "protection" from police raids and arrests or administrative sanctions.²²³ An informant helped the FBI conduct surveillance to witness police extortion at the Brass Ass.²²⁴ Despite their denials, a federal jury convicted three of the

Two Time Loser-Indicted Again," (no author), April 28, 1973, 3K; Kentucky Post, "Matrella's Conviction Goes Out Window," (no author), December 18, 1973, 7K; Kentucky Post, "Matrella Acquitted In Circuit Court," (no author), April 24, 1974, 18K; Editorial, "Newport Indictments," Kentucky Post, July 16, 1973, 4K.

²²³ Jim Eberle, "Federal Jury Indicts 4 Newport Cops," Kentucky Post, May 9, 1974, 1K.; Jim Eberle, "Arrest 4 Newport Nightclub Figures," Kentucky Post, May 8, 1974, 1K.

²²⁴ Larry Osterhage, "Cops' Payoffs On FBI Tapes And Pictures," Kentucky Post, July 2, 1974, 1K; Roger Auge, "Faulkner Says \$200 Was Not A Payoff," Kentucky Post, November 24, 1974, 1K; Cincinnati Enquirer, "Nightclub Bookkeeper Drags Names In Trial Of Police Trio", (no author), November 20, 1974, 9; Roger Auge, "Harris Says Baker's Name on Payroll Ledger," Kentucky Post, November 20, 1974; Roger Auge, "Harris Details Police Payoffs," Kentucky Post, November 19, 1974, 1K; Bob Fogarty, "FBI Surveillance Photos Show Police Activity at Brass Ass," November 16, 1974, 29; Roger Auge, "FBI Agent Says He Saw Payoff," Kentucky Post, November 16, 1974, 1K; Roger Auge, "FBI Has Film Of Payoff To Cop," Kentucky Post, November 11, 1974, 1K; Roger Auge, "Moll Says She Paid To Protect Her Life," Kentucky Post, November 27, 1974, 1K.

officers in a December 1974 trial.²²⁵ For interstate prostitution activities and for lying to a grand jury, indictees included the Pink Pussycat's Callie Blaine Eisner, Bernice Jones, the Jai Alai's James Harris, and Nick Iacobucci, operator of Newport's Talk of the Town and Nix Bourbon Street.²²⁶ The Callie Eisner-Bernice Jones case ended with convictions of both women.²²⁷ James Harris's trial ended with a guilty verdict for promoting prostitution in a case that included more evidence of police payoffs.²²⁸

Anti-Prostitution Efforts

²²⁵ Roger Auge, "Three Cops Guilty On All Counts," Kentucky Post, December 12, 1974, 1K; Cincinnati Enquirer, "Newport Policemen Guilty In Payoff Case," (no author), December 11, 1974, 1; Bert Workman, "Convicted Night Chief Retires From Force," Kentucky Post, December 14, 1974, 3K; Bob Fogarty, "Faulkner Quits Newport P.D.," Cincinnati Enquirer, December 14, 1974, 1; see U.S. v. Donald D. Faulkner, William E. Wells, Jerry McClanahan, 538 F.2d 724 (6th Circuit, 1976) (convictions affirmed on appeal). The three officers were Donald Faulkner, Jerry McLanahan, and William E. Wells.

²²⁶ Jim Eberle, "Federal Jury Indicts 4 Newport Cops," Kentucky Post, May 9, 1974, 1K; 6/5-1022

²²⁷ Roger Auge, "Nightclub Pair Guilty In Tearful Vice Trial," Kentucky Post, June 13, 1975, 1K; Roger Auge, "Pink Pussycat Women Sent To Prison," Kentucky Post, June 17, 1975, 1K; see U.S. v. Eisner, 533 F.2d 987 (Sixth Circuit, 1976) (Callie Blain Eisner appeal). The general facts were:

[that] between August 13, 1973, and February 22, 1974, [Callie Blaine Eisner] was the owner of a nightclub known as the Pink Pussycat located in Newport, Kentucky. Bernice Jones was the manager of the club. The club employed dancers of the exotic variety. The testimony of one of the dancers, Tracy Tippit, and one of the customers, Jack Trainer, established that various dancers engaged in a variety of sexual acts with various customers for a price. Bernice Jones handled the day-to-day operation of the club. Tracy Tippit testified that on one occasion the appellant was present at the club when other dancers went into the back room with customers. Bernice Jones testified that she had been hired by the appellant, that the appellant kept the daily ledgers, and that the appellant often paid the dancers.

United States v. Eisner, at 989.

²²⁸ Carol Ellison, "Scuffle Outside Court Livens Nightlife Trial," Kentucky Post, June 7, 1975, 9K; Roger Auge, "Nightclub Pair Guilty In Tearful Vice Trial," Kentucky Post, June 13, 1975, 1K. Roger Auge, "Newport Fed Trial Resumes Today," Kentucky Post, March 17, 1975, 4K; Roger Auge, "Harris Convicted of Vice Charge," May 29, 1975, 1K; Kentucky Post, "Cuts Harris' Federal Jail Term, Fine," (no author), June 19, 1975, 12K.

The unlawful exploits of an errant few on Newport's Police Department did not prevent the majority of city police from doing their job. State troopers' undercover efforts found prostitution at several Newport adult bars and, in April 1973, Newport Police made ten prostitution arrests at a Newport home being used for that purpose. Police also probed the role of cabbies in promoting downtown prostitution.²²⁹ Between early March and June 1973, Newport police conducted several anti-prostitution operations after Mayor Roland Vories called for a "War on Prostitution." Newport Police successes were due, in part, to the use of rookie officers not yet known to bar operators.²³⁰

For a brief time thereafter, the December 1972 indictments pressured authorities to more closely scrutinize activities of some downtown adult bars. Richard Matrella's Galaxie Club narrowly missed a license revocation when a Commission majority decided to await the outcome of his pending criminal charges.²³¹ Alcohol Beverage Control agents cited the Brass Ass for prostitution uncovered during the State Police investigations, and agents. Agents found similar violations at the Spotted Calf where teenage go-go dancers were part of the attractions.²³² Law enforcement discovered teenage prostitution and use of minors as dancers in at least five other clubs. Investigations also uncovered a prostitute "exchange" between Newport, Kentucky, and Newport, Tennessee, and, in Wisconsin, authorities found a Newport "connection" in a

²²⁹ Mike Palmisano, "Solicited for Vice Police Say," Kentucky Post, March 9, 1973, 1.

²³⁰ Mike Palmisano, "Newport Vice Raid Brings Ten Arrests," Kentucky Post, April 3, 1973, 1; Mike Palmisano, "Newport Rips Into Vice," Kentucky Post, May 3, 1973, 1K.

²³¹ Mike Palmisano, "Galaxie Padlock Suit Snags," Kentucky Post, April 10, 1973, 1K; Mike Palmisano, "Baker Raps State Police," Kentucky Post, May 22, 1973, 1K.

²³² Jay Gourley, "Accuse Night Club of Permitting Prostitution," Kentucky Post, June 7, 1973, 3K; Kentucky Post, "ABC Cites Newport Bar on Four Counts," (no author), October 24, 1973, 14K.

“White Slave Traffic” operation that implicated a Kentucky chapter of the Seventh Sins Motorcycle Club.²³³

Between late 1970 and through 1975, Newport’s image continued to worsen. Pornography, grand jurors’ finding prostitution and corruption, and indictments of public officials reinforced the city’s lawless reputation a mere ten years after a purported cleanup during the early 1960s. The stench of corruption still lingered, but there was some cause for some optimism on the part of reformers. In decades past, grand jury probes and resultant indictments for official corruption were rare. Though no convictions resulted from the December 1972 charges, the fact that Campbell County Circuit Judges and grand juries undertook the effort was a sign that some in government and law enforcement were willing to challenge Newport’s status quo, but the early 1970s revealed how much more Newport needed to accomplish before a true “cleanup.”

²³³ Kentucky Post, “Girls Tell State of Prostitution,” (no author), October 30, 1973, 4K; Howard Raver, “Two Face White Slave Charge,” Kentucky Post, November 2, 1973, 2K; Kentucky Post, “Calf Fined 700 and Reopens,” (no author), November 6, 1973, 2K; Kentucky Post, “Get Tough On Night Sport, Girls,” (no author), November 20, 1973, 1K. The Newport connection in the Wisconsin case was the Galaxie Club and the Elbow Room Bar.

CHAPTER IV:

1976-1977 COMMISSION: IRENE DEATON, ZONING, AND A BOOKSTORE

By the latter half of the 1970s, Newport's central business district had changed little since the 1960s, a reality inapposite to the notion of a successful reform effort during the early 1960s. Newport was still Cincinnati's playground. Gaming never returned, but strip bars in abundance along Monmouth Street kept Newport wearing the Sin City cloak.²³⁴ Strippers, B-girls, and sex-for-drinks remained business as usual.²³⁵ So negative was Newport's reputation for lax morals and corruption, that a New Yorker writer observed how outsiders might view as sleazy or corrupt even well intended acts by Newport authorities. New Yorker's Calvin Trillin suggested that if city officials could "miraculously transport the Great Pyramid from Giza to Newport, the assumption would be that the purpose was to provide an authentic setting for some particularly imaginative Egyptian belly dancing."

Newport's new Mayor was long time Newport politician Johnny "T-V" Peluso. A former city mayor (1964-1968) and one of the town's most outspoken liberals, Peluso

²³⁴ Former United States Marshall Bill Von Strohe interview, February 21, 2007; Tom Loftus, "Newport Swings At Night," Kentucky Post, October 24, 1977, 1K; Kentucky Post, "Nab 3 Prostitutes," Kentucky Post, April 8, 1977, 5K

²³⁵ Bill Von Strohe interview, February 21, 2007; Former Newport Police Detective Al Garnick interview, May 23, 2006; former Newport Police Chief Rick Huck interview, March 23, 2006; Newport License Administrator Michael Whitehead interview, March 9, 2007.

considered adult entertainment integral to Newport's economic well being.²³⁶ The burst of indictments and grand jury probes from 1972 through 1974, and the "Deep Throat" trials, resulted in relatively few going to jail and produced no discernible differences in Sin City. The Cinema X remained and continued showing hard-core adult movies and the adult industry carried on almost unchecked.

This chapter describes events and developments during the 1976-1977 City Commission term. On the strength of a United States Supreme Court decision, Newport took a dramatic step to set limits upon the adult industry. In a break from the past, the Commission passed an amendment to the zoning code (Adult Zoning Amendment) that restricted future expansion and locations of adult businesses. The amendment, while not necessarily extraordinary for a typical American city, was significant in the context of Newport as Sin City.

During the 1976-1977 Commission term, Monmouth Street again became the home of an adult bookstore, but the city's reception was much different than that afforded to Stanley Marks in 1970. Unlike the hostility shown Marks, the new store acquired a license with relative ease. In fact, it was deceptively easy. Despite the lack of litigation that occurred over the Stanley Marks's Bookstore, there were changes in local and state law and politics. Furthermore, Newport's citizens were becoming more organized and proactive. Though subtle at first, there was a growing momentum for a community free of the Sin City moniker. Newport had not yet turned a corner in the struggle to change its image and distance itself from the Sin City moniker, but in 1976-77, the process of real

²³⁶ Calvin Trillin, "Newport, Ky.: Across The River-Still Sinning," New Yorker, March 27, 1976, 114; The "T-V" nickname was one Peluso acquired because he once owned a television repair shop.

reform was taking the first steps.

Irene Deaton

Charles Sarakatsannis lost the 1975 mayoral race to long time Newport politician and former mayor, Johnny “T-V” Peluso. Partially mitigating Sarakatsannis’s loss from the Board was the election of newcomer Irene Deaton to a Commission seat. Wife of a Newport firefighter and mother of eight, Deaton could identify with the challenges of raising a family in Sin City. Commissioner Deaton adopted adult entertainment issues, especially nude dancing and pornography, as her special causes. Her nemesis on adult issues through 1981 was Mayor Peluso.²³⁷ Determined to end nude entertainment, Commissioner Deaton sought to eliminate nude entertainment.²³⁸

To address nude entertainment issues, it was not necessary that Irene Deaton first expose the practice. Live nude performances in bars were no secret and were available throughout the central business district. Far from hiding it, adult bars flaunted it.²³⁹ Sidewalk facades of several clubs featured glass enclosed photos of strippers in various stages of undress, all visible to passersby, including children and shoppers.²⁴⁰ The only way to avoid exposure of these sights was not to walk the downtown sidewalks.

Commissioner Deaton’s early efforts were not successful. Newport had a half

²³⁷ Interviews with former Newport Economic Development Director Laura Long, April 4, 2006; former Finance Director and City Manager, Phil Ciafardini interview, April 1, 2007; Bert Workum, “Irene Deaton Wants Halt To Nude Dancing,” Kentucky Post, December 10, 1975, 1K; Purvis, Bicentennial History, 284; Tim Nolan interview, May 25, 2006.

²³⁸ Tim Nolan interview, May 24, 2006.

²³⁹ Tom Loftus, “Newport Swings At Night,” Kentucky Post, October 24, 1977, 1K; Kentucky Post, “Nab 3 Prostitutes,” Kentucky Post, April 8, 1977, 5K.

²⁴⁰ Interview with Newport License Administrator Michael Whitehead, March 9, 2007; Interview with Kentucky State Police (ret.) Detective, March 14, 2006 (must remain anonymous); interview with former Newport Detective and Police Chief, Rick Huck, March 23, 2006.

century tradition of adult entertainment and one needed to be over fifty years of age to recall when Newport was not inextricably bound to adult entertainment and illegal vice. For anyone younger, an adult industry had always been part of the town's landscape and Newport had always been Sin City. Before Steve Goetz became Newport's mayor (1984-1990) he was a City Commissioner who first ran for the office during 1977. While campaigning, Goetz recalls citizens telling him that change would never happen. People were sure that, regardless of politicians' good intentions, vice and corruption had so long been indelibly woven into the city's fabric that Sin City would continue as it had for decades. Pro-adult entertainment advocates assumed that Newport's economy depended upon the sexually oriented adult attractions, especially nude dancing. Supporters of live nude dancing had only to point out the crowds that came to bars featuring strippers. Nudity, they argued, brought the crowds and the crowds brought money. Ending nude dancing, supporters contended, would irreparably harm the city's economy. With the exception of Irene Deaton, Commissioners were reluctant to eliminate attractions that brought crowds and revenues, no matter the sexually oriented appeal.²⁴¹

Antiquated And Vague Laws

That in-bar prostitution and other vices prospered in Newport did not mean the city was without existing local laws pertaining to illegal sexual conduct, public lewdness, and obscenity. Since before 1961, Newport had laws relating to "lewdness," "obscenity,"

²⁴¹ Dick Freeman, "Newport Cracks Down On Nude Strippers," Kentucky Post, September 28, 1976, 6K; Interview with Michael Whitehead; interview with Steve Goetz; Kentucky Post, "Naked Law Up Tonight," (no author), March 1, 1976, 4K. Not only nude dancing resulted in venting during meetings. See Editorial, "Newport In Crises," Kentucky Post, February 25, 1977, 4K; Editorial, "Top Of Newport List," Kentucky Post, March 1, 1976, 6K; Bert Workum, "Girl In Pasties Nude," Kentucky Post, March 2, 1976, 1K; Bert Workum, "Newport Tables Nude Law Again," Kentucky Post, March 9, 1976, 11K; see, Martin Hogan, Jr., Newport Nite Life: The Beat Goes On." Cincinnati Enquirer, May 11, 1980, B1.

and “sexual misconduct.” Other city ordinances prohibited prostitution, but laws addressing adult entertainment were vague and somewhat antiquated.²⁴² For instance, Newport ordinances outlawing the “lewd and obscene” referred to brothels with their “strumpets and whores.”²⁴³

Applying vague laws to live adult entertainment was troublesome for the police. Police Chief Ed Gugel complained that city ordinances provided no guidance about whether a dancer’s performance was unlawful. At best, city law only prohibited the “obscene” or “lewd,” but local laws did not clearly define these terms. Assuming no sexual acts took place during a dancer’s performance, officers were unclear about what constituted unlawful “sexual misconduct.” Without guidance within the ordinances, police officers were in the questionable position of each deciding for themselves if dancers broke the law.²⁴⁴

Newport was not the only community struggling with nudity in entertainment. In 1976, prohibiting nudity was a complex and often frustrating issue local governments had to confront. Communities could not constitutionally legislate broad and sweeping

²⁴² “Local ordinances” is a redundancy. An “ordinance” was a law passed by local government, such as a city or county. “Statutes” refer to laws passed by Kentucky’s legislature, the General Assembly. All ordinances, by definition, are “local ordinances.”

²⁴³ Blain McLaughlin, Ed., Ordinances And Municipal Laws For City of Newport, Kentucky, effective July 1, 1939, (Newport, Kentucky: H. Otto Printing Co., 1939), Ordinance No. 1299; Wesley Bowen, Ed., Ordinances and Municipal Laws For City of Newport, Kentucky, effective August 1, 1959, (Newport, Kentucky: Otto Printing Co., 1959), Ordinance No. 646, as amended 1950. See also, Hines v. Commonwealth, 308 Ky. 859, 215 S.W.2d 1014 (1948); Nuchols v. Commonwealth, 312 Ky. 171, 226 S.W.2d 796 (1950).

²⁴⁴ Tim Nolan interview, May 25, 2006; Bert Workum, “Can’t Touch Nude Dancers,” Kentucky Post, December 11, 1975, 1K; Bert Workum, “Can’t Touch Nude Dancers,” Kentucky Post, December 11, 1975, 1K; Newport City Ordinance, O-1430, (passed April 29, 1968)(“not expose body in indecent or obscene fashion”). In 1976, the federal Cinema-X cases remained on appeal, and one of the issues in the federal appeal was the definition of obscenity.

prohibitions against nude and semi-nude performances, no matter how offensive the mainstream found those performances. By the time Irene Deaton assumed office in 1976, the United States Supreme Court had already decided that “mere nudity” in live performances that did not include sexual conduct may be protected speech under the First Amendment.²⁴⁵ Furthermore, the Supreme Court found laws banning “all” nudity were unconstitutional “prior restraints” upon “presumptively protected” forms of speech and expression under the First Amendment.²⁴⁶ Irene Deaton had to temper her zeal with the reality of United States Supreme Court rulings.

Kentucky’s state liquor licensing authorities²⁴⁷ had some latitude in regulating live entertainment in establishments licensed to sell alcoholic beverages. During the latter 1960s, ABC Board Commissioner S.W. Palmer-Ball expressed concerns about reports of “indecent and lewdness” in adult bars, including what the Commissioner

²⁴⁵ See, California v. LaRue, 409 U.S. 109, 118 (1972); Doran v. Salem Inn, Inc., 422 U.S. 922 (1975); Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, 2004), 9-10.

²⁴⁶ Southeastern Promotions, LTD v. Conrad, 420 U.S. 546 (1975); Erznoznik v. City of Jacksonville, Fla., 422 U.S. 205, 211-12 (1975); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Jenkins v. Georgia, 418 U.S. 153, 161 (1974) (“nudity alone does not place otherwise protected material outside the mantle of the First Amendment”); California v. LaRue, 409 U.S. 109, 118 (1972) (sustained anti-nudity provisions that applied to liquor licensed establishments); Doran v. Salem Inn, Inc., 422 U.S. 922, 932 (1975) (“the customary type of nude dancing may involve only the barest minimum of protected expression . . . this form of entertainment might be entitled to First and Fourteenth Amendment protection under some circumstances”); Jeffrey Trachtman, “NOTE: Pornography, Padlocks, And Prior Restraints: The Constitutional Limits Of The Nuisance Power,” New York University Law Review 58 (December 1983): 1478 [also cited as 58 N.Y.U.L. Rev. 1478]; Paul Oberst and Jeffrey B. Hunt, “LAW SURVEY: Administrative And Constitutional Law,” Kentucky Law Journal 71 (1983): 418 [also cited, 71 Ky. L.J. 418]. For First Amendment cases pertaining to free speech and expression, see Schacht v. United States, 398 U.S. 58, 63(1970); Shelton v. Tucker, 364 U.S. 479, 488 (1960); Schad v. Borough of Mt. Ephraim, 452 U.S. 61, 66 (1981).

²⁴⁷ The Alcoholic Beverage Control Commission [ABC Board] in Kentucky.

called an “excess of homosexual patronage,”²⁴⁸ Palmer-Ball expressed a desire to address the “problem,” including prohibitions against all nudity or “go-go” dancing as promoting “lewd and indecent conduct” and breaches of state liquor laws.²⁴⁹ The Commissioner was particularly sensitive to female employees’ use of “sensual and seductive gestures” to entertain and encourage drink purchases.²⁵⁰ The ABC Board considered Newport and its strip bars as places of interest, but the agency rarely revoked liquor licenses.²⁵¹ The ABC’s and Newport’s local Liquor License Administrators could suspend licenses and fine offending licensees, but these sanctions had only limited value and impact. Adult bars made so much money from illegal “sex-for-drinks” that fines and temporary suspensions accomplished little.²⁵²

²⁴⁸ This was a time before “political correctness.”

²⁴⁹ Former Newport City Commissioner Charles Sarakatsannis interview, November 15, 2006; Donna McKewon and Bruce Dudley, “ABC Board Proposes Sweeping Stringent Regulations That Would Ban Improper Conduct,” Kentucky Post, August 20, 1968.

²⁵⁰ Carl West and Clay Wade Bailey, “Propose Tough Regulations – ABC Sets Go-Go No-Nos,” Kentucky Post, September 2, 1970, 1K; Clay Wade Bailey, “Club Faces New Nudity Charges,” Kentucky Post, October 28, 1970, 14K. See also, California v. LaRue, 409 U.S. 109, 118 (1972)(city as licensing authority to regulate sexual displays at establishments with liquor licenses).

²⁵¹ Jack Hicks, “Northern Kentucky: A Study In Paradox,” Cincinnati Enquirer, June 21, 1970; Kentucky Post, “Pink Pussycat Hearing Scheduled,” (no author), August 25, 1970, 2K; Clay Wade Bailey, “Go, Go, Go, for Go-Go,” Kentucky Post, August 26, 1970, 1K; Cincinnati Enquirer, “Defend Girlie Show Operator: Newport Officials Aid City Image,” (no author), August 30, 1970; Clay Wade Bailey, “Suspend Newport Nightclub,” Kentucky Post, September 10, 1970, 1K; Clay Wade Bailey, “Club Faces New Nudity Charges,” Kentucky Post, October 28, 1970, 14K.

²⁵² Michael Whitehead, Newport News, Interview with Ky. ABC Board Commissioner Bernard Keene (for Liquor License Review Committee, Newport Citizens Advisory Council, 1978), transcribed by Brighton Center, Inc.; Livingston Taylor, “Kentucky Closes Only A Few Violators of Liquor Laws,” Courier-Journal and Times, March 27, 1977, A1 (no closing required for bar that employed sixteen yr old female go-go dancer). For more on the Alcoholic Beverage Commission Board and its history of actions against offending liquor licensees, see Al Salvato, “Cities, State Clash Over Bar Troubles,” Kentucky Post, March 6, 1985, 1K; Al Salvato, Cities Wage Long, Tiring War Against

Dancers And G-Strings

Irene Deaton's first attempts to eliminate nude entertainment in Sin City was a technical victory only. The ordinance she convinced the Board majority to pass had no impact upon nude entertainment. In 1976, dancers' costumes were usually G-strings and pasties; however, by performance end, the dancers' costumes consisted of little more than her shoes. Deaton wanted laws requiring more covering but she could not persuade a Board majority.²⁵³ When Deaton did persuade the passage of a new ordinance, what the majority was willing to pass fell short of what Irene Deaton sought. As passed, the ordinance required that nudity needed to "affront or alarm" a viewer, highly unlikely at a strip bar where patrons generally preferred more, not less, nudity. The bland and ineffective ordinance illustrated the city's reluctance to jeopardize that which drew the crowds. Understandably, the new law had no effect upon the adult industry.²⁵⁴

Taxing The Cinema

Since the Cinema X stayed in business and overcame both city and federal authorities' efforts to stop exhibition of pornographic movies, Newport decided to tax the theater and get revenues from its continued operation. The Cinema X "Deep Throat" case was still pending in the federal appellate courts and there were no city or county criminal cases pending against the theater.²⁵⁵

Bars," Kentucky Post, March 7, 1985, 1K; Al Salvato, "Alcohol Board: Cities Don't Understand," Kentucky Post, March 8, 1985, 1K.

²⁵³ Kentucky Post, "Vow War On Nudity, Prostitutes," (no author), September 24, 1976, 1K; Bertram Workum, "Girl In Pasties Nude," Kentucky Post, March 2, 1976, 1K.

²⁵⁴ Newport City Commission Minutes: September 27, 1976; Commissioners' Ordinance No. O-76-34; Commissioners' Ordinance No. O-76-34, Section I(3); Dick Freeman, "Cops Say Nude Law Vague," Kentucky Post, October 4, 1976, 3K.

²⁵⁵ United States of America, Plaintiff-Appellee v. Stanley Marks, d/b/a/ Cinema X Theatre, Harry Mohny, Guy Weir, American Amusement Co., Inc., American News Company, Inc., a/k/a American News Distributing Company, Defendants-Appellants,

Newport's earlier and costly battles with Stanley Marks should have enlightened city officials about the consequences of singling out vendors of sexually oriented publications for special negative treatment. Yet, Commissioners did just that during early 1976. The Board approved a graduated ticket tax upon all admissions to Newport theaters. Under the terms of the new ordinance (O-76-5), ticket prices determined the amount of the tax.²⁵⁶ There were two theaters in Newport. One was the mainstream theater, the Newport Cinemas I-II (two rooms with screens – one theater). The only other movie theater was Cinema X. Based upon ticket prices at Cinemas I-II, the new ticket tax was an additional ten cents per admission, but the impact was greater for Cinema X admission prices. Cinema X admissions were five dollars per person; therefore, the tax drove ticket prices to six dollars, a twenty percent increase. Cinema X attorney Mott V. Plummer threatened a federal lawsuit if the patently discriminatory tax became law, but Commissioners passed the contested tax.²⁵⁷

520 F.2d 913 (United States Court of Appeals For The Sixth Circuit, 1975)(affirmed trial court); Marks, et al. v. United States, 430 U.S. 188 (Argued November 12, 1976; decided March 1, 1977; Supreme Court reversal and remand to Sixth Circuit Court of Appeals); Marks et al. v. United States, Case No. 74-1531 through No. 74-1535 (1977 U.S. App. Lexis 14082), March 29, 1977 ("Upon consideration of the judgment of reversal of the Supreme Court and the remand, it is Ordered that the judgment of the [United States District Court for the Eastern District of Kentucky, Covington Division] be reversed, and the cause is remanded to the District Court for further proceedings consistent with the opinion of the Supreme Court."); Marks et al. v. United States, 585 F.2d 164 (Court of Appeals for Sixth Circuit, 1978)(Court of Appeals reversal of District Court convictions in second jury trial and remand for new trial). There never was a third trial.

²⁵⁶ Kentucky Post, "Promises A Movie Tax Will Bring Lawsuit," (no author), March 11, 1976, 12K.

²⁵⁷ Newport City Commission Minutes: January 5, 1976, January 19, 1976, and February 2, 1976; Newport City Commission Minutes: March 1, 1976, March 15, 1976; Newport Commissioners' Ordinance No. O-76-5 (passed March 15, 1976); Bert Workum, "Newport Has A Movie Tax," Kentucky Post, March 16, 1976, 2K; Kentucky Post, "Sues To Block Movie Tax," (no author), April 8, 1976, 16K; Kentucky Post,

Constitutional flaws rendered the tax short lived. Among the constitutional problems was a requirement that theater owners post a \$10,000 bond, subject to forfeiture and other sanctions if theaters showed “obscene films.” Newport’s decision to impose such a bond is puzzling. During 1972, Federal Judge Mac Swinford held a similar bond requirement unconstitutional during the Stanley Marks litigations. As they promised, Cinema X’s lawyers filed a federal lawsuit.²⁵⁸

In mid-March 1976, attorney Tim Nolan was Newport’s City Solicitor. Nolan convinced the Board that the new tax would not survive federal court challenge and advised Commissioners to rescind the ticket tax and replace it with one that set a “flat tax rate,” one not discriminatory on account of film content.²⁵⁹ Following Nolan’s advice, Board members repealed O-76-5 and replaced it with a flat five percent revenue tax. Cinema X did not challenge the flat tax rate (O-76-24).²⁶⁰

A New Bookstore

By mid-1976, Newport had been without an adult bookstore since Stanley Marks's adult bookstore closed in 1973. but a former Marks employee filled that void. James “Buck” Lewallen applied to open a “variety store” directly across from Cinema X

“Promises A Movie Tax Will Bring Lawsuit,” (no author), March 11, 1976, 12K (Mayor Peluso argued that the tax could bring \$80-\$100,000 dollars in additional tax revenues).²⁵⁸ Kentucky Post, “Sues To Block Movie Tax,” (no author), April 8, 1976, 16K; Tim Nolan interview, May 25, 2006.

²⁵⁹ Bert Workum, “Seeks Change In Movie Tax,” Kentucky Post, May 24, 1976, 2K; Newport City Commission Minutes: March 15, 1976, March 29, 1976. Note: A federal suit alleging constitutional violations carried with it, then and now, the potential for an award of attorney fees on behalf of the plaintiffs. The amount of attorney fees was not necessarily related to the money damages suffered by plaintiffs, but upon the number of hours lawyers expended. It was not uncommon for fees to be in the thousands of dollars. See 42 United States Code §1983.

²⁶⁰ Commissioners’ Ordinance No. O-76-24 (passed June 14, 1976); Bert Workum, “Seeks Change In Movie Tax,” Kentucky Post, May 24, 1976, 2K; Newport City Commission Minutes: May 24, 1976, June 14, 1976.

at 721 Monmouth Street. Newport had no zoning laws regulating adult bookstores, but existing regulations permitted a “variety store.” Fearing that Lewallen intended to open an adult bookstore, Commissioner Deaton mounted an opposition. Her concerns were well-founded. Lewallen made known his intention to exhibit hard core peepshow²⁶¹ films at his so-called variety store and applied for a movie theater business classification. He claimed that the 8mm peepshow film booths made his store a theater,²⁶² a point of fact with which Campbell Circuit Judge John Diskin did not agree as the Judge denied Lewallen’s bookstore a theater classification. Undeterred, Lewallen went forward with the adult peepshows, all the while denying the store would become an adult bookstore.²⁶³

The building owners at 721 Monmouth vouched for Lewallen's promises that the

²⁶¹ A peepshow booth, or a “peep booth,” was an enclosure containing a coin operated movie projector. The movie, a silent, 8 mm color film projected to one of the booth’s walls. A “seat” was in each of the several booths. Each booth usually showed a different film, all of which were hard-core pornography. A quarter showed about a minute and a half and the film ended. Another quarter continued the movie, and so on. Each booth had a door to provide for privacy within the booths was of wood or paneling construction. Interview with Kentucky State Police Detective (ret.), March 14, 2006; interview with former Newport Detective Al Garnick, May 24, 2006; Meese Report, footnote 1651-1676; Daniel Linz, Paul Bryant, Mike Z. Yao, “Peep Show Establishments, Police Activity, Public Place, and Time: A Study of Secondary Effects in San Diego, California,” *The Journal Of Sex Research*, 43: No. 2 (2006): 182. For an extensive and frank description of peepshows, see Gary W. Potter, The Porn Merchants (Dubuque, Iowa: Kendall-Hunt Publishing Company, 1986).

²⁶² During a City Commission meeting on September 13, 1976, Commissioner James Peluso asked for the city’s Housing Inspector to “determine if the Peep Show booths were a part of the original building construction or if they were added on later and if so whether they applied for a wilding permit for this purpose.

²⁶³ Kentucky State Police Detective Interview, March 14, 2006; Al Garnick interview, May 24, 2006; Kentucky Post, “Peep Shows May Get Hefty Tax,” (no author), August 14, 1976, 11K; Kentucky Post, “X-Rated Peep Shows May Keep Operating,” (no author), August 9, 1976, 6K; Kentucky Post, “Newport Lashes Out At Books, Peep Shows,” (no author), August 6, 1976, 1K; Kentucky Post, “Peep Shows Under Debate,” (no author), November 11, 1976, 14K; Kentucky Post, “Peep Show Not Theater,” (no author), December 3, 1976, 5K; Kentucky Post, “Newport Peep Show Loses Round In Court,” (no author), November 23, 1976, 7K.

store would not be an adult bookstore. Building co-owners were Mary Dell Wright and former City Commissioner Paul Baker and his wife. Wright operated Monmouth Street's New Plaza Lounge, a strip bar, and her husband was local nightlife figure, Albert "Sammy" Wright. Wright was a former safecracker once associated with Detroit's infamous Purple Gang, and both he and Mary Dell had criminal records.²⁶⁴ Law enforcement discovered that, although James Lewallen was the named licensee, Sammy Wright was the de facto owner who exerted control over the store's operation. Former City Solicitor and Campbell County District Judge Tim Nolan recalls Sammy Wright, a frequent visitor to city offices, took more than a casual interest in the bookstore and nightlife issues generally.²⁶⁵

Believing a behind the scenes "deal" to provide Lewallen an occupational license existed, Commissioner Deaton obtained over a thousand signatures on a petition opposing an adult bookstore. Mayor Peluso refused to sign.²⁶⁶ Despite Deaton's efforts

²⁶⁴ Dick Freeman, "It Ain't Gonna Be No Bookstore," Kentucky Post, September 9, 1976, 10K; Kentucky Post, "Resume Peep Show Clash," (no author), November 2, 1976, 2K

²⁶⁵ Tim Nolan interview, May 25, 2006; former Newport Detective Al Garnick interview, May 24, 2006; Kentucky State Police Detective (ret.) interview, March 14, 2006; Kentucky Post, "Newport Lashes Out At Books, Peep Shows," (no author), August 6, 1976, 1K; Kentucky Post, "X-Rated Peep Shows May Keep Operating," (no author), August 9, 1976, 6K; Dick Freeman, "It Ain't Gonna Be No Bookstore," Kentucky Post, September 9, 1976, 10K; Kentucky Post, "Peep Shows Under Debate," (no author), November 11, 1976, 14K. Note: In February 1981 a Campbell County District Court jury convicted Albert "Sammy" Wright of facilitation to distribute obscene matter, a misdemeanor, because of Wright's involvement with 721 Monmouth (to be discussed later herein).

²⁶⁶ Dick Freeman, "Irene Gathers Bushels Of Dirty Book Protests," Kentucky Post, October 20, 1976, 1K; Dick Freeman, "Mrs. Deaton Begins Drive Against Adult Bookstore," Kentucky Post, August 17, 1976, 2K; Kentucky Post, "1000 Ask Dirty Book Ban," (no author), August 26, 1976, 1K; Dick Freeman, "No Peep From Peluso; So Tearful Irene Leaves Caucus," Kentucky Post, August 10, 1976, 1K; Dick Freeman, "It Ain't Gonna Be No Bookstore," Kentucky Post, September 9, 1976, 10K; Newport City

and the lack of a business license, Lewallen's Monmouth Street Theater and Variety Store (the Bookstore) opened during December 1976.²⁶⁷

Lewallen's earlier promises and the assurances of those who vouched for him soon proved worthless. The store offered hard-core sexually explicit books, 8mm films, and the coin operated peepshows.²⁶⁸ The initial lack of a business license prompted Newport Police raids and arrests and Lewallen responded with a lawsuit that never needed to proceed to trial. Newport granted the licensee. For Irene Deaton, the granting of the business license was a setback, but not end her anti-porn efforts.²⁶⁹

Commissioner Deaton and City Solicitor Tim Nolan encouraged Commonwealth Attorney Louis Ball to investigate the Cinema X and Bookstore. Meanwhile, a few private citizens took the initiative and purchased two hard-core books, Lollipop and Eyes Closed. Newport Ministerial Association members reviewed the materials and urged prosecutor Ball to take action, but the Association had additional worries.²⁷⁰ The “Deep Throat” reversals and Lewallen's success made members uneasy that others might open

Commission Minutes: October 25, 1976 (Deaton submits petition against Bookstore and expresses additional concerns about Cinema X).

²⁶⁷ Herein called the “Bookstore.”

²⁶⁸ Kentucky State Police Detective interview, April 4, 2006; Al Garnick interview, May 24, 2006; Rick Huck interview, March 23, 2006; Jim Dady, “Peep Show Now Sells Books Too,” Kentucky Post, February 15, 1977, 9K.

²⁶⁹ Kentucky Post, “Book Store Owner Sues For License,” (no author), October 18, 1976, 10K; Kentucky Post, “Police Hit Peep Show 5th Time,” (no author), January 1, 1977, 11K; Eric Schmitz, “Peep Show Fight Goes To Federal Court,” Kentucky Post, February 5, 1977, 12K; Tim Nolan interview, May 25, 2006; Kentucky Post, “Pays Fine, Gets Peep Shows Back,” (no author), February 16, 1977, 11K.

²⁷⁰ Tom Loftus, “[Commonwealth Attorney Lou] Ball Promises Some Action In Dirty Books,” Kentucky Post, March 8, 1977, 5K; Tim Nolan interview, May 25, 2006. Note: Prior to 1978, Newport’s Police Court had jurisdiction to hear pornography criminal charges if the allegations constituted misdemeanors. Under some circumstances, the Circuit Court might also hear such cases.

similar stores.²⁷¹

The Bookstore And Cinema X – Indicted

Commonwealth Attorney Ball’s investigation brought pornography opponents some satisfaction. A March 1977 grand jury indicted James Lewallen and Cinema X’s corporate owner, Brown Bear, Inc. (Brown Bear)²⁷² with distribution of obscene materials.²⁷³ Incorporated as a Kentucky company in 1975, Brown Bear was the Cinema X licensee of record,²⁷⁴ but Harry Mohney remained the de facto owner.²⁷⁵ Believing that incorporating porn businesses was a shield against personal civil and criminal liabilities, Mohney and other porn distributors formed corporate networks and removed their names from ownership documents.²⁷⁶ Since most obscenity law violations required

²⁷¹ Stanley Marks v. United States, 430 U.S. 188 (1977)(decided March 1, 1977); Jim Dady, “Newport Orders Up Anti-Porn Law To Combat Smut,” Kentucky Post March 3, 1977, 6K.

²⁷² Corporations were subject to criminal laws and prosecution. See Kentucky Revised Statutes, KRS 502.050; KRS 502.060.

²⁷³ Campbell County Circuit Court Records: “Order Book” No. 17, Case Nos. 14935-CR (Brown Bear, Inc., d/b/a Cinema-X Theatre), Case nos. 14934-CR, 14933-CR. The grand jury indicted the Bookstore’s property owners, Paul Baker, Mary Dell Wright; however, prosecutors requested dismissals of both. Baker and Mary Dell Wright had faced charges for “facilitation to distribute obscene matter,” a lesser charge than distribution. There will be no further discussion of the charges against Mary Dell Wright and Paul Baker.

²⁷⁴ Campbell County Attorney Justin Verst records: Articles of Incorporation, Brown Bear, Inc., Campbell County Clerk Articles of Incorporation Book 16, Page 184.

²⁷⁵ Mohney’s base of operations for his ownership of Cinema X was always in Michigan through Modern Bookkeeping Services (MBS). See, Gary Webb, “Who Is Behind The Cinema-X?,” Kentucky Post, November 22, 1980, 1K; United States v. Harry V. Mohney, Thomas T. Tomkins, Elizabeth L. Scribner, and Lee J. Klein, 723 F.Supp. 1197 (1989)(United States District Court, Eastern District, Michigan); Tom Loftus, “Bookstore’s License in Jeopardy,” Kentucky Post, July 6 1978, 2K; Brown Bear remained title holder to the Cinema-X real estate.

²⁷⁶ United States v. Harry V. Mohney et al., 723 F.Supp. 1197 (United States District Court, Eastern District Michigan, 1989); United States v. Harry V. Mohney, 949 F.2d 1397, 1408 (6th Cir., 1992); United States v. Lee J. Klein, 19 F.3d 20 (6th Cir., 1994)(Klein was Mohney’s attorney and handled the bulk of Mohney’s business affairs at the highest corporate level); see also, United States v Reuben Sturman, 951 F.2d 1466,

some knowledge on a distributor's part, a faceless and non-personal corporation made obscenity prosecutions more complicated for law enforcement.²⁷⁷

Neither Brown Bear nor Lewallen took their cases to trial. During June 1978, both pled guilty to obscenity charges.²⁷⁸ Once Brown Bear had an obscenity conviction, the theater became vulnerable to an action by the city to revoke the occupational (business) license on public nuisance grounds.²⁷⁹ To avoid a Cinema X licensee's having a criminal record, Brown Bear transferred the theater's business license to another Kentucky corporation, Happy Day, Inc.²⁸⁰ Formed in 1975, Happy Day had no criminal convictions and was, in the eyes of the law, an entirely separate legal entity from Brown Bear. The theater's real ownership and control remained with Harry Mohny, but

1474 (6th Cir., 1991), cert. denied, 112 S.Ct. 2964 (1992); Gary Potter, The Porn Merchants (Dubuque, Iowa: Kendall Hunt Publishing Company, 1986), 125-144.

²⁷⁷ See discussion of Mohny's manipulation of corporate structures in United States v. Harry V. Mohny, Thomas T. Tomkins, Elizabeth L. Scribner, and Lee J. Klein, 723 F.Supp. 1197 (1989) (United States District Court, Eastern District Michigan). The nation's one time largest porn distributor, Reuben Sturman of Shaker Heights, Ohio, also used multiple and interlocking corporations to conceal ownership and assets. See, United States v. Reuben Sturman; 951 F.2d 1466 (Sixth Cir., 1991); Gregory Stricharchuk, "Selling Skin: 'Porn King' Expands His Empire With Aid Of Businessman's Skills - Cleveland's Reuben Sturman Adapts Quickly as Mores And Technology Change - Eluding the Obscenity Laws," Wall Street Journal, May 8, 1985, 1; Boston Globe, "Organized Crime Linked To US Pornography," (no author), February 16, 1983, 1; New York Times, "6 In Alleged Smut Ring Face U.S. Tax Charges," (no author), June 29, 1985, 1. The tactic was not a success in the end. Federal prosecutors learned ways to pierce through the corporate protections, but this is beyond the scope of this thesis.

²⁷⁸ Campbell County Attorney Justin Verst records: Order And Judgment filed on June 28, 1978 for "Indictment No. 14935 - CR," Campbell County Circuit Court, Division I, Hon. John Diskin, Judge, presiding. Prosecutors agreed to dismiss all charges against the building owners

²⁷⁹ Code City Newport, Gen'l Ordinances eff. June 15, 1981, in George W. Robinson, ed., Public Papers Of Governor Bert T. Combs, 1959-1963, (Lexington, Kentucky: University Press of Kentucky, 1979), Chap 16: 16.1, nuisances . . . commission unlawful acts or fail perform duty . . . permitting condition or thing to exist which injurious or endangers health and safety of others . . . offends decency

²⁸⁰ Campbell County Attorney Justin Verst files: Articles of Incorporation for Happy Day, Inc., Campbell County Clerk Records, Articles of Incorporation Book 16, Page 106.

corporate records listed officers of both Happy Day and Brown Bear as members of the Fred Hollis family.²⁸¹ On Brown Bear's guilty plea, Circuit Judge John Diskin fined the company \$5000.²⁸² Newport did not pursue revocation of the Cinema X license.

Worried that Newport may revoke his license, James Lewallen tried to withdraw his guilty plea and attempted a transfer of his business license to a corporation appropriately named XX. Lewallen surmised that the transfer might avoid a license revocation such as that suffered in 1971 by Stanley Marks's Bookstore. When Lewallen tried to convey his Bookstore license to XX, City Manager Ralph Mussman blocked the transfer. After Judge John Diskin refused his change of plea, Lewallen appealed. In a decision the 1978-1979 Commissioners later regretted, the Board chose to await the outcome of Lewallen's appeal before seeking a license revocation.²⁸³

Young v. Mini Theatres (1976) – Cities Get Options

Newport was not the only American city where adult businesses troubled city leaders. Around the nation, local governments had difficulties balancing adult business owners' constitutional rights to operate with local government's duties to minimize the unwanted and negative effects of adult businesses upon their surroundings. First Amendment principles prohibited sweeping and overly restrictive regulations based upon the adult content of movies and other publications. Too much regulation fared poorly against challenges in federal courts, but too little regulation led to uncontrolled

²⁸¹ Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006.

²⁸² Campbell County Attorney Justin Verst records: Order And Judgment filed on June 28, 1978 for "Indictment No. 14935 - CR," Campbell County Circuit Court, Division I, Hon. John Diskin, Judge, presiding.

²⁸³ Tom Loftus, "No Plea Change in Adult Case," Kentucky Post, August 19, 1978, 11K; Lewallen v. Commonwealth, Ky. App., 584 S.W.2d 748 (July 6, 1979; as Modified July 20, 1979); Had Newport gone forward with the revocation, and if Lewallen's appeal had been successful, then the license revocation might have been set aside because Lewallen's conviction was the basis for the revocation

proliferation of adult businesses. On this issue, cities found themselves in a “lose-lose” situation, but communities did not remain passive.²⁸⁴

During the 1960s and 1970s, a number of communities closely examined adult businesses’ impact in local neighborhoods. Studies conducted in San Antonio, Texas, Indianapolis, Indiana, Los Angeles, California, Phoenix, Arizona, Whittier, California, Amarillo, Texas, the cities of Minneapolis and St. Paul, Minnesota,²⁸⁵ and Cleveland, Ohio, came to similar conclusions. The presence of adult businesses produced “adverse secondary effects”; that is, communities suffered negative social and economic consequences from concentrations of sexually oriented establishments. Adverse effects included increases in drug and assault crimes, lower property values, decreases in mainstream investment, and increased law enforcement costs. A city’s small size, the added presence of alcohol establishments, and circumstances of two or more adult

²⁸⁴ A Quantity of Books v. Kansas, 378 U.S. 205 (1964); Marcus v. Search Warrant, 367 U.S. 717 (1961); Heller v. New York, 413 U.S. 483 (1973); Freedman v. Maryland, 380 U.S. 51, 58 (1965); Southeastern Promotions, LTD v Conrad, 420 U.S. 546 (1975); Roth v. United States, 354 U.S. 476 (1957); Memoirs v. Massachusetts, 383 U.S. 413 (1966); City of Kenosha, Wisconsin v. Bruno, et al., 412 U.S. 507, (1973); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Jenkins v. Georgia, 418 U.S. 153, 161 (1974)(“nudity alone does not place otherwise protected material outside the mantle of the First Amendment”); Schad v. Borough of Mount Ephraim, 452 U.S. 61, 62-63, 66 (1981) (zoning case: adult bookstore with peep show machines, including coin-operated mechanism permitting the customer to watch a live dancer, usually nude, performing behind a glass panel.); California v. LaRue, 409 U.S. 109, 118 (1972); Doran v. Salem Inn, Inc., 422 U.S. 922, 932 (1975) (“the customary type of nude dancing may involve only the barest minimum of protected expression . . . this form of entertainment might be entitled to First and Fourteenth Amendment protection under some circumstances”); Erznoznik v. City of Jacksonville, Fla., 422 U.S. 205, 211-12 (1975); Schacht v. United States, 398 U.S. 58, 63(1970); Shelton v. Tucker, 364 U.S. 479, 488 (1960); John Gilmore, “Zoned Out,” Planning 65, no. 2 (February, 1999): 15; Robert C. Ellickson, “Controlling Chronic Misconduct In City Spaces: Of Panhandlers, Skid Rows, and Public Space Zoning,” Yale Law Journal 105, no. 5 (1996): 1165-1248.

²⁸⁵ This study was a joint effort by the Minnesota Attorney General, the City of St. Paul’s Division of Planning, and Minnesota’s Crime Control Board.

businesses in close proximity to one another exacerbated the problems.²⁸⁶ In the 1966 Report To The American Center For Law and Justice On The Secondary Impacts Of Sexually Oriented Businesses (hereinafter Report On Impact of SOB) researchers noted that

harassment and propositioning of pedestrians in the vicinity can be seen as a direct outcome of the presence of sex oriented businesses...especially women, walking in the vicinity of a sex oriented business may be perceived...as being there for reasons related to the sex oriented business and approached or spoken to accordingly...[the area]...thus becomes one women will not venture near to avoid being accosted...This is especially so in smaller cities...where they are more likely to be seen by persons who know them.²⁸⁷

Larger cities had concerns that sections of their towns might fall prey to the effects of adult establishments, but Newport's central business district was the town's adult entertainment section. For Newport, the problem in the 1970s was not containment of adult entertainment away from mainstream sections of town. Adult businesses were already dispersed in the central business district along Monmouth Street. Instead, Newport had to confront the domination of a legally entrenched adult industry already in residence. Prior to 1976, the United States Supreme Court had never resolved how communities might balance an interest in preserving a good quality of life with First

²⁸⁶ Environmental Research Group, Report To the American Center Of Law and Justice On The Secondary Impacts of Sexually Oriented Businesses, March 31, 1996 (Compiled by the American Center For Law And Justice, National Law Center For Children and Families); see, Gary W. Potter, The Porn Merchants (Dubuque, Iowa: Kendall-Hunt Publishing Company, 1986), 154.

²⁸⁷ Environmental Research Group, Report To The American Center For Law And Justice On The Secondary Impacts of Sexually Oriented Businesses, March 31, 1996, 11-12. Copies of individual studies supplied by National Law Center for Children and Families, 3819, Fairfax, Va., 22030-2512 (National Law Center referred to as NLC); see, NLC Summaries of "SOB [Sexually Oriented Businesses] Land Use" Studies, National Law Center for Children and Families, 1991, rev. 2005; See, Gary W. Potter, The Porn Merchants (Dubuque, Iowa: Kendall-Hunt Publishing Company, 1986), 154.

Amendment rights of adult business owners.²⁸⁸ Fortunately for Newport and other American cities, the United States Supreme Court provided some answers in Young v. American Mini Theatres,²⁸⁹ a 1976 case out of Detroit, Michigan.

Young held that cities could use zoning and other appropriate legislation to balance “competing interests” of adult businesses First Amendment rights with the community’s “need to preserve a good quality of life.”²⁹⁰ In his concurring opinion, Associate Justice Lewis Powell observed that the Young case was the first time the Court examined “interests in free expression [which were] implicated in municipalities” planning and zoning concerns.²⁹¹

Young originated after Detroit conducted a study of adult entertainment’s effects upon surrounding neighborhoods and mainstream businesses. The study found that the presence of sexually oriented adult establishments produced adverse economic and social consequences. Those findings prompted Detroit to enact regulatory ordinances that included classifications of movie theaters based upon film content, but the city did not

²⁸⁸ Frederick F. Schauer, The Law Of Obscenity (Washington D.C.: Bureau of National Affairs, Inc., 1976), 241-242, citing Erznoznik v. City of Jacksonville (Florida), 422 U.S. 205 (1975) (city ordinance prohibiting movies which showed certain nude portions of male and female anatomies, but Jacksonville ordinance did not limit prohibitions to obscene films).

²⁸⁹ Young v. American Mini Theatres, 427 U.S. 50 (1976). See discussion in Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 94-96.

²⁹⁰ Young v. American Mini Theatres, 427 U.S. 50, 75-78, rehearing denied, 429 U.S. 873 (1976)(see Justice Lewis Powell’s concurring opinion at 75-78). To read another detailed rendition of Young’s background facts, see the District Court beginnings in Nortown Theatre v. Gibbs, 373 F. Supp. 363 (United States District Court, Eastern District of Michigan, 1974).

²⁹¹ Young, at 76.

forbid showing sexually explicit films.²⁹² The new ordinances also imposed minimum distance requirements from one adult theater to another.²⁹³ The Supreme Court cautioned that no land usages were immune from reasonable regulation and that First Amendment concerns would not stop cities' reasonable exercise of police powers.²⁹⁴ If a the use of property harmed or threatened with harm a community's general health and welfare, local governments could intervene. First Amendment rights could not shield harmful uses of property from reasonable government regulation.²⁹⁵

Young did not hold that local government could impose restrictions solely because sexually oriented materials offended citizens' sensibilities. In deciding whether specific legislation was unconstitutionally restrictive, courts could consider lawmakers'

²⁹² Young, 74-75 ("the [Detroit City] Council was motivated by its perception that the "regulated uses," when concentrated, worked a "deleterious effect upon the adjacent areas and could contribute to the blighting or downgrading of the surrounding neighborhood . . . determination that the recent proliferation of these establishments and their tendency to cluster in certain parts of the city would have the adverse effect upon the surrounding areas that the ordinance was aimed at preventing.").

²⁹³ Young, at 58, 65-66, 78-79:

Detroit has silenced no message, has invoked no censorship, and has imposed no limitation upon those who wish to view them. The ordinance is addressed only to the places at which this type of expression may be presented, a restriction that does not interfere with content. Nor is there any significant overall curtailment of adult movie presentations, or the opportunity for a message reach an audience.

See Ginsberg v. New York, 390 U.S. 629 (1968).

²⁹⁴ "Police power" represent the authority of government to legislate or otherwise take action on behalf of the health, safety, and morals of citizens. An example in American history was government regulation of the nation's meat industry, regulation of water and sanitation, and the like. See, Al Williams v. State of Arkansas, 217 U.S. 79 (1910); Young, at 71, 76; Berman v. Parker, 348 U.S. 26, 32 (1954) ("Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs.").

²⁹⁵ Young, 79-80, (J. Powell, concurring) ("that zoning, when used to preserve the character of specific areas of a city, is perhaps the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life.")(citations omitted), also citing Euclid v. Ambler Realty Co., 272 U.S. 365, (1926).

intentions.²⁹⁶ The Supreme Court concluded that Detroit did not intend the prevention of sexually oriented materials, an unconstitutional prior restraint, but merely sought to avoid the “deleterious effects” and “destructive impacts” of concentrated adult businesses. Detroit’s ordinances did not target the material inside the theaters, but only the effects upon the immediate surroundings outside. Young permitted cities to consider adult entertainment businesses’ adverse factors in formulating laws and regulations.²⁹⁷

Newport Applies Young v. Mini Theatres: The Adult Zoning Amendment

In March 1977, Newport incorporated Young’s holding in an amendment to the city’s zoning regulations. City Solicitor Tim Nolan drafted, and the Board passed, the (Adult Zoning Amendment).²⁹⁸ The Amendment’s “Preamble” identified what Commissioners considered the “negative secondary effects” of Newport’s downtown adult industry. Mayor Peluso, who had recently told the New Yorker of his support for adult entertainment in Newport, cast the only “nay” vote.²⁹⁹

²⁹⁶ Young, 71, 75, 80-81, J. Lewis Powell, concurring opinion:
It is not [the Court’s] function to appraise the wisdom of [Detroit’s] decision to require adult theaters to be separated rather than concentrated in the same areas. In either event, the city’s interest in attempting to preserve the quality of urban life is one that must be accorded high respect. Moreover, the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems . . . The purpose of preventing the deterioration commercial neighborhoods was certainly within the concept of the public welfare that defines the limits of the police power. . Berman v. Parker, 348 U.S. 26, 32-33 (1954) . . . it is clear indeed it is not seriously challenged that the governmental interest prompting the inclusion in the ordinance of adult establishments was wholly unrelated to any suppression of free expression.

²⁹⁷ Young, at 74-78, 80-81 (J. Lewis Powell, concurring opinion).

²⁹⁸ Ordinance O-77-9; Newport City Commission Minutes: March 28, 1977.

²⁹⁹ Newport City Commission Minutes: March 28, 1977; Tim Nolan interview, May 25, 2006; see, Calvin Trillin, “Newport: Across The River-Still Sinning,” The New Yorker, March 27, 1976, 114; Kentucky Post, “Newport Restricts New Adult Places,” (no author), March 29, 1977, 9K; Jim Dady, “New Adult Bookstore Ban Seen,” Kentucky Post, March 28, 1977, 7K; Tom Loftus, Gary Webb, Thomas Scheffey, “3 Tell Of Bribery Try In Newport,” Kentucky Post, November 21, 1978, 1K.

In enacting O-77-9, Commissioners introduced some limits upon an industry that had never exercised self restraint and had defied laws and regulations. The Amendment imposed minimum distances between adult businesses and set minimum distances between adult bars and nearby residential neighborhoods, churches, schools, and the like. The central business district became a downtown zone that henceforth prohibited new live adult entertainment businesses, including new adult theaters and bookstores. The Amendment was a “freeze” upon any new adult businesses within the central business district and further prohibited the addition of live nude entertainment in any establishment that did not offer it before passage on March 29, 1977.³⁰⁰

The new ordinance brought no immediate visible changes on Monmouth Street. The City of Newport could not constitutionally force businesses to close after the zoning amendment’s passage, but pre-existing businesses acquired a new zoning classification, that of “nonconforming uses.” A nonconforming use classification indicated the property’s current use was not in conformity with current zoning laws.³⁰¹ So long as the businesses remained open and operating, and so long as pre-existing adult bars did not become public nuisances, the “non-conforming” adult businesses could remain in operation. Without a sound legal reason to do so, Newport could not constitutionally

³⁰⁰ Jim Dady, “Newport Orders Up Anti-Porn Law To Combat Smut,” Kentucky Post March 3, 1977, 6K; Jim Dady, “NKAPC Softens Newport Anti-Porn Law Just A Bit,” Kentucky Post, March 24, 1977, 15K; Jim Dady, “New Adult Bookstore Ban Seen,” Kentucky Post, March 28, 1977, 7K; Kentucky Post, “Newport Restricts New Adult Places,” (no author), March 29, 1977, 9K. Note: Exceptions were possible, but a business owner needed to apply to the Board of Adjustments.

³⁰¹ Newport Zoning Code, Section 9.11(B)(1):
the lawful use of any public or private structure or land existing at the time of the adoption of this ordinance may be continued although such use does not conform to the provisions of this ordinance, however, no nonconforming use may be enlarged or extended unless and until the use is brought into conformance with all provisions of this Ordinance.

order nonconforming uses to close. If the law was otherwise, a city might end a legitimate business's existence through a mere zoning change.³⁰² If for reasons that included voluntary closures or a closure by court order,³⁰³ no adult businesses could thereafter open or reopen at the site.³⁰⁴ Using property for prostitution was an activity that might cause a court to close an adult business.³⁰⁵

During 1977-1978, several adult business owners³⁰⁶ and operators in Jefferson County, Kentucky, filed federal lawsuits to prevent enforcement of Louisville and County ordinances that were based upon the Young decision. The ordinances included regulations for minimum distances between similar establishments and imposed

³⁰² There were always exceptions, but none that apply here.

³⁰³ There were other nonconforming uses besides adult entertainment enterprises, but, for purposes of this thesis, sexually oriented businesses are the only ones being considered.

³⁰⁴ Gosset v Commonwealth, 270 Ky. 450, 109 S.W.2d 1183 (1937); Howard v. Commonwealth, 267 Ky. 315, 102 S.W.2d 32 (1937); City of Paducah v. Hook, 257 Ky. 19, 77 S.W.2d 383 (1934); Dulaney v. Fitzgerald, 277 Ky. 566, 13 S.W.2d 767 (1929); KRS 100.253(1); City of Paducah v. Johnson, 522 S.W.2d 447 (Ky. App. 04/25/1975)(the lawful use of a premises at the time of adoption of any zoning regulation affecting it may be continued, although such use does not conform to the provisions of such regulations); see Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Darlington v. Board of Councilmen, 282 Ky. 778, 140 S.W.2d 392 (1940); Dempsey v. Newport Board of Adjustments, 941 S.W.2d 483 (Ky. App., 1997); Pearson v. Bonnie, 209 Ky. 307, 272 S.W. 375 (1927); Newport Zoning Code, Section 9.11(B)(3).

³⁰⁵ Michael Whitehead interview, March 9, 2007. See, Kentucky Revised Statutes (KRS) Chapter 233:

House of prostitution . . . means any building, erection or other place used for the purpose of lewdness, assignation or prostitution. It includes the ground upon which the building stands, and all improvements upon that ground.

See also, KRS 233.020:

House of prostitution a nuisance -- To be enjoined and abated: Any person who erects, establishes, continues, maintains, owns, occupies, leases or subleases a house of prostitution shall be guilty of a nuisance, and the house of prostitution, the furniture, fixtures, musical instruments and all other contents of the house of prostitution are declared a nuisance, and shall be enjoined and abated as provided by this chapter.

³⁰⁶ Businesses included movie theaters, bookstores, adult bars.

mandatory conditions upon the interior physical layouts.³⁰⁷ Plaintiff owners asserted their First Amendment rights and alleged that the laws imposed systems of prior restraint upon free speech and expression and unlawfully encroached upon plaintiffs' privacy rights. The owners argued a right to market what they contended were "presumptively protected"³⁰⁸ materials without local government's unreasonable and arbitrary interferences. The federal judges assigned to the cases³⁰⁹ denied all the plaintiffs' claims.³¹⁰

Mayor Peluso Attempts Repeal Of Zoning Amendment

A challenge to Newport's adult zoning regulation did not come from business owners, but from the Mayor. Mayor Peluso had voted against the Adult Zoning Amendment and had refused to sign Irene Deaton's petition against licensing a pornographic bookstore. Within a month after the Zoning Amendment's passage, Peluso tried to bring about the Amendment's repeal. Rather than restrict adult businesses, the Mayor proposed special downtown zones, "combat zones," within which adult businesses could freely operate and thrive. The Mayor claimed the special zones would benefit Newport's economy and argued that enforcement of vice and zoning laws pertaining to

³⁰⁷ Louisville Ordinance No. 69, Series 1977 (a licensing ordinance, not a zoning regulation. Entire ordinance found in Movie World, Inc. v. Sloan, Mayor, 458 F.Supp. 863 (1978) (United States District Court, Western District, Ky., Louisville Division); Mac Borrigo, d/b/a Show World Cinema X, Ideal Arts Cinema, and Shelmar Follies (Plaintiffs) v. City of Louisville, et al. (Defendants), 456 F. Supp. 30 (1978) (United States District Court, Western District, Ky., Louisville Division).

³⁰⁸ See, Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); Chapman v. California, 405 U.S. 1020 (1972); Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964); Marcus v. Search Warrants, 367 U.S. 717 (1961).

³⁰⁹ There were enough plaintiffs that the federal judges divided them into two separate cases and two judges.

³¹⁰ At the time of the suit, Harry Mohney had at least four sexually oriented businesses operating in Louisville and Jefferson County. Justin Verst Cinema X files: Reports of Task Force On Child Prostitution And Pornography, Louisville, Kentucky.

adult entertainment required too much police time.³¹¹ Furthermore, Peluso offered, a prosperous adult industry would mean jobs and desperately needed tax revenues. The Board rejected each of Peluso's calls for repeal.³¹²

In late 1977, the Zoning Amendment accomplished one of its intended goals, the prevention of more adult businesses. Larry Gabbard tried to open an adult bookstore on Monmouth Street. Even Mayor Peluso's support was not enough to overcome the Zoning Amendment's terms. Gabbard filed lawsuits and opened the store without a business license, a move that evoked an immediate police response.³¹³ Gabbard's lawsuits ended when the building's owners sold the premises.³¹⁴

For a brief time, another adult bookstore opened under the partial ownership of

³¹¹ Tom Loftus, "Battle Shapes Up For Newport Combat Zone," Cincinnati Post, December 5, 1977, 26C. See, Ephraim Glenn Coulter, Wayne Hoffman, Eva Pendleton, and Alison Redick, editors, "Policing Public Sex: Queer Politics and the Future of AIDS Activism", (Boston, Massachusetts: South End Press, 1996) 294; Barbara Milman, "New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?," Harvard Woman's Law Journal 3 (1980): 54-59; Lauri Lewin, Naked Is The Best Disguise: My Life as a Stripper (New York: William Morrow and Company, 1984), 30; Norman Marcus, "Zoning Obscenity: Or the Moral Politics of Porn," Buffalo Law Review 27, no. 1 (1978): 2-4; Robert C. Ellickson, "Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning," Yale Law Journal 105, no. 5 (1996): 1165-1248; John Gilmore, "Zoned Out," Planning 65, no. 2 (February, 1999): 15.

³¹² Jim Dady, "Ban On Adult Shops," Kentucky Post, April 26, 1977, 7K; Newport City Commission Minutes: April 25, 1977 (vote 3-2 against repeal of O-77-9); Kentucky Post, "Newport Restricts New Adult Places," (no author), March 29, 1977, 9K; Tom Loftus, "Battle Shapes Up For Newport Combat Zone," Cincinnati Post, December 5, 1977, 26; Newport City Commission Minutes: October 14, 1977; Jim Dady, "Ban On Adult Shops," Kentucky Post, April 26, 1977, 7K.

³¹³ Tom Loftus, "Newport's Anti-Smut Law Comes Under Fire," Kentucky Post, September 24, 1977; Roger Auge, "Bookstore Owner Arrested On Opening Day," Kentucky Post, October 8, 1977, 2K; Guilty In Adult Shop Case," (no author), November 5, 1977, 2K.

³¹⁴ Kentucky Post, "Gabbard Slaps 2d Suit On City," (no author), October 20, 1977, 18K; Kentucky Post, "Newport Wins In Bookstore Skirmish," (no author), October 24, 1977, 3K.

Lester “Junior” Lee.³¹⁵ Lee was so determined to have an adult bookstore that he tried to bribe newcomer Commission candidates, Steve Goetz, Ken Mullikin, and Marty Due to “leave the bookstore alone.”³¹⁶ The 1977 bribe attempt failed and Lee’s bookstore effort ended when an unknown assailant murdered him!³¹⁷

When 1977 ended, Newport looked nearly the same as when Irene Deaton assumed office, with the notable exception of an James Lewallen’s bookstore in the middle of the central business district. Downtown remained dominated by adult bars from Fourth to Eleventh Streets, but there were some subtle differences. The Adult Zoning Amendment began the process, if ever so slightly, of reducing adult entertainment’s unchallenged grip upon downtown. Newport had officially taken a position to prevent adult entertainment’s future expansion, and a grand jury had indicted Cinema X and James Lewallen for obscenity crimes. As Charles Sarakatsannis had done before her, newcomer Irene Deaton succeeded in making adult entertainment issues frequent Board topics, and more reformers placed their hats into the political ring for election in the 1977 Commission races. Sin City’s foundation was not yet ready to crumble, but cracks had begun to appear.

³¹⁵ City Commission Minutes: October 11, 1977.

³¹⁶ Tom Loftus and Thomas Scheffey, “Three Tell Of Bribery Try In Newport,” Kentucky Post, December 21 1978, 1K; interview with former Commissioner and Mayor Steve Goetz.

³¹⁷ Former Newport Detective Al Garnick interview, December 15, 2006.

CHAPTER V

A REFORMER MAJORITY: THE 1978-1979 COMMISSION

Although legislative changes made by the 1976-77 City Commission resulted in no immediate discernible changes in the central business district, Kentucky acquired a new court system and Campbell County elected a new prosecutor. Both developments had extreme consequences for the adult entertainment industry. Nude dancers and B-girls still drew crowds and Newport still wore the Sin City cloak, but challenges to the former status quo intensified as elements needed for a true reform of Newport began to appear. This chapter describes the legal and political changes that occurred during 1978-1979.

A new court became operational and rendered extinct Kentucky's patchwork system of city and county courts. Prosecutors in misdemeanor cases were no longer appointees of the City Commission. Instead, Kentucky prosecutors became independent of city governments. Campbell County voters elected an aggressive County Attorney who became a "worst nightmare" for chronically offending adult businesses and the in-bar prostitution that owners permitted and promoted. In Newport city government, a reformer majority on the Board took office. Mayor Johnny Peluso, with two years remaining on his mayoral term, became a minority Board member and almost powerless act when the four reform minded Commissioners implemented measures to make government more responsive to citizens. Concurrent a reformer Board were the increasingly more proactive nine Newport neighborhood councils and the Newport Citizens Advisory Council. The councils' goal was

to improve the quality of life in Newport and to become more involved in city affairs. For two years, Newport Police and a new Liquor License Administrator enforcement efforts and enhanced scrutiny of city bars had the support of local government. Since Prohibition, Newport had lacked the necessary combination of law enforcement, city government, citizen influence and participation, and an independent judiciary necessary to overcome the money, politics, and corruption that created and sustained Sin City. These elements started to converge during 1978-79.

New Courts And New System For Prosecutors

Effective in January 1978, Kentucky's "Judicial Article" or "Judicial [Constitutional] Amendment" ended the Commonwealth's patchwork system of locally controlled city and county courts.³¹⁸ During the mid-1970s, Kentucky voters approved constitutional changes in the state's judicial system for full implementation in 1978. Circuit Court changes were minimal, but the Judicial Amendment established a District Court system comprised of 114 new judges and at least one such court in each of the state's 120 counties.³¹⁹ After January 1, 1978, the new District Judges' duties included the trials of misdemeanor cases. Prosecutions of misdemeanors in the new courts fell upon each of the state's County Attorneys.³²⁰ The Commonwealth's highest court, the Kentucky Court of Appeals became the Kentucky Supreme Court. The Judicial Article also created a new

³¹⁸ Nancy Lancaster, "Judicial Reform In Kentucky: Dedication, Desire for Excellence Led To 1975 Passage of Judicial Article," Accent On Courts 7, no. 4 (October-December, 1985) (Frankfort, Kentucky; Kentucky Administrative Office Of The Courts), 1; see generally, Ky. Const. § 109-§124; Kentucky Revised Statutes, "Title Iv-The Judicial Branch," Chapters 21 thru 34; KRS, Chapter 15.700 et seq.

³¹⁹ Campbell County had three District Judges. The number of District Judges depended upon some formula related to population and caseloads.

³²⁰ The District Courts handled probate, juvenile, mental health inquests, and other matters, including civil cases below a certain dollar amount; however, the criminal misdemeanor cases are the criminal offenses relevant to this thesis.

intermediate appellate court,³²¹ and named it the Court of Appeals.³²²

The General Assembly restructured the state's system for prosecuting cases. The County Attorneys became part of the state's Unified Prosecutorial System and enjoyed independence from municipalities. Prosecutors were no longer subject to dismissals by city officials and city politics could no longer dictate prosecutors' priorities.

A New Campbell County Prosecutor: County Attorney Paul Twehues

In January 1978, Campbell County native Paul Twehues became County Attorney for Campbell County, a high caseload venue.³²³ Twehues and his staff recall the nightmarish first year.³²⁴ At the beginning, the new District Court system had no ready courtrooms, and the system required entirely new record keeping and other organizational protocols. Twehues hired three Assistant County Attorneys, and, at mid-year, a fourth.³²⁵ None of the new prosecutors had experience prosecuting cases in the way that their new duties demanded, but, prepared or not, on January 1, 1978, Twehues and his staff of Justin

³²¹ This term means that another level of appeal existed within the system, in this case the Supreme Court.

³²² In ascending order relative to monetary and criminal jurisdictions, Kentucky's court levels were the District Court, the Circuit Court, the Court of Appeals, and the Kentucky Supreme Court. Though a trial court for the most part, all Circuit Courts became "appellate courts" for appeals from District Courts. For appeals from administrative bodies, Circuit Courts were a combination of appellate and trial court, depending upon the administrative body from which the appeal originated. [e.g. An aggrieved bar owner could appeal a Liquor Administrator's or a city's decision to revoke or suspend a liquor license to the states' ABC Board. From that agency, an appeal was to the Franklin County Circuit Court, which could retry the matter or simply decide a question as an appellate court. Beyond the Circuit Court was the Court of Appeals and then the Kentucky Supreme Court.]

³²³ As County Attorney, Twehues had the additional duty to serve as the legal advisor for the Campbell County Fiscal Court (the county governing body).

³²⁴ Former County Attorney Paul Twehues interview, April 2, 2006; Campbell County Attorney Justin Verst interview, May 3, 2006; Former Assistant Campbell County Attorney and former Campbell County Circuit Judge (retired), Hon. William Wehr interview, April 27, 2006.

³²⁵ The original three were Justin Verst, Bill Wehr, and Bill Schoettelkotte. On July 1, 1978, I became the fourth, but in a separate law office.

Verst, Bill Wehr, and Bill Schoettelkotte assumed their new roles.³²⁶ Despite the lack of prior prosecutorial experience and the heavy caseloads, Twehues's office earned a reputation among law enforcement for preparedness and tenacity.³²⁷

Citizen Participation In City Government

In addition to developments within Kentucky's criminal justice system were changes in Newport's city government. In the 1977 elections, voters re-elected Irene Deaton and added first timers Steve Goetz, Ken Mullikin, and Marty Due. The newcomers received a taste of old time Newport politics when, prior to fall elections, local nightlife figure Lester Lee offered them a bribe. Former Mayor and Commissioner Steve Goetz recalls the incident occurred at night in an atmosphere reminiscent of an old black and white movie, complete with a foggy mist. As the candidates stood in a darkened parking lot, Lee drove up to them in a "dark sedan," gave them a cash-filled envelope, and stated that, when the three were in office, to "leave the bookstore alone." The stunned men returned the funds shortly thereafter. Such was an example of local politics the three hoped to change.³²⁸

The new majority tried to infuse city government with professionalism and integrity.³²⁹ Determined to create a "bridge" between citizens and elected leaders, the Commission established the practice of seating a Newport Citizens Advisory Council representative with the Board during meetings and caucuses. The practice allowed the rotating representatives to freely participate in Board discussions. Created, in part, to satisfy

³²⁶ Paul Twehues interview, April 2, 2006; Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006.

³²⁷ Former Kentucky State Police Detective (retired) (must remain anonymous) interview, March 14, 2006; former Newport Police Chief Rick Huck interview, March 23, 2006; former Newport Police Detective Al Garnick interview, May 24, 2006.

³²⁸ Former City Commissioner Steve Goetz interview, May 23, 2006; Tom Loftus, "Three Tell Of Bribe Try," Kentucky Post, November 21, 1978.

³²⁹ Steve Goetz interview, April 25, 2006.

citizen input protocols for federal urban grants, the Advisory Council formed during 1976 with the assistance of the Brighton Center, a local privately run social service agency. Comprised of neighborhood councils from each of Newport's nine neighborhoods, the Newport Citizens Advisory Council (NCAC) sought to improve their city's image and quality of life. Albeit non-voting, the special Commission seat enhanced the Advisory Council's role in local government. Both literally and figuratively, the arrangement gave citizens a "voice" in local government. Since the neighborhood councils chose the revolving representatives, Mayor Johnny Peluso had no control over who sat; therefore, he opposed the practice.³³⁰ Peluso appreciated even less the Advisory Council's scrutiny.³³¹

City Ombudsman Kenneth Rechtin

The special Commission seat was not the new Commission's only new idea. To further the goal of a more responsive city administration, and, once again, over Johnny Peluso's objections, Commissioners created the position of City Ombudsman. The new office was a step toward eliminating past practices of some elected officials' exploiting their elected positions to extend special favors to supporters, often at city expense. Commissioners envisioned an Ombudsman acting as a liaison between elected officials and citizens for complaints and requests, a type of official "middleman."³³²

Mayor Peluso opposed the Ombudsman's position and he also opposed Commissioners' choice for the job, Kenneth Rechtin.³³³ Appointee Rechtin was proactive in the NCAC and shared the Advisory Council's goals of improving Newport.

³³⁰ Newport License Administrator Michael Whitehead interview, March 9, 2007; interview with former Mayor and Commissioner Steve Goetz, May 23, 2006.

³³¹ Interview with Steve Goetz, May 23, 2006.

³³² Steve Goetz interview, May 23, 2006; former Newport Ombudsman (1978-1979) Kenneth Rechtin interview, July 18, 2008.

³³³ Steve Goetz interview, May 23, 2006.

Commissioners increased Peluso's displeasure by appointing Rechtin to be the city's newest Liquor License Administrator.³³⁴ During the remainder of the Commission term, the level of Peluso's dislike for Ken Rechtin became a barometer of the Liquor Administrator's effectiveness.

Located in the State Capitol of Frankfort, the Alcoholic Beverage Board's agents did some monitoring of licensed establishments around the Commonwealth,³³⁵ but, as a "city of the second class," Newport had its own "alcoholic beverage control administrator."³³⁶ Rechtin's duties included investigating complaints of liquor law violations, conducting hearings to adjudicate complaints, and assessing sanctions such as fines and suspensions, but the City Commission decided license revocations. Liquor Administrator decisions were often not the final resolution of disputes over liquor law violations. An aggrieved licensee could take an appeal, first to the ABC Board in Frankfort and then to the Circuit Court in Franklin County (Frankfort). A further appeal might go to the Kentucky Court of Appeals

³³⁴ Newport City Commission Minutes: January 9, 1978, January 16, 1978; Steve Goetz interview, April 25, 2006; Bertram Workum interview, March 14, 2007; April 25, 2006; City of Newport Resolutions: Resolution No. R-78-1671; Newport City Commission Minutes: October 30, 1978; Ken Rechtin interview, July 18, 2008.

³³⁵ KRS Chapter 241: KRS 241.020, KRS 241.030, KRS 241.060; City of Newport v. Tye, Ky., 335 S.W.2d 340 (1960).

³³⁶ Newport License Administrator, Michael Whitehead interview, March 9, 2007; interview with former Newport Ombudsman and Liquor Administrator, Kenneth Rechtin, July 18, 2008. See, KRS 241.160("The legislative body of any city of the first, second, third, or fourth class or a consolidated local government in which traffic in alcoholic beverages is not forbidden by KRS Chapter 242 shall by ordinance create the office of city alcoholic beverage control administrator, or shall assign the duties of this office to a presently established city office."); Deckert v. Levy, 308 Ky. 67, 213 S.W.2d 431 (1948); Shearer v. Dailey, 312 Ky. 226, 226 S.W.2d 955 (1950); see, Whitehead v. Estate of Bravard, 719 S.W.2d 720 (Ky., 1986). KRS 241.190 ("The functions of each city administrator shall be the same with respect to city licenses and regulations as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a city administrator may be less stringent than the statutes relating to alcoholic beverage control or than the regulations of the board.").

and, in some instances, to the Kentucky Supreme Court. The entire process could take more than two years, during which time the bar often remained open.³³⁷

Kenneth Rehtin embraced both roles enthusiastically. As the new Liquor Administrator, Rehtin provided more monitoring of liquor licensed establishments than had past Administrators and certainly more than the licensees preferred.³³⁸ Newport's bars received additional scrutiny when the Advisory Council established a Liquor Review Board to assess certain bars. The new scrutiny and demands that bar owners' comply with regulations was a source of disagreements between the city and the bar licensees.³³⁹

Bar owners and licensees became disgruntled over Newport's enhanced scrutiny and enforcement. Supportive of bar owners, Mayor Peluso saw the discontent as a reason to replace Kenneth Rehtin. The Campbell County Tavern Owners Association complained

³³⁷ Michael Whitehead interview, March 9, 2006.

³³⁸ Michael Whitehead interview, March 9, 2006; Steve Goetz interview April 25 2006; Newport City Commission Minutes, December 11, 1978; Kentucky Post, (no author), "T-V" Tries To Bounce City Liquor Director," December 12, 1978, 5K; Kentucky Post, (no author), "Three Newport Bars Pay Fines," November 22, 1978, 6K; Kentucky Post, "Newport Café May Close After Disorderly Conviction," (no author), January 10, 1979, 10K; Cincinnati Enquirer, "Newport Café Loses License," (no author), January 17, 1979, 11A; Jeff Gutsell, "Liquor Administrator Fines Jai Alai Bar 4200," Cincinnati Enquirer, June 9, 1979, 1A; Tom Loftus, "Four Arrested On Prostitution Charges," Kentucky Post, November 28, 1978, 2K; Kentucky Post, (no author), "Three Newport Bars Pay Fines," November 22, 1978, 6K; Cincinnati Enquirer, (no author), "Newport Bars Slapped As License Reviews Start," December 1, 1978, 11A; Kentucky Post, (no author), "Café Faces New Liquor Charges," December 4, 1978, 2K (prostitution charges); Jim Reis, "Mousetrap To Enter Guilty Plea," Kentucky Post, December 9 1978, 4.

³³⁹ Kentucky Post, "Rehtin Pushes Booze Law Changes," (no author), December 5, 1978, 1K; Cincinnati Enquirer, (no author), "Newport Bars Slapped As License Reviews Start," December 1, 1978, 11A; Tom Loftus, "Bar Men Belly Up To Protest Plan," Kentucky Post, November 14, 1978, 8K; Tom Loftus, "Fight Stirs In Newport Bar Hours," Kentucky Post, November 11, 1978, 1K; Cincinnati Enquirer, "Newport's Late Night Gets New Life," (no author), November 28, 1978, 11; Cincinnati Enquirer, Newport Committee To Vote On 3 a.m. Bars Issue," (no author), June 10, 1979, B10; Jeff Gutsell, "Panel Urges Newport To Stop Issuing 3 a.m. Liquor Licenses," Cincinnati Enquirer, 3A; Newport City Commission Minutes: August 9, 1979, August 10 1979. Newport City Commission Minutes, December 11, 1978.

there were "too many anti-tavern reformers" in city government. As evidence, the Association cited Rechtin's appearance before a Kentucky General Assembly committee exploring ways to improve Kentucky's liquor laws. Peluso's request to fire Ken Rechtin failed when Commissioners found the Association's claims to be without merit.³⁴⁰

Kenneth Rechtin was not alone in efforts to deal with illegal activities. With a supportive Board majority, Newport Police conducted anti-vice operations. From September through December of 1978, officers investigated and raided adult bars. Police used undercover police teams to visit establishments and to observe offenses, including prostitution, underage drinking, and the use of minors as dancers in the strip bars.³⁴¹ Police efforts led to a number of successful prosecutions.

One of law enforcement's targets was the Jai Alai nightclub at Ninth and York Streets. Notorious for prostitution, officers raided the club twice in 1978. A November

³⁴⁰ Ken Rechtin interview, July 18, 2008; Newport City Commission Minutes, December 11, 1978; Kentucky Post, (no author), "T-V" Tries To Bounce City Liquor Director," December 12, 1978, 5K; Kentucky Post, (no author), "Three Newport Bars Pay Fines," November 22, 1978, 6K; Cincinnati Enquirer, (no author), "Newport Bars Slapped As License Reviews Start," December 1, 1978, 11A; Kentucky Post, "Café Faces New Liquor Charges," (no author), December 4, 1978, 2K (prostitution); Jim Reis, "Mousetrap To Enter Guilty Pleas," Kentucky Post, December 9, 1978, 4K; Kentucky Post, "Rechtin Pushes Booze Law Changes," (no author), December 5, 1978, 1K; Kentucky Post, "Newport Café May Close After Disorderly Conviction," (no author), January 10, 1979, 10K; Cincinnati Enquirer, "Newport Café Loses License," (no author), January 17, 1979, 11A; Jeff Gutsell, "Liquor Administrator Fines Jai Alai Bar 4200," Cincinnati Enquirer, June 9, 1979, 1A; Tom Loftus, "Four Arrested On Prostitution Charges," Kentucky Post, November 28, 1978, 2K; Cincinnati Enquirer, "Newport Committee To Vote On 3 a.m. Bars Issue," (no author), June 10, 1979, 10B; Jeff Gutsell, "Panel Urges Newport To Stop Issuing 3 a.m. Liquor Licenses," Cincinnati Enquirer, June 14, 1979, 3A;

³⁴¹ Cincinnati Enquirer, "Newport Raiders Arrest Three," (no author), September 14, 1978, B3; Gary Webb, "Three Arrested in Newport Crackdown," Kentucky Post, September 14, 1978, 15K; Kentucky Post, "Trials Set in Vice Crackdown," (no author), September 15, 1978, 11K; Jeff Gutsell, "Twelve Arrested in Newport Raid," Cincinnati Enquirer, November 18, 1978, D3; Tom Loftus, "12 Nabbed In Newport Gambling Raid," Kentucky Post, November 17, 1978, 1K.

1978 raid included the unusual scenario of a civilian informant having sex with a female employee for money. Though unplanned, the incident supported claims of Jai Alai prostitution. The Jai Alai cases afforded Paul Twehues an opportunity to demonstrate the doggedness of his office.³⁴² The adult industry paid a price for not taking heed.

Through the end of the 1978-79 Commission term, Ken Rechtin and Newport Police continued their enforcement efforts. Vice cases and liquor law violations appeared on court dockets and Rechtin's hearing calendars. 1978-1979 offered an insight into what might be accomplished with the right combination of an independent judiciary, an aggressive and independent prosecutor, a supportive city government, a committed police agency, and a determined Liquor Administrator. Further, the two years presented an example of a better harmony between citizens and their city government. It appeared that Newport might be turning a corner away from its "Sin City" image, but it was not yet to be. Instead, the city was about to endure two years of what the press called a "dismal chapter in the city's history." Newport had to backslide one more time before experiencing a true catharsis from "Sin City."³⁴³ Worse for adult businesses, the Kentucky State Police were coming to Newport.

³⁴² Tom Loftus, "Four Arrested on Prostitution Charges," Kentucky Post, November 28, 1978, 2K; Tom Loftus, "Plead Not Guilty in Jai Alai Bust," Kentucky Post, November 29, 1978, 15K; Jim Reis, "Tapes at Issue in Prostitution Case," Kentucky Post, December 15, 1978; 1K; Kentucky Post, "No Tapes of Arrest Officials Say," (no author), December 20, 1978, 24K; Jim Reis, "Jury Can't Decide [Jai Alai] Sex Case," Kentucky Post, January 5, 1979, 3K; Terry Donahue and Al Salvato, "Find Women Guilty On Prostitution Charges," Kentucky Post, January 20, 1979, 7K; Cincinnati Post, "Grant Third Trial In Jai Alai Case," (no author), February 15, 1979, 18; Jeff Gutsell, "One Acquitted, One Convicted In Jai Alai Case," Cincinnati Enquirer, May 19, 1979, 2A; Jeff Gutsell, "Sixty Day Sentence Levied In Jai Alai Prostitute Case," Cincinnati Enquirer, June 8, 1979, 1A.

³⁴³ Editorial, "Newport: Dismal Chapter In City History Closed Quietly," Cincinnati Enquirer, January 10, 1982, I2.

CHAPTER V:

A CLEANUP OF NEWPORT – THE BEGINNING

1980-1981 were difficult years for Newport and Newport's adult industry, but the period was pivotal for the city's future. 1979 elections returned a liberal majority to the City Commission. Former Mayor Johnny Peluso, aging politician Tony Warndorf, and Owen Deaton³⁴⁴ became the new Commission majority. The three made no secret of their pro-adult entertainment leanings. Former Liquor Administrator and City Ombudsman Kenneth Rechtin suggests that the 1978-79 reform Commissioners had to face so many long percolating problems that " [the Commissioners] could not please everybody." The result was a majority in 1980-81 who favored a role for adult entertainment and a return to former practices.³⁴⁵

The 1980-1981 Commission majority may have been reminiscent of past times, but Newport's citizenry was not. The 1978-1979 Commission had empowered the Newport Citizens Advisory Council and helped infuse the city's neighborhoods with a sense of optimism about shedding the Sin City image. The County Attorney was aggressive on vice cases and Newport Police proved its own potential for ferreting out vice and participating in successful prosecutions. Within a few months of the new Commission term, citizens and the adult entertainment industry discovered the Kentucky State Police would commit to anti-

³⁴⁴ No relation to Irene Deaton. To avoid confusion, references to Mr. Deaton will include his first name or first initial (e.g. O. Deaton; Owen Deaton) .

³⁴⁵ Kenneth Rechtin interview, July 18, 2008.

vice operations. Needed elements for a Newport vice cleanup were converging, but, unfortunately, any anti-vice effort would have to take place in spite of the 1980-1981 City Commission's new three member majority. This chapter describes the early salvos in the anti-vice struggle that began in April 1980 and continued for a decade until Newport rid itself of Sin City. Unwilling or unable to control itself in the past, Newport's adult industry was about to experience a reckoning.

The New Commission: City Government Backslides

The 1980-81 Commission was a stark contrast to its immediate predecessor and reformers were anxious. Members of the new Commission majority members were protective of the adult entertainment industry and supportive of an adult industry's role in Newport's economy and culture. As Mayor, Johnny Peluso opposed the Adult Zoning Amendment of 1977 and supported establishing special downtown zones ("combat zones") to accommodate and expand downtown's adult industry. He opposed police monitoring of adult bars, and believed adult businesses were beneficial because they brought crowds. The other two liberals on the Commission, Owen Deaton and Tony Warndorf, seldom parted ways with Peluso on adult entertainment matters.³⁴⁶

John Peluso was not the only cause for concern. Tony Warndorf favored a "wide open" Newport and his association with nightlife figure Sammy Wright raised fears about improper influences by adult business owners. Warndorf frequented the Pepper Pod, a popular short order restaurant a few doors from the adult bookstore, a spot also frequented by Wright, and the two regularly associated with each other. Wright had a history of demanding concessions for adult establishments and trying to exert influence over public

³⁴⁶ Interview with former Mayor and City Commissioner Steve Goetz, April 25, 2006; interview with Kentucky Post reporter (retired) Bertram Workum, March 14, 2007.

officials.³⁴⁷

The Commission still had a reformer presence. Irene Deaton became the city's Mayor and voters returned incumbent Commissioner Steve Goetz to another term. The two became the new Board's minority faction on issues pertaining to adult entertainment. Goetz recalls that, shortly after taking office, Warndorf told him that he and "[Mayor] Deaton had their chance" and that the two of them should be quiet.³⁴⁸

Adult Entertainment Divides Commission

Not unexpectedly, the Commission regularly divided on adult entertainment issues. Morality questions aside, there was a wide gulf between the majority and minority members on the economic importance and future role of adult businesses. Commissioner Steve Goetz and Mayor Irene Deaton believed adult businesses and the image they projected stymied economic growth and were at the root of the city's declining population and losses of mainstream businesses. The Mayor and Goetz believed that so long as Newport remained Sin City, Newport's economic future was dim.³⁴⁹

Taking issue with Goetz and the Mayor, majority members cited large crowds and the uniqueness of Newport's adult businesses as a source of needed revenues. Peluso claimed adult entertainment brought \$100,000 in needed fees and taxes, but the former mayor identified no reports or other documentation for that figure. Peluso chided reformers that their only concern was whether "some gal kept her pants on."³⁵⁰

Fearing what the majority might do, the Advisory Council monitored meetings and

³⁴⁷ Former Newport City Solicitor and Campbell County District Court Judge Tim Nolan interview, May 25, 2007.

³⁴⁸ Former City Commissioner and City Mayor Steve Goetz interview, April 25, 2006.

³⁴⁹ Steve Goetz interview, April 25, 2006; Martin Hogan, Jr., "Newport Nite Life: The Beat Goes On," Cincinnati Enquirer, May 11, 1980, B1.

³⁵⁰ Martin Hogan, Jr., "Newport Nite Life: The Beat Goes On." Cincinnati Enquirer, May 11, 1980, B1.

caucuses, a decision that evoked a hostile majority response. Disdainful of critics and criticism, the majority members were openly contentious toward any opposition, a circumstance the local media publicized. One local T-V anchor, Nick Clooney,³⁵¹ followed the combative Commission meetings, the “Monday Night Fights.”³⁵² Clooney sometimes began his broadcast coverage of Newport’s Commission sessions with a parody of the popular Saturday Night Live signature opening: “Live from Newport . . . It’s Meeting Night.” Commissioners Peluso, Warndorf, and Owen Deaton were not amused. On one occasion, Tony Warndorf “squared off” with Kentucky Post reporter Bertram Workum outside the meeting room.³⁵³

To evade scrutiny and to avoid requirements of Kentucky’s Open Meetings Law (“Sunshine Law), the majority often retired to “executive sessions,” a legal protocol for government to conduct business away from the public view, but only for certain enumerated reasons.³⁵⁴ Commissioners Peluso, Warndorf, and Owen Deaton frequently abused the executive session protocols in order to obstruct Advisory Council monitoring. To further hinder critics and citizens’ tracking of Commission activities, the majority imposed limits upon citizens’ comments during meetings and sometimes changed meeting nights and times without sufficient notice. Steve Goetz recalls that the majority often ignored their own restrictions if a speaker was one whom the majority considered “friendly.”³⁵⁵ In further

³⁵¹ Father to actor George Clooney; brother to late singer and actress Rosemary Clooney.

³⁵² Purvis, Bicentennial History, 284.

³⁵³ Former Kentucky Post reporter Bertram Workum interview, March 14, 2007; interview with Associate Justice of Kentucky Supreme Court and former Newport City Solicitor Hon. Wil Schroder, May 9, 2006.

³⁵⁴ The “Open Meetings Act,” KRS Chapter 61No. : “. . . the basic policy . . . is that the formation of public policy is public business and shall not be conducted in secret . . . “

³⁵⁵ Jeff Gutsell, “Newport Night Life Nudges Anger, Stirs Emotions,” Cincinnati Enquirer, April 7 1980, D2; Steve Goetz interview, May 23, 2006; Bertram Workum,

avoidance of the Sunshine Law, majority members frequently decided city matters other than on the record at public meetings.³⁵⁶ When confronted about the illegal practice of conducting public business away from public scrutiny, Warndorf suggested what the Advisory Council “could do with the Sunshine Law” and to “buzz off.”³⁵⁷ To discourage the majority’s off-the-record discussions, Steve Goetz began having a small recording device near at hand. Tony Warndorf stole the device.³⁵⁸

Majority Cleans House

Less than two months into the 1980-81 term, the majority began eliminating employees not to their liking. At the February 20, 1980, meeting, the majority fired Liquor-License Administrator Kenneth Rehtin³⁵⁹ and City Manager Ralph Mussman. When

“Newporters Hoot at Liquor Law’s Repeal,” Kentucky Post, March 12 1980, 1K; Allan Tucker, “Newport Limits Meeting Attendance,” Kentucky Post, March 13 1980, 3K; Newport Commission Minutes: March 12, 1980; Steve Goetz interview, May 23, 2006; Bertram Workum interview, March 14, 2007.

³⁵⁶ Kentucky Revised Statute 61.800 – KRS 61.850; KRS 61.810: Exceptions to Open Meetings; enacted 1974, revised 1992, 1994; KRS 81.805(1); Courier-Journal and Louisville Times Co., v. University of Louisville Bd of Trustees, 586 S.W.2d 374 (Ky.App. 1979). NOTE: only those reported cases or Opinions of [Kentucky] Attorney General up to and including 1980 are cited; Attorney General Opinions: OAG- 74-378 OAG- 78-411; OAG- 78-571; OAG- 80-81; Fiscal Court v. Courier-Journal and Louisville Times Co., 554 S.W.2d 72 (Ky. 1977).

³⁵⁷ Steve Goetz interview, May 23, 2006; Bertram Workum, “Priest Tells Newport Cleanup Time”, Kentucky Post, March 6, 1980, 1K; Bertram Workum, “Buzz Off: Warndorf Tells Citizens’ Group”, Kentucky Post, January 15, 1980, 1K; Interview with Steve Goetz, May 23, 2006; Bertram Workum, “Newport Officials In Conflict On Seating”, Kentucky Post, January 31, 1980, 14K; Bertram Workum, “Keep Quiet, Warndorf Warns”, Kentucky Post, January 25, 1980, 3K; Bertram Workum, “Newport Snubs Citizen Board”, Kentucky Post, February 8, 1980, 6K; Newport Commission Minutes: March 12 1980.

³⁵⁸ Bertram Workum, “Recorder Incident Ignites Newport Row”, Kentucky Post, February 12, 1980, 1K; Bertram Workum, “Goetz Questions Closed Meetings”, Kentucky Post, February 1, 1980, 2K; Bertram Workum, “Warndorf Said Tape Taken Not Stolen,” Kentucky Post, February 13, 1980, 6K; Bertram Workum, “Warndorf Guilty in Recorder Case”, Kentucky Post, March 8, 1980, 1K.

³⁵⁹ Rehtin recalls that, before February 20, 1980, newly elected Owen Deaton “interviewed” him about expectations the new majority had. Rehtin suggests that he “did not answer the questions the [right way].”

Mayor, Peluso tried to dismiss Ken Rechtin but never had the needed votes.³⁶⁰ As a majority member, Peluso had the votes. The majority's other target did not go quietly.

At the February 20, 1980, Commission meeting, and when the majority made clear their intent to fire him, City Manager Ralph Mussman read a statement about a "well-known nightlife figure" who had threatened him with loss of the Manager's position. Mussman related how the "nightlife figure" demanded approval of James Lewallen's bookstore license transfer since 1978.³⁶¹ Mussman did not name the "figure" during the meeting but explained the firing was an example of nightlife figures' influences over the majority.³⁶² Mussman later revealed the "nightlife figure" was Sammy Wright.³⁶³ Commissioner Warndorf responded by calling the outgoing City Manager a "liar," but subsequent events supported Mussman's claims.³⁶⁴ To replace Mussman, the three member majority appointed Sammy Wright's friend and attorney, Bert Berg. During the following week, the Bookstore's attorneys threatened to sue if the disputed license transfer did not occur, but with a Commission majority of Peluso, Warndorf, and Owen Deaton, the transfer lost its

³⁶⁰ Steve Goetz interview, May 23, 2006; Newport City Commission Minutes: February 20, 1980.

³⁶¹ James Lewallen v. Commonwealth of Kentucky, Ky.App., 584 S.W.2d 748 (1979) (as modified July 20 1979) Interview with Steve Goetz: May 23 2006; See, Tom Loftus, "Ask Judge to Allow Bookstore Hearing," August 21, 1978, Kentucky Post, 14K; Tom Loftus, "Bookstore's License in Jeopardy," Kentucky Post, July 6 1978, 2K; Kentucky Post, "Claim Defects in Obscene Plea," (no author), August 5 1978, 4K; Tom Loftus, "No Plea Change in Bookstore Case," Kentucky Post, August 19, 1978, 11K; Kentucky Post, "Newport Wins Round In Bookstore Fight," August 22 1978, 5K; Bertram Workum and Tom Loftus, "Gangland Killing Linked to Coal Fields," Kentucky Post, September 23, 1978, 1K.

³⁶² Newport City Commission Minutes: February 20, 1980; Bertram Workum, "Newport Risks Bookstore Suit," Kentucky Post, February 27, 1980, 3K; Bertram Workum, "Mussman Blames Newport Nightlifer for Job Loss," Kentucky Post, February 21, 1980, 1K (The vote was 3-2. Steve Goetz and Mayor Deaton were the minority votes).

³⁶³ Bertram Workum interview, March 14, 2007.

³⁶⁴ Bertram Workum interview, March 14, 2007; Newport City Commission Minutes: February 20, 1980; Bertram Workum, "Mussman Blames Newport Nightlifer for Job Loss," Kentucky Post, February 21, 1980, 1K.

urgency.³⁶⁵ The majority considered abolishing the Advisory Council's special seat, but did not do so. Nevertheless, to show their scorn, the three defeated a Steve Goetz resolution to acknowledge the Newport Citizens Advisory Council for its contributions to good city government.³⁶⁶

In Bar Prostitution: Sex For Drinks

One of the most troublesome adult bars for prostitution and the the sex-for-drinks scheme was Monmouth Street's Mousetrap Lounge (the Mousetrap), but the routine there was typical of the other adult bars. When a male customer entered, a scantily clad B-girl approached to solicit drinks and, if the man accepted, the two initially sat to talk. After a drink or two and the passage of mere minutes, and if the woman did not suspect the customer was a police officer working undercover, she let it be known that more expensive drinks entitled the patron to more time with her in a more darkened area of the premises. In a variety of way, through touching or carefully chosen words, the B-girl communicated that the more expensive drinks also included some sexual intimacies. Strategically arranged lighting produced these "darkened areas." The higher priced drinks ranged from \$20-\$25 to \$100 or more, depending upon the sex acts, the number of participants, and the physical layout of the clubs. The woman who performed the sex was seldom the direct recipient of payment from the male customer. Another woman often served as the intermediary. The prostitute received her share of the "drink prices" later. The Jai Alai at Ninth and York Streets was an example of a bar that had rooms available away from the usual customer

³⁶⁵ Newport Commission Minutes: February 20, 1980; Bertram Workum, "Newport Risks Bookstore Suit," Kentucky Post, February 27 1980, B3. Note: by February 1980, James Lewallen knew of his unsuccessful appeal.

³⁶⁶ Steve Goetz interview, April 25, 2006.

areas.³⁶⁷

Some bars made no noticeable attempts to conceal the sex-for-drinks scheme and employees were often reckless in their failure to appreciate the possibility that undercover police were at work. A former Kentucky State Police Detective, now retired, recalls that B-girls sometimes carried towels, tissues, and hand soaps as they circulated from patron to patron. Further, the former detective recalls, some businesses employed a unique method for disposal of used towels and tissues – holes in the walls. When a customer finished, the prostitute often put the towels and tissues into holes that looked as if someone had simply punched the walls and partitions. After troopers collected evidence from these disposal sites into large plastic garbage bags, subsequent laboratory results confirmed evidence of sexual activities. On an occasion when State Police used an alternative light source to detect body fluids otherwise not visible, the rooms “lit up” from the quantities of substances on floors, walls, and furniture.³⁶⁸

This same detective recalls sitting across from a prostitute during her day long criminal trial before a District Court jury. After her conviction, she returned to work the same day. When the detective saw her at an adult bar that evening, incredibly she solicited him again. When she momentarily hesitated, suggesting to him that he looked “familiar,” the detective feigned “hurt” that she did not remember the “time” they had together once before. Later, the woman again faced prostitution charges. Notwithstanding the frequency

³⁶⁷ Details provided by a retired Kentucky State Police Detective who was one of the several Kentucky State Police officers assigned to the Newport vice investigations during 1980-1981; however, upon request, his name must remain undisclosed.

³⁶⁸ Kentucky State Police Detective (retired) interview, March 14, 2006; former Campbell County Attorney Paul Twehues interview, April 2, 2006. See also, testimony of retired Kentucky State Police Detective Hobart Strange during public hearing on adult entertainment license ordinance before the Campbell County Fiscal Court, December 2006.

and openness of the in-bar prostitution, the owners and managers claimed ignorance of it all.

Father Anthony Deye And The Board Majority

Reformers had a strong voice at Commission meetings in the person of Corpus Christi Catholic Church³⁶⁹ Pastor Anthony Deye. Father Deye had supported the 1977 Adult Zoning Amendment and emerged as a spokesperson against adult bars and pornography. Deye had been Corpus Christ's pastor since 1970, was a veteran of the 1960s Civil Rights movement in Alabama, and was one of the Newport Citizens Advisory Council's founding members. Deye was not a person whom the Commission majority could intimidate, but they could not ignore him either.³⁷⁰ Citizens perceived him as a leader and the local media reported his confrontations with Peluso and Warndorf. For the Commission majority and adult entertainment industry, Deye was a formidable foe.³⁷¹

Father Deye took issue with claims that adult entertainment benefitted Newport and was quick to challenge majority claims that financial benefits from adult businesses outweighed the consequences of Newport's poor image.³⁷² Further, Father Deye asserted that the presence of adult businesses conveyed the wrong message to Newport's youth. Lenora Bacon, Executive Director of the Northern Kentucky Chamber of Commerce, doubted claims that adult entertainment benefitted the local economy. At best, Bacon

³⁶⁹ Within Newport's Two Rivers neighborhood, for which Deye became the representative.

³⁷⁰ Newport License Administrator Michael Whitehead interview, March 9, 2007; Bertram Workum interview, March 14, 2007 (Johnny Peluso, a Catholic, encouraged the Bishop for the Diocese of Covington to send Father Deye elsewhere. The Bishop did not do so.).

³⁷¹ Michael Whitehead interview, March 9, 2007; Jeff Gutsell, "Rev. Deye To Step Aside As Head of Local Church," Cincinnati Enquirer, January 15, 1982, C-1; Barry M. Horstman, "Rev. Anthony Deye: Priest Sought Justice," Kentucky Post, October 18, 1999, 1K; Michael Whitehead interview, March 9, 2007.

³⁷² Michael Whitehead interview, March 9, 2007.

estimated, any economic benefits were “minimal.”³⁷³ The Northern Kentucky Baptist’s Association and the Priests’ Synod for the Roman Catholic Diocese of Covington offered Father Deye their support.³⁷⁴

A Commission Meeting: April 2, 1980

A great deal happened during the month of April 1980 that had long term consequences for the Commission majority and the downtown adult industry. At a particularly fervid Board meeting on April 2, 1980, the majority asserted their support for adult businesses, repeating the usual reasons of crowds and Newport’s need for steady revenues. Responding to reformers’ morality concerns, Commissioner Owen Deaton blamed any morality problems on “bad parenting and insisted adult entertainment had served Newport “well” for a “long time.” Peluso trivialized reformers, suggesting they were merely a vocal minority demonstrating “sour grapes” after reformers “poor showing” in the

³⁷³ Interview with Steve Goetz, May 23, 2006; Martin Hogan, Jr., “Newport Nite Life: The Beat Goes On,” Cincinnati Enquirer, May 11, 1980, B-1; Bertram Workum, “Ministers Plan to Monitor Newport Board Meetings,” Kentucky Post, February 22, 1980, 7K; Bertram Workum, “Sampson New Liquor Chief,” Kentucky Post, February 26, 1980, 6K; David Wecker, “Priest Criticizes Cinema X; Tony Warndorf Strikes Back,” Kentucky Post, November 13, 1980, 10K; Newport Commission Minutes: November 12, 1980 Cincinnati Enquirer, “Newport Churches May Begin To Picket Adult Movie House,” (no author), November 15, 1980, D3.

³⁷⁴ Newport City Commission Minutes: April 2, 1980; Jeff Gutsell, “Baptists Support Newport Drive Against Adult Entertainment,” Cincinnati Enquirer, April 4, 1980, B3; see also, Bertram Workum, “Irene Deaton Resumes her Go-Go Reform,” Kentucky Post, March 19, 1980, 18K; Bertram Workum, “Newport Wants Nude Dancing Ban Rewritten,” Kentucky Post, March 20, 1980, 10K; Cincinnati Enquirer, “Nude Dancing Ban Goes to Newport Commission,” (no author), March 26, 1980, 1K; Greg Paeth, “Ministers To Inspect Newport Nightclubs,” Cincinnati Enquirer, March 27, 1980, 1A; Jeff Gutsell, “Newport Ministers Plan Protests at Nightspots,” Cincinnati Enquirer, March 28, 1980, B1; Jeff Gutsell, “Newport Night Life Nudges Anger, Stirs Controversy On Commission,” Cincinnati Enquirer, April 7, 1980, D2; Steve Goetz interview, April 25, 2006.

1979 election.³⁷⁵

The majority's open support for adult entertainment convinced the Advisory Council and religious leaders that Peluso, Warndorf, and Owen Deaton intended to expand adult entertainment's role and influence. Reformers especially feared Peluso's idea of special zones for sexually oriented businesses.³⁷⁶ The majority's support gave adult businesses some sense of security, at least so long as Peluso, Warndorf, and Owen Deaton remained the Commission majority. If owners did acquire a sense of security, it was brief, and, in hindsight, the adult industry was enjoying the calm before a storm.

Anti-Vice Efforts: The Campaign Begins

The decade long campaign that destroyed adult entertainment as a factor in Newport's economic and cultural life may have begun over a lunch. At some point during his first two years in office, County Attorney Paul Twehues attended a Newport Ministerial Association luncheon meeting. Father Deye also attended. Association members were interested in what Twehues intended to do about Newport vice, especially pornography at Cinema X and Lewallen's Bookstore. With no prior experience in obscenity cases, Twehues could only promise to research the matter.³⁷⁷ By early 1980, Twehues was convinced the

³⁷⁵ Jeff Gutsell, "Newport Night Life Nudges Anger, Stirs Controversy on Commission," Cincinnati Enquirer, April 7, 1980, D2; Steve Goetz interview, April 25, 2006; Newport City Commission Meeting Minutes: April, 2, 1980.

³⁷⁶ The "Combat Zones." See, Ephraim Glenn Coulter, Wayne Hoffman, Eva Pendleton, and Alison Redick, editors, "Policing Public Sex: Queer Politics and the Future of AIDS Activism", (Boston, Massachusetts: South End Press, 1996) 294; Barbara Milman, "New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?," Harvard Woman's Law Journal 3 (1980): 54-59; Lauri Lewin, Naked Is The Best Disguise: My Life as a Stripper (New York: William Morrow and Company, 1984), 30; Norman Marcus, "Zoning Obscenity: Or the Moral Politics of Porn," 27 Buffalo Law Review 27, no. 1 (1978): 2-4; Robert C. Ellickson, "Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning," Yale Law Journal 105, no. 5 (1996): 1165-1248; John Gilmore, "Zoned Out," Planning 65, no. 2 (February 1999): 15.

³⁷⁷ Paul Twehues interview, April 2, 2006.

Cinema X and Bookstore were violating Kentucky's obscenity laws.³⁷⁸ He also learned the Kentucky State Police were interested in Newport vice.

Unfortunately, Twehues could not depend upon the city's support against ongoing vice. So long as the current Commission majority remained in power, Newport Police would not receive needed Commission majority support for anti-vice operations. State Police involvement offered the best possible chances for an effective and enduring anti-vice effort.³⁷⁹

During the same week as the stormy April 2, 1980, Commission meeting, a District Judge, police, and prosecutors attended the Cinema X as paying customers. Assistant County Attorneys Justin Verst, Bill Wehr, Campbell County Police Officer Bruce Collins, and Campbell County District Judge Leonard Kopowski viewed the hard-core films "Getting Off" and "Painful Desire." Judge Kopowski provided the "prior judicial review" that the Judge Mac Swinford repeatedly stressed during the Stanley Marks litigation.³⁸⁰

Believing the movies obscene, Judge Kopowski issued a warrant and, on April 7, 1980, police raided the Cinema X and seized the films.³⁸¹ Prosecutors charged licensee

³⁷⁸ Kentucky Revised Statutes Chapter 531.

³⁷⁹ Paul Twehues interview, April 2, 2006; Kentucky State Police (ret.) Detective interview, March 14, 2006.

³⁸⁰ Campbell County Attorney Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006; Marcus v. Search Warrants of Property At 104 East Tenth Street, Kansas City, Missouri, 367 U.S. 717, 81 S.Ct. 1708, 6 L.Ed.2d 1127 (1961); Quantity of Copies of Books v. State of Kansas, 378 U.S. 205, 84 S.Ct. 1723, 12 L.Ed.2d 809 (1964); Lee Art Theatre Inc. v. Virginia, 392 U.S. 636 (1968); Heller v. New York, 418 U.S. 483 (1973); Roaden v. Kentucky, 413 U.S. 496 (1973); Keene v. Commonwealth, Ky., 516 S.W.2d 852 (1974); see Fourth Amendment to United States Constitution, and §10, Kentucky Constitution. The practice of having a judge personally attend the theater to view suspected obscene films was not constitutionally required, but served as an added measure to avoid the seizure of a non-obscene film.

³⁸¹ Interview with Campbell County Attorney Justin Verst, May 3, 2006; interview with former Assistant County Attorney Hon. William Wehr (former Campbell County Circuit

Happy Day, Inc. with “distribution of obscene matter,”³⁸² a Class A misdemeanor, and Brown Bear, Inc. with “facilitation”³⁸³ to distribute obscene matter,” a Class B misdemeanor.³⁸⁴

James Lewallen’s store did not escape attention. Undercover County Police officers purchased three sexually explicit publications and charged Lewallen with “distribution of obscene matter.” Prosecutors also charged property owners Sammy and Mary Dell Wright with “facilitation” to distribute obscene materials.³⁸⁵ Authorities did not accept the Wrights’ claims that they were mere landlords with no involvement in the Bookstore.³⁸⁶

To avoid becoming a convicted licensee, Happy Day tried to transfer the theater’s license. Brown Bear, Inc., had executed a similar transfer after the 1977 obscenity indictment, but Mayor Irene Deaton ordered City Manager Bert Berg to deny the Happy Day transfer. Happy Day’s prospective transferee was Combined Entertainment Ventures,

Judge, now retired), interview, April 27, 2006; interview with former Campbell County Attorney Paul Twehues, April 2, 2006; interview with Kentucky State Police Detective, (retired), March 14, 2006; Jeff Gutsell, “Campbell County Cracks Down on Adult Bookstore and Theater,” Cincinnati Enquirer, April 12, 1980, D3.

³⁸² 531.020 Distribution of obscene matter:

(1) A person is guilty of distribution of obscene matter when, having knowledge of its content and character, he: (a) Sends or causes to be sent into this state for sale or distribution; or (b) Brings or causes to be brought into this state for sale or distribution; or (c) In this state, he: 1. Prepares, or 2. Publishes, or 3. Prints, or 4. Exhibits, or 5. Distributes, or 6. Offers to distribute, or 7. Has in his possession with intent to distribute, exhibit or offer to distribute, any obscene matter.

³⁸³ “Facilitation” is a lesser charge and might be more commonly known as the “aiding and abetting” of a crime.

³⁸⁴ Jeff Gutsell, “Campbell County Cracks Down on Adult Bookstore and Theater,” Cincinnati Enquirer, April 12, 1980, D3.

³⁸⁵ Jeff Gutzell, “Campbell County Cracks Down on Adult Bookstore and Theater,” Cincinnati Enquirer, April 12, 1980, D3. The magazines were “Pile Drivers,” and “Lust Driven Swappers.” The catalogue was the “Swedish Erotica” catalogue of eight millimeter films.

³⁸⁶ Interview with former Newport Detective and Captain Al Garnick, May 23, 2006; interview with Kentucky State Police Detective, retired, April 14, 2006.

Ltd., Inc., another Kentucky corporation having the same officers as both Brown Bear and Happy Day.³⁸⁷ In response to Mayor Deaton's refusal, Combined Entertainment filed a federal action to compel the transfer, but the suit, filed on May 18 1980, played no part in the anti-vice efforts. From Twehues's perspective, prosecutors now had three, not two, Cinema X companies to charge in future cases, thereby raising the potential of tripling the penalties.³⁸⁸

³⁸⁷ Jeff Gutzel, "Occupational Licensing Tightened by Newport," Cincinnati Enquirer, May 1 1980, A2; Newport Commission Minutes, April 30, 1980 Records of Campbell County Attorney Justin Verst: Complaint For Declaratory Relief, Injunction And Money Damages, United States District Court, Eastern District of Kentucky, Covington Division, Case No. 80-57, Combined Entertainment Ventures, Ltd., vs. The City of Newport, And Irene Deaton, Mayor, (May 8, 1980); "Articles of Incorporation Of Combined Entertainment Ventures, Ltd.," Filed in Office of Kentucky Secretary of State, April 8, 1980, executed by Susianne [Hollis] Burchette, "sole Director," on April 8, 1980; "Bill of Sale" by Happy Day, Inc. Tom Hollis Sr., President, to Combined Entertainment Ventures, Ltd., Inc., Susianne [Hollis] Burchette, "sole director," dated April 7, 1980; "Purchase Agreement," by Combined Entertainment Ventures, Ltd., Inc., Susianne [Hollis] Burchette, sole director, as "party of the first part," and Happy Day, Inc., "party of the second part," of Cinema X theater contents, dated April 7, 1980; "Minutes Of Special Meeting Of The Board Of Directors Of Combined Entertainment Ventures, Ltd., Susianne [Hollis] Burchette, "Secretary" and "Chairman," dated April 9, 1980 for purchase of "business and contents" of Cinema X Theatre, 716 Monmouth Street, Newport, Kentucky, which was consummated on the 7th Day of April, 1980"; Letter from attorney Mott V. Plummer, "Agent," to David Bogart, City of Newport License Inspector and Bert Berg, City of Newport City Manager (notification of Happy Day's transfer of business and contents to Combined Entertainment and request for license transfer, "Application To Establish An Account For Occupational License Taxes For City of Newport" attached to Plummer's letter), dated April 9, 1980.

³⁸⁸ United States District Court for Eastern District of Kentucky, Covington Division, Case No. 80-57, Combined Entertainment Ventures, Ltd. v. City of Newport and Irene Deaton, "Complaint for Declaratory Relief"; Jeff Gutsell, "Plot Thickens in 'Who Owns Cinema X?'," Cincinnati Enquirer, July 15, 1980, A2; Gary Webb, "Who Is Behind the Cinema X," Kentucky Post, November 22, 1980, 1K; Cincinnati Enquirer, "Newport Mayor Called in Trial of Cinema X," (no author), November 4, 1980, A2; Jeff Gutzel, "Cinema X Owners Sue City, Mayor Deaton In Licensing," Cincinnati Enquirer, May 9, 1980, A1; Jeff Gutzel, "Newport Seeks Dismissal of Porno Case," Cincinnati Enquirer, May 28, 1980, A2. In September, Cinema X's corporations the federal suit to allege the Newport ordinance was unconstitutional because the enactment was designed to "literally eliminate adult film fare and press materials from the community of Newport." Bob Fogarty, "Cinema X Expands Suit Against Newport." Cincinnati Enquirer, September 6, 1980, A1. NOTE: prosecutors

Police and prosecutors did not delay long before another raid. In June 1980, Newport officers and detectives were investigating sexual solicitations around the Bookstore's peepshow booths when a few unfortunates solicited undercover police officers for sex, Detective Rick Huck led a raid on June 13, 1980, during which District Judge George Muhlenkamp ordered several peepshow films and other materials confiscated. Four days later, on June 17, Huck raided the Cinema X and executed a search warrant to seize two films. Prosecutors charged all Cinema X corporations and, at the Bookstore, James Lewallen, Sammy Wright and a clerk.³⁸⁹

Cinema X Goes To Trial

Authorities filed seven sets of charges against Cinema X companies between April 1980 and February 1982. Six of the cases went to a jury trial in the Campbell County District Court.³⁹⁰ A lawyer who had represented Harry Mohny's interests on a frequent basis over previous years, Robert Eugene Smith of Maryland and Georgia³⁹¹ headed a defense team that included several seasoned local trial attorneys, including Richard Slukich, Mott V. Plummer, Louis Sirkin, and, on some occasions, Colorado lawyer Arthur Schwartz, made appearances. Lawyer Plummer was the defense counsel who appeared most regularly on Cinema X's behalf. The defense attorneys were experienced in federal and state

did not charge Combined Entertainment after the first raid because, on the available records, Combined was not yet involved at the Cinema X. For all remaining Cinema X cases, all three corporations were defendants.

³⁸⁹ Jeff Gutzel, "Two Movies Confiscated in Raid at Cinema X," Cincinnati Enquirer, June 18, 1980, A1; Bertram Workum, "Police Arrest Wright in Bookstore Raid," Kentucky Post, June 14, 1980, 1K; Rick Huck interview, March 23, 2006; Justin Verst files: "Trial and Verdict" against Happy Day, Brown Bear, and "Combined Entertainment Ventures, Inc., convicted on November 6, 1980" (filed November 29, 1980). Note: discussions about clerks charged and charges relating to Mary Dell Wright's Bookstore involvement will not appear hereafter.

³⁹⁰ The seventh case ended in a negotiated plea.

³⁹¹ Smith would also list Maryland and California as office addresses.

obscenity litigation, but it was Robert Eugene Smith who decided the defense strategies.³⁹²

Kentucky's obscenity law applied the definition of "obscene"³⁹³ set out in Miller v. California (1973).³⁹⁴ At the trials, Robert Smith never vigorously disputed the films' hard-core content.³⁹⁵ Instead, Smith asserted that the movies had scientific, artistic, or other values, a defense similar to that used in the 1970s "Deep Throat" trials. Smith contended the movies content inspired sexual fantasies that he and his expert witnesses submitted was a component of a healthy sex life. Smith proposed that the "fantasy enrichment" potential

³⁹² Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006.

³⁹³ Kentucky Revised Statutes 531.010, "obscene" means

To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and (b) The matter depicts or describes the sexual conduct in a patently offensive way; and (c) The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.

For analysis of this definition from Miller v. California, see Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 67-83.

³⁹⁴ 413 U.S. 15, 1973); Ewell Hall and Harry V. Mohny v. Commonwealth of Kentucky, ex rel, Edwin A. Schroering, Commonwealth Attorney for Jefferson County, et al., Ky, 505 S.W. 2d 166 (1974); KRS 531.010, "Sexual conduct" means "acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification," James Smith v. Commonwealth, Ky., 465 S.W. 2d 918 (1971); Armon Keene v. Commonwealth, Ky., 516 S.W. 2d 852 (1974); Western Corporation v. Commonwealth, Ky. 558 S.W. 2d 605 (1977) (the movie "Deep Throat"). In the Hall case, Kentucky's obscenity statutes were contained within KRS Chapter 436. By 1980, the statutes were renumbered into Kentucky's new Penal Code; however, the wording remained compliant with Miller v. California; see also, Keene v. Commonwealth 516 S.W.2d 852 (Ky., 1972); Western Corporation v. Commonwealth, 558 S.W.2d 605 (Ky., 1977). See also, Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, 2004), 69 (discussion of Chief Justice of the United States Supreme Court Warren Burger's example of "what a state statute might define for regulation [as obscene]: Patently offensive representations or descriptions of ultimate sex acts, normal and perverted, actual or simulated [and] patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals." Miller v. California).

³⁹⁵ Kentucky law defined "obscene," but not "hard core." But see, James Smith v. Commonwealth, Ky., 465 S.W. 2d 918 (1971); Armon Keene v. Commonwealth, Ky., 516 S.W. 2d 852 (1974); Western Corporation v. Commonwealth, Ky. 558 S.W. 2d 605 (1977) (movie "Deep Throat").

constituted a “scientific value.” Smith argued that, according to the Miller v. California criteria, the potential for inspiring fantasy should preclude an obscenity finding.³⁹⁶ Smith also asserted that the Cinema X’s movies did not meet another Miller element; that is, the films were not offensive to Campbell County’s “contemporary community standards.” In the decade since Cinema X opened, the theater exhibited thousands of hard-core films but there had been only the 1978 obscenity conviction. Smith reasoned that if Cinema X movies offended community standards,³⁹⁷ there would have been more convictions.³⁹⁸ Assistant County Attorneys Justin Verst and Bill Wehr, hoped convictions and fines might accumulate and convince Cinema X to either stop showing criminally obscene films or the theater owners would decide that the average monthly gross of \$30,000 was not enough to remain in business.³⁹⁹

The first trial began on July 7, 1980, before District Judge Timothy Nolan. When it

³⁹⁶ KRS 531.010(3)(c): “The matter taken as a whole lacks serious . . . scientific value.” Interview with Campbell County Circuit Judge and former Assistant County Attorney William “Bill” Wehr, April 27, 2006; interview with Campbell County Attorney Justin Verst, May 3, 2006; David Wecker, “Sex Experts Call Movies Therapeutic,” Kentucky Post, July 9, 1980, 11K See, Frederick F. Schauer, The Law Of Obscenity (Washington D.C.: Bureau of National Affairs, Inc., 1976), 44-48, 136-147; Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 67-68, 77-78.

³⁹⁷ “To the average person, applying contemporary community standards . . . “ KRS 531.010(3)(a)(b). See, Thomas C. Mackey, Pornography On Trial (Santa Barbara, California: ABC-CLIO, Inc., 2004), 70; Frederick F. Schauer, The Law Of Obscenity (Washington D.C.: Bureau of National Affairs, Inc., 1976), 116-135.

³⁹⁸ The federal “Deep Throat” convictions never became “final”; that is, the convictions did not survive appeals and could not count as convictions.

³⁹⁹ Justin Verst interview, May 3, 2006; Paul Twehues interview, April 2, 2006; Hon. William Wehr interview, April 27, 2006. Note: the average monthly gross income for the Cinema X from November 1979 through April 1980 was \$29,780. The average revenue to the City Newport was \$599 per month. All figures used to calculate these numbers were “rounded down” to the nearest dollar for each month. Campbell County Attorney Justin Verst Cinema X files: Monthly Returns for License Fees. From November 1979 through March 1980, the license fee was 1.5% of each month’s gross receipts (Commissioners’ Ordinance No. O-79-20); however, the percentage increased to 5% beginning in April 1980 (Commissioners’ Ordinance No. O-80-12).

ended, the jury found “Painful Desires” and “Getting Off” obscene and corporate defendants Brown Bear and Happy Day guilty. In his defense of the Cinema X’s companies, attorney Smith offered witnesses who testified as experts in treatment of sexual dysfunctions and who told jurors the movies had therapeutic value.⁴⁰⁰ In his closing argument before the jury, prosecutor Verst borrowed a succinct term often used by his late father in certain circumstances. Verst stated that the fantasy enrichment theory was, in a word, “hogwash.” Apparently, jurors agreed.⁴⁰¹ Judge Nolan imposed the jury’s recommended⁴⁰² \$10,000 fine against licensee Happy Day and \$5000 against Brown Bear.⁴⁰³

Law enforcement had won the important first trial. The guilty verdicts, the second obscenity conviction from Cinema X, proved that the theater, a survivor of earlier federal and state litigation, raids, and confiscations, was vulnerable to aggressive law enforcement, suggesting that other adult businesses may be as well. For Father Deye and the Advisory Council, the conviction was an additional argument to present at Commission meetings. With two convictions, reformers had a legitimate argument that that the Cinema X was a

⁴⁰⁰ County Attorney Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006; David Wecker, “Sex Experts Call Movies Therapeutic,” Kentucky Post, July 9, 1980, 11K; Phillip M. Boffey, “Sexology, Struggling To Establish Itself Amid Wide Hostility,” New York Times, May 3, 1983, C1. Judge Wehr relates that he once vacationed in California and, while there, discovered he was near the school from where the defense experts had their degrees. When Judge Wehr visited the location, he found the “school” was little more than a storefront.

⁴⁰¹ Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006.

⁴⁰² Under Kentucky law, jurors recommended criminal penalties.

⁴⁰³ Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006; Records of Campbell County Attorney Justin Verst: Attested copy of “Trial and Verdict” in Commonwealth of Kentucky vs. Happy Day, Inc., Brown Bear, Inc., and Pauline Mullins (Case No. 80 – M – 767, 768, 706), Campbell County District Judge Timothy L. Nolan presiding, dated July 9, 1980; Jeff Gutsell, “Newport Cinema X Firms Convicted Of Obscenity,” Cincinnati Enquirer, July 10 1980, A1; Jeff Gutsell, “Plot Thickens In Who Owns Cinema X?,” Cincinnati Enquirer, July 15, 1980, A2; David Wecker, “Cinema X Decision Helps Define Community Standards,” Kentucky Post, July 10, 1980, 1K.

public nuisance and subject to loss of business license.⁴⁰⁴

Following the July 1980 conviction, majority members Peluso, Warndorf, and Owen Deaton took no action against the Cinema X, but Twehues and the State Police did. Just days after the July trial, State troopers and selected Newport officers conducted simultaneous raids at the Cinema X and Bookstore. On July 11, Judge Nolan, a prosecutor, and two State Police troopers viewed suspected films as paying customers.⁴⁰⁵ Late the following evening, a caravan of State Police vehicles and troopers descended upon Monmouth Street. Moments later, and with military precision, troopers secured the Cinema X and Bookstore and executed warrants. Judge Nolan came to the Bookstore to provide a

⁴⁰⁴ Code City Newport, Gen'l Ordinances eff June 15, 1981, in George W. Robinson, ed., Public Papers Of Governor Bert T. Combs, 1959-1963, (Lexington, Kentucky: University Press of Kentucky, 1979), Chap 16: 16.1, nuisances . . . commission unlawful acts or fail perform duty . . . permitting condition or thing to exist which injurious or endangers health and safety of others . . . offends decency 16.2(i) . . . any building structure condition violation of state or federal laws . . . 16.4-.8 ..owner refusals to abate . . . (prepared by, Municipal Code Corp 1981 Tallahassee Florida); Walker v. Commonwealth, 117 Ky. 727 (Ky. App., 1904); Adams v. Commonwealth, 162 Ky. 76 (Ky. App., 1915); City of Newport v. Schmit, 191 Ky. 585 (Ky. App., 1921); John and Effie Green v. Commonwealth, 196 Ky. 17 (Ky. App., 1922); Wells v Commonwealth, 203 Ky. 373 (Ky. App. 1923); Hall v. Commonwealth, 505 S.W.2d 166 (1974) (a Harry Mohny case from Jefferson County); KRS Chapter 231(Places of Entertainment, effective June 17, 1954); KRS 231.11(Conduct prohibited on premises); see, KRS 231.180 (no showing previews for “R” or “X” rated movies if “G” or “GP” movie is playing). See also, Newport City Commission Minutes, “In Re: Stanley Marks,” November 16, 1970; Stanley Marks v. The Board of Commissioners for the City of Newport, Kentucky, 504 S.W.2d 338 (1974)(Kentucky Court of Appeals upheld Newport’s revocation of business license).

⁴⁰⁵ Tim Nolan interview, May 25, 2006; Bertram Workum interview; Jeff Gutsell, “Judge OK’s Seizure Of Books And Films,” Cincinnati Enquirer, July 15, 1980, A2; Randy Allen “Police Raid Cinema X And Bookstore,” Cincinnati Enquirer, July 14 1980, A1; Bertram Workum, David Wecker, Mark Neikirk, “Police File 26 Charges After Latest Newport Raid,” Kentucky Post, July 14, 1980, 1K; Bertram Workum and Roger Auge, “Wright And Employees Charged In Wake Of Recent Bookstore Raid,” Kentucky Post, July 18, 1980, 8K; Cincinnati Enquirer, “Newport And State Police Raid Cinema X And Variety Shop,” (no author), July 14, 1980, D2. Discovering that a raid was imminent, but keeping keeping it to himself, reporter Workum was present when troopers conducted the raids, Bertram Workum interview, March 14, 2007. I was the prosecutor present with Judge Nolan and the troopers during the July 11, 1980, viewing and during the July 12 raid.

judicial review of items before seizure, including over one hundred sexually explicit 8mm films still in their original and graphically illustrated cases.⁴⁰⁶ Authorities charged all three Cinema X companies,⁴⁰⁷ Sammy Wright, and James Lewallen with obscenity offenses.⁴⁰⁸

Majority Retaliation

By mid-July 1980, law enforcement was well into the anti-vice campaign that had begun in earnest during early April. The adult businesses targeted were the same establishments that Commissioners Peluso, Warndorf, and Owen Deaton praised as valuable to Newport's economy during the tumultuous April 2 Commission meeting. Since then, the adult industry had been under assault and the crackdowns did not appear to be nearing an end. The majority could do nothing to stop Twehues or the State Police, but the three had something to say about Newport Police engaging in anti-vice work.

In mid-1980, the majority announced intentions to ignore the city's promotional exam protocols and appoint their personal choices into key Police Department command level positions.⁴⁰⁹ In doing so, the majority denied promotions or changed assignments of

⁴⁰⁶ Two days later, Judge Nolan executed a warrant permitting prosecutors and troopers to view the enclosed films to determine if additional charges were appropriate. Judge Nolan viewed the explicit photos while in the Bookstore the night of the raid. An additional warrant was necessary to open the boxes and view the films. The (then pending) case of Walter v. United States, 447 U.S. 649, 100 S. Ct. 2395, 65 L. Ed. 2d 410 (1980) inspired prosecutors to seek the additional warrant.

⁴⁰⁷ Brown Bear, Happy Days, and Combined Entertainment Ventures, Ltd., Inc. (Combined Ventures).

⁴⁰⁸ Tim Nolan interview, May 25, 2006; Bertram Workum interview, March 14, 2007; MLW; Randy Allen "Police Raid Cinema X And Bookstore," Cincinnati Enquirer, July 14 1980, A1.; Bertram Workum, David Wecker, Mark Neikirk, "Police File 26 Charges After Latest Newport Raid," Kentucky Post, July 14, 1980, 1K.

⁴⁰⁹ Interview with Steve Goetz, April 25, 2006; Newport Commission Minutes: April 2, 1980, June 11, 1980, June 25, 1980, October 15, 1980, October 29, 1980 (Petition with fifty-four citizens' signatures presented in opposed to abolishing promotional exams); Newport Commission Minutes November 25, 1980; David Wecker, "Newport Ducks Police Exams," Kentucky Post, October 16, 1980, 1K; Kentucky Post, October 18, 1980, 10K; Editorial, "Good-Bye To Promotional Exams And Hello To Politics," Kentucky Post, (no author),

those Newport officers and detectives who had performed their duties by engaging in anti-vice initiatives. The majority's appointment of Lieutenant Earl Roesel to the Department's sensitive Criminal Investigation Division (CID) was controversial because of Roesel's associations with Sammy Wright, then currently facing three sets of obscenity charges. When Acting City Solicitor Jan Koch⁴¹⁰ cautioned about an "appearance of impropriety," the majority fired him and his wife, a secretary with the city's Legal Department.⁴¹¹ When Police Chief Bill Henley tried to resist the majority's transfer of Roesel, they stripped the Chief of his administrative authority.⁴¹²

The majority did not overlook Detectives Al Garnick and Rick Huck. Both detectives had roles in anti-vice activities since 1978, and Huck had led the Bookstore and Cinema X raids in June 1980. The majority either passed them over for promotions or

October 18, 1980, 2K; Gabriella Jacobs, "Peluso Backs Warndorf for Police Job," Kentucky Post, October 16, 1980, 7K.

⁴¹⁰ Attorney Koch was an Assistant City Solicitor under City Solicitor Tim Nolan in 1979, and Nolan credits Koch's legal research with the successful passage of Newport's 1977 zoning amendments' imposition of restrictions on downtown's adult entertainment industry. Tim Nolan interview, May 25, 2006.

⁴¹¹ Bertram Workum interview, March 14, 2007; Newport City Commission Minutes: June 11, 1980; Newport Commission Minutes: June 11 1980, June 25 1980, July 23, 1980, August 6, 1980; Jeff Gutsell, "Newport Chief Told To Resist Roesel Shift," Cincinnati Enquirer, July 22 1980, A1; See Interview with Steve Goetz, April 25, 2006; Newport City Commission Minutes, July 23 1980; Jeff Gutsell, "New Solicitor's Advice To Aide: Don't Make Any Long Range Plans," Cincinnati Enquirer, July 30 1980, A2; Jeff Gutsell, "Newport Solicitor Faces Firing Vote Next Week," Cincinnati Enquirer, August 2 1980, A2.

⁴¹² Newport City Commission Minutes: June 25, 1980; interview with former Detective and Newport Police Chief Rick Huck interview, March 23, 2006; interview with former Newport Detective Al Garnick, May 24, 2006; Bertram Workum, "Newport Chief Will Refuse To Honor Commission Order," July 22, 1980, 1; Jeff Gutsell, "Newport Chief Told To Resist Roesel Shift," Cincinnati Enquirer, July 22, 1980, A1; See Newport Commission Minutes, June 11 1980; Interview with Steve Goetz, May 23, 2006; Bertram Workum, "Newport Officials To Replace Raid Leader," Kentucky Post, July 19, 1980, 1K; Rolf Wiegand, "Chief Bows To Authority Of Newport Commissioners," Cincinnati Enquirer, January 28, 1981, B1; Cincinnati Enquirer, "City's Request Turned Down By Kentucky Judge," (no author), January 16, 1981, D4; Cincinnati Enquirer, "Judge Diskin Refuses To Stop Removal of Newport Officer," (no author), January 14, 1981, B1.

removed them from posts the two had earned. The treatment of Huck and Garnick was the majority's message to police personnel that anti-vice initiatives were potentially damaging to one's career.⁴¹³

The majority's actions did not deter Paul Twehues or the State Police. Vice raids continued. On September 20, 1980, troopers raided James "Big Jim" Harris's Jai Alai nightclub. Both the Jai Alai and Harris had a history of prostitution cases. Harris had served in prison for prostitution offenses during the 1950s.⁴¹⁴ During 1978-1979, Newport Police targeted the club during the prostitution crackdowns and the club accumulated over \$5000 in fines during Kenneth Rechlin's service as Liquor Administrator.⁴¹⁵ During 1980, law enforcement raided Jai Alai in May and again in September.

The September raid commenced so swiftly that the club's "lookout" had no time to

⁴¹³ Bertram Workum interview, March 14, 2007; Steve Goetz interview, April 25, 2006; Bertram Workum, "Newport Officials To Replace Raid Leader," Kentucky Post, July 19, 1980, 1K.

⁴¹⁴ Former City Commissioner Charles Sarakatsannis interview, November 15, 2006. Harris was convicted of "pandering," a branch of "commercialized prostitution, James Harris v. Commonwealth of Kentucky, Ky., 285 S.W.2d 489 (1956); Cincinnati Enquirer, "Call For Federal Probe Follows Newport Raid," (no author), September 21, 1980, A1; Cincinnati Enquirer, "Night Spot Owner Sought On Sex Charge," (no author), September 21, 1980, B4; Cincinnati Enquirer, "Newport Club Raided," (no author), September 22, 1980, B1; Cincinnati Enquirer, "Judge Sets Court Date In Bar Raid," (no author), September 22, 1980, D1; Cincinnati Enquirer, "County Grand Jury Indicts Two More In Jai Alai Case," (no author), October 2, 1980, A2.

⁴¹⁵ Interview with former Campbell County Attorney Paul Twehues, April 2, 2006; Kentucky Post, "Prostitution Trial Delayed," (no author), July 10, 1978, 2k; Peter Barnes, "Local Spots Named In USA Vice Trial," Kentucky Post, July 11, 1978, 1K; Tom Loftus, "4 Arrested On Prostitution Charges," Kentucky Post, November 28, 1978, 2K; Tom Loftus, "Plead Not Guilty In Jai Alai Bust," Kentucky Post, November 29, 1978, 15K; Kentucky Post, "Newport Bars Slapped As License Review Starts," (no author), December 1, 1978, 11K; Jim Reis, "Jury Can't Decide Sex Case," Kentucky Post, January 5, 1979, 3K; Terry Donohue and Al Salvato, "Find Women Guilty On Prostitution Charges," Kentucky Post, January 20, 1979, 7K; Kentucky Post, "Grant 3d Trial In Jai Alai Case," (no author), February 15, 1979, 18K; Jeff Gutsell, "One Acquitted, One Convicted In Jai Alai Case," Cincinnati Enquirer, May 19, 1979, A2; Jeff Gutsell, "Administrator Fines Jai Alai Bar \$4200," Cincinnati Enquirer, June 9, 1979, A1.

activate an alarm button operators had installed behind the bar. Troopers found a couple “in the act” of consummating a \$110 sex-for-drinks transaction. The Jai Alai was honeycombed with rooms and cubicles and accommodations ranged from sleeping bags on the floor to beds. In abundance were paper towels, hand soaps, lotions, and various “hygiene product.” During the preceding investigation, Jai Alai women offered undercover troopers sex for drinks costing from \$55 and up. Authorities charged Harris, manager Wanda Blackburn, and several women for prostitution related offenses, most of which resulted in convictions.⁴¹⁶

In the wake of the September Jai Alai raid, Captain Marion Campbell, Commander of Kentucky State Police Post Six in Grant County, expressed “surprise” at the “enormity” of Newport’s in-bar prostitution and warned that State Police operations thus far were “only a start.” “With or without” Newport’s help, Campbell promised anti-vice efforts would

⁴¹⁶ Paul Twehues interview, April 2, 2006 (Twehues, at State Police request, came to the secured scene to view the building’s interior and other evidence obtained. I accompanied Twehues.); Kentucky State Police (ret.) Detective interview, March 14, 2006; Jeff Gutsell, “Nine Cited In Raid Appear In Court,” Cincinnati Enquirer, September 23, 1980, A2; Jeff Gutsell, “Eight Women Plead Innocent To Prostitution, Drug Charges,” Cincinnati Enquirer, September 23, 1980, A2; Cincinnati Enquirer, “Woman Faces Charges In Kentucky Nightclub Raid,” (no author), September 26, 1980, D4; Cincinnati Enquirer, “Call For Federal Probe Follows Newport Raid,” (no author), September 21, 1980, A1; Cincinnati Enquirer, “Night Spot Owner Sought On Sex Charge,” (no author), September 21, 1980, B4; Cincinnati Enquirer, “Newport Club Raided,” (no author), September 22, 1980, B1; Cincinnati Enquirer, “Judge Sets Court Date In Bar Raid,” (no author), September 22, 1980, D1; Cincinnati Enquirer, “County Grand Jury Indicts Two More In Jai Alai Case,” (no author), October 2, 1980, A2. For Harris, the September raid and his several other pending charges related to the Jai Alai prompted the club operator to sell the business, a sale that led to reduced or dismissed charges. In 1984, the club burned under “mysterious circumstances.” Jeff Gutsell, “Harris Tired Of Coping With Police, Puts Jai Alai Lounge Up For Sale,” Cincinnati Enquirer, October 27, 1980, A2; Jeff Gutsell, “Harrises To Sell Jai Alai: Newport Lounge Faces License Loss,” Cincinnati Enquirer, October 25, 1980, D1; Cincinnati Enquirer, “Jai Alai Among 26 Citations For Liquor Permit Hearings,” (no author), January 15, 1981, A4; Charles Sarakatsannis interview, November 15, 2006.

continue.⁴¹⁷ Shortly thereafter, a joint operation of the FBI and State Police raided the home and business of Sammy and Mary Dell Wright as part of an illegal gambling probe.⁴¹⁸

During a Board meeting attended by Captain Campbell, Commissioner Tony Warndorf confronted the Commander, warning him that the Governor was “[Campbell’s] boss” and that a “letter of complaint . . . may be sent” telling what troopers were “doing to Newport.” Campbell just listened and the raids continued.⁴¹⁹

A retired KSP detective recalls Commander Campbell’s determination to deal with Newport vice and that the Commander’s warnings were not empty ones.⁴²⁰ Since April 1980 troopers’ raids and arrests had touched nearly all downtown adult businesses and the undercover efforts were continuing. When troopers’ cases went to court, Twehues’s office was winning convictions.⁴²¹ The combination of State Police and County Attorney introduced a relentless intensity to anti-vice efforts and that intensity showed no signs of diminishing.

Porn Trials Resume

⁴¹⁷ Stephen Key, “Police Cite Prostitution At Jai Alai,” Kentucky Post, September 20, 1980, 1K; Stephen Key, “Jai Alai Raid Just A Start,” Kentucky Post, September 22, 1980, 1K; Stephen Key, “State Police Declare War On Crime In Newport,” Kentucky Post, October 18, 1980, 10K; David Wecker, “Newport Police Score High In Ongoing Prostitution Probe,” Kentucky Post, October 9, 1980, 12K.

⁴¹⁸ Cincinnati Enquirer, “Sammy Wright Is Target Of Newport Gambling Probe,” (no author), October 7, 1980, D3.

⁴¹⁹ David Wecker, “I’ll Tell Your Boss, Warndorf Warns State Police Captain,” Kentucky Post, October 23, 1980, 4K; Steve Goetz interview, May 23, 2006.

⁴²⁰ Kentucky State Police Detective (retired) interview, March 14, 2006.

⁴²¹ Kentucky Post, “Two Convicted For Prostitution,” (no author), September 27, 1980, B2 (Chic’s); Cincinnati Enquirer, “Two Arrested In Raid Plead Guilty,” (no author), October 9, 1980, A3 (Mousetrap – Raid of May 30, 1980); David Wecker, “Newport Police Score High In Ongoing Prostitution Probe,” Kentucky Post, October 9, 1980, 12K; Paul Twehues interview, April 2, 2006; Kentucky State Police Detective interview, March 14, 2006; Kentucky Post, “Newport Club Raided: 8 Arrested,” (no author), September 22, 1980, B1; Jeff Gutsell, “Nine Cited In Raid Appear In Court,” Cincinnati Enquirer, September 23, 1980, A2.

During November 1980, Justin Verst and Bill Wehr convicted three Cinema X corporations, the third obscenity conviction for Brown Bear, a second for Happy Day, and the first for Combined Entertainment Ventures. In addition to the convictions and criminal fines, Judge George Muhlenkamp fined the companies \$4500 for contempt of court after the companies failed to timely comply with prosecutors' subpoenas for corporate records.⁴²² After prosecutors obtained the records, they found that Harry Mohny's three Cinema X companies were, at least on paper, the alter egos of the Fred Hollis family.⁴²³ Tom Hollis, Jr., and Susianne [Hollis] Burchette, brother and sister, were the presidents and stockholders

⁴²² Jeff Jeff Gutsell, "Cinema X Tries To Avoid Contempt," Cincinnati Enquirer, October 21, 1980, A2; Kentucky Post, "Three Firms Face Fines In Cinema Case," (no author), October 18, 1980, 3K; Kentucky Post, "Prosecutors Get Cinema X Records," (no author), October 21, 1980, 6K.

⁴²³ Campbell County Attorney Justin Verst Cinema X files: City of Newport Questionnaire for Payment of Occupational Tax, dated June 27, 1980; License Transfer from Brown Bear, Inc. to Happy Day, Inc., July 1, 1978; Corporate Resolution for Transfer of Cinema X business from Brown Bear, Inc., to Happy Day, Inc., Corporate Resolution of Brown Bear, Inc., dated June 30, 1978, effective July 1, 1978, by Thomas Hollis, Sr., Seller to Thomas Hollis, Sr. Purchaser; Minutes Of A Special Meeting Of The Board Of Directors Of Brown Bear, Inc., Tom Hollis, Sr., President, June 30, 1978; Agreement [Of Sale of Assets] Between Happy Day, Inc., Tom Hollis Sr., President, and Brown Bear, Inc., Tom Hollis, Sr., President, dated July 1, 1978; Employers' Quarterly Return Of License Fee Withheld, Quarter Ending March 30, 1980; Articles of Incorporation Of Combined Entertainment Ventures, Ltd., Filed in Office of Kentucky Secretary of State, April 8, 1980, executed by Susianne [Hollis] Burchette, sole Director, on April 8, 1980; Bill of Sale by Happy Day, Inc. Tom Hollis Sr., President, to Combined Entertainment Ventures, Ltd., Inc., Susianne [Hollis] Burchette, sole director, dated April 7, 1980; Purchase Agreement, by Combined Entertainment Ventures, Ltd., Inc., Susianne [Hollis] Burchette, sole director, as party of the first part, and Happy Day, Inc., party of the second part, of Cinema X theater contents, dated April 7, 1980; Minutes Of Special Meeting Of The Board Of Directors Of Combined Entertainment Ventures, Ltd., Susianne [Hollis] Burchette, Secretary and Chairman, dated April 9, 1980 for "purchase of business and contents of Cinema X Theatre, 716 Monmouth Street, Newport, Kentucky," consummated on April 7, 1980, 1980; letter from attorney Mott V. Plummer, Agent, to David Bogart, City of Newport License Inspector and Bert Berg, City of Newport City Manager (notification of Happy Day's transfer of business and contents to Combined Entertainment and request for license transfer; Application To Establish An Account For Occupational License Taxes For City of Newport attached to Plummer's letter), dated April 9, 1980.

of all three companies.⁴²⁴ Evidence in a 1989 federal trial also listed Tom Hollis, Jr., as an incorporator of a Harry Mohny company out of Michigan, MIC Limited.⁴²⁵

The featured films of the second Cinema X jury trial were “Inside Desiree Cousteau” and “Sylvia.” Cinema X’s defense lawyers again employed the “fantasy enrichment” defense in trying to convince jurors that such movies had therapeutic value. Jurors again rejected the defense arguments, finding both films obscene and the three Cinema X companies guilty. Trial Judge Muhlenkamp imposed the recommended fines.⁴²⁶

Following the November 1980 guilty verdicts, the third set of obscenity convictions originating from the theater since 1977, County Attorney Twehues urged Mayor Irene Deaton to revoke Cinema X’s business license on public nuisance grounds. Twehues contended that the theater was perpetrating ongoing criminal obscenity violations and that

⁴²⁴ Burchett was for Combined Entertainment Ventures, Inc.; Hollis for the other two; see, Jeff Gutsell, “Plot Thickens In Who Owns Cinema X?,” Cincinnati Enquirer, July 15, 1980, A2; Interviews with Paul Twehues, April 2, 2006; Justin Verst interview, May 3, 2006; Hon. William Wehr, April 27, 2006. Though unique due to the nature of the business conducted, the arrangement was neither uncommon nor illegal under Kentucky corporation laws.

⁴²⁵ United States of America, Plaintiff, V. Harry V. Mohny, Thomas H. Tompkins, Elizabeth L. Schribner and Lee J. Klein, Defendants, 723 F.Supp. 1197, 1202-03, 1209-10 (1989)(E.D. Mich.)(App. A.)(chart of Mohny’s companies, including offshore holdings).

⁴²⁶ The Court imposed \$10,000 against license holder Happy Day for the distribution charge and \$5000 each against Brown Bear and Combined Entertainment for “facilitation to distribute obscenity” charges. The jury found cashier Pauline Mullins, “not guilty” of facilitation to distribute obscene materials; Campbell County Attorney Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006; Cincinnati Enquirer, “Newport Mayor Called In Trial of Cinema X,” (no author), November 4, 1980, A2; Gabriella Jacobs, “Mussman May Be Witness At Cinema Trial,” Kentucky Post, November 3, 1980, 3B; Bob Fogarty, “Cinema X Jury Selection Underway,” Cincinnati Enquirer, October 29, 1980, A2; Jeff Gutsell, “Cinema X Trial Hits Legal Snag,” Cincinnati Enquirer, October 31, 1980, A3; Cincinnati Enquirer, “Kinsey Co-Author Testifies In Obscenity Trial Of Cinema X,” (no author), November 2, 1980, B10; Jeff Gutsell, “Cinema X Charge Challenged,” Cincinnati Enquirer, November 6, 1980, A4. Bob Fogarty, “Cinema X Trial Starts,” Cincinnati Enquirer, October 28, 1980, A2; Bob Fogarty, “Cinema X Trial Jury Gets Underway,” Cincinnati Enquirer, October 29, 1980, A3; Jeff Gutsell, “Three Cinema Firms Found Guilty Of Obscenity,” Cincinnati Enquirer, November 7, 1980, A1.

the City of Newport had sufficient grounds for a license revocation. To initiate license revocation actions, heard and decided by the Board of Commissioners, Mayor Deaton needed a three vote majority, and the Mayor was unlikely to get the necessary three votes.⁴²⁷ Remaining consistent in their protectiveness of adult entertainment, Commissioners Peluso, Warndorf, and Owen Deaton refused to implement what Twehues suggested. Peluso maintained that the theater paid the city \$25,000 per year in fees and taxes and that amount justified some tolerance. Further, Peluso argued, a nuisance action would cost Newport for legal fees and other legal related costs.⁴²⁸ On the Board, only Mayor Deaton and Commissioner Steve Goetz voiced support for Twehues's proposal.⁴²⁹

The majority's arguments in support of refusing to act against the Cinema X brought responses from Father Deye and the Advisory Council. Father Deye took immediate issue with the majority's position that protection of the public purse justified Newport's tolerating

⁴²⁷ David Wecker, "Paul Twehues Letter To Mayor Irene Deaton," Kentucky Post, November 15, 1980, 1K; Jeff Gutsell, "County Attorney May Urge Closing Of The Cinema X," Cincinnati Enquirer, November 8, 1980, D1; interview with former County Attorney Paul Twehues.

⁴²⁸ Former Campbell County Attorney Paul Twehues interview, April 2, 2006; Newport City Commission Minutes: November 12, 1980, November 25, 1980; December 10, 1980; Jeff Gutsell, "Prosecutor Awaits Help For Fight On Cinema X," Cincinnati Enquirer, December 9, 1980, A1; Campbell County Attorney Justin Verst Cinema X files: Letter To County Attorney Paul Twehues from Newport City Clerk, November 20, 1980, with attached letter from Johnny Peluso, Commissioner, to Paul Twehues, November 19, 1980; Kentucky Post, "Cinema X Rejects Closing Offer," (no author), November 21, 1980, 11K; Jeff Gutsell, "Cinema X Shows No Signs of Closing," Cincinnati Enquirer, November 21, 1980, A3; Jeff Gutsell, "Cinema Closing Would Cut Fines," Cincinnati Enquirer, November 19, 1980, A4; Newport Commission Minutes: November 12, 1980, November 25, 1980, December 10, 1980; interview with Paul Twehues; David Wecker, "Prosecutors Look For Ways To Shut Down Cinema X," Kentucky Post, November 7, 1980, 1A; David Wecker, "Don't Worry About Lawsuit," Prosecutor Advises," Kentucky Post, December 4, 1980, 8K.

⁴²⁹ Former Mayor and City Commissioner Steve Goetz interview, April 25, 2006; former Campbell County Attorney Paul Twehues interview, April 2, 2006; David Wecker, "Don't Worry About Lawsuit," Kentucky Post, December 4, 1980, 8K.

an unrelenting presence of hard-core and, according to recent jury verdicts, illegal pornography in the midst of downtown. Deye then reminded Commissioners Peluso, Warndorf, and O. Deaton that the city's church members contributed much more to Newport's well being than did the Cinema X.⁴³⁰ In a hostile tone, Tony Warndorf "lashed out" with a personal attack upon the Corpus Christi Pastor.⁴³¹ Commissioner Peluso summed up the majority's position, declaring "since the county" was prosecuting the Cinema X, let them finish it."⁴³² Despite the majority's opposition, the general public supported the anti-vice campaign.⁴³³

Bookstore Trial

In February 1981, the focus on obscenity trials shifted to James Lewallen's adult bookstore and the trial of Lewallen and of Sammy and Mary Dell Wright. A talented and aggressive team of local lawyers headed by Robert Lotz represented the defendants in the jury trial that began on February 13, 1981, and ended three days later.⁴³⁴ Neither of the

⁴³⁰ Cincinnati Enquirer, "Newport Churches May Begin To Picket Adult Movie House," (no author), November 15, 1980, D3; David Wecker, "Priest Criticizes Cinema X; Tony Warndorf Strikes Back," Kentucky Post, November 13, 1980, 10K; Newport Commission Minutes: November 12, 1980.

⁴³¹ Cincinnati Enquirer, "Newport Churches May Begin To Picket Adult Movie House," (no author), November 15, 1980, D3; David Wecker, "Priest Criticizes Cinema X; Tony Warndorf Strikes Back," Kentucky Post, November 13, 1980, 10K; Newport Commission Minutes: November 12, 1980.

⁴³² Newport Commission Minutes: December 10, 1980 (the reference to "the County" was incorrect. Though Paul Twehues was a County Attorney, as a prosecutor Twehues acted on behalf of the Commonwealth of Kentucky. Campbell County, as a political entity, was not a party to the criminal cases); Jeff Gutsell, "Peluso Requests Reports After Closed Caucus Sessions," Cincinnati Enquirer, December 5, 1980, A2; David Wecker, "Paul Twehues' Letter To Mayor Irene Deaton," Kentucky Post, November 15 1980, 1K; Newport Commission Minutes: November 12, 1980, November 25, 1980.

⁴³³ Dan Belmont, (no title) editorial, Kentucky Post, January 8, 1981, 4K (advocated continuing Cinema X prosecutions until the "cinema no longer existed."

⁴³⁴ Store clerk Leslie Cooper was one of the defendants charged, but the principals were Lewallen and Sammy Wright. Cooper and Mary Dell Wright will not receive extensive discussion herein.

Wrights testified, but, through their lawyers, maintained that they were mere landlords with no role in the Bookstore's operations. Prosecutor Bill Schoettelkotte proved otherwise, showing Sammy Wright participated in the Bookstore's daily operation, including ringing up sales on the cash register and being present in and around the store on a regular basis.⁴³⁵ Ralph Mussman testified about Wright's role in the Lewallen license transfer dispute that brought about Mussman's temporary loss of the City Manager's job. Sammy Wright's conduct belied claims of being a disinterested property owner and landlord.⁴³⁶ Jurors found the magazines obscene and further found all but Mary Dell Wright guilty of obscenity offenses.⁴³⁷

After the Bookstore trial, more raids followed. In early March 1981, troopers raided the Bookstore for the fourth and fifth times and continued the undercover operations at adult bars. Targeted businesses included the chronically troublesome Dillinger's and the Mousetrap. Lewallen's conviction, his second since opening in 1976, inspired more Board debates about revoking Lewallen's license.⁴³⁸ Commissioner Goetz and Mayor Deaton

⁴³⁵ Kentucky Post, "Bookstore Case Opens With Dispute," (no author), February 24, 1981, 7K; Jim Dady, "Wright Bookstore Case Goes To Jury," Kentucky Post, February 24, 1981, 3K; Jim Dady, "Jury Out On Case Of Adult Bookstore," Kentucky Post, February 27, 1981, 4K; Jim Dady, "Defense: Books Not Obscene," February 27, 1981, 4K. Note: I assisted Assistant County Attorney Bill Schoettelkotte in the prosecution of this trial.

⁴³⁶ Kentucky Post, "Police Say Wright Was At Bookstore," February 25, 1981, 14K; Jeff Gutsell, "Prosecution Rests In Wright Obscenity Trial," Cincinnati Enquirer, February 25, 1981, A3; Cincinnati Enquirer, "Closing Arguments Today In Obscenity Trial," (no author), February 24, 1981, A1.

⁴³⁷ Jurors recommended a jail term of one year and a \$500.00 fine for Lewallen, a fine of \$500.00 for Cooper, and a jail term of ninety days and fine of \$250.00 for Sammy Wright; Jim Dady, "Sammy Wright Convicted In Obscenity Case," Kentucky Post, February 28, 1981, 1K; Jeff Gutsell, "3 Convicted Of Obscenity In Newport," Cincinnati Enquirer, February 28, 1981, A1.

⁴³⁸ Cincinnati Enquirer, "State Police Raid Porno Shop Again," (no author), March 8, 1981, A1; Kentucky Post, "Police Raid Bookstore A Fourth Time," (no author), March 9, 1981, 1K; Randy Allen, "Newport Raiders Arrest 4," Cincinnati Enquirer, March 13, 1981,

proposed resolutions to revoke the Lewallen's business license. When the City Commission revoked Stanley Marks's bookstore license in 1971, Marks had no convictions. The 1981 City Commission had more compelling than did the Board in 1971, but Commissioners Peluso, Warndorf, and Owen Deaton defeated all resolutions for action against Lewallen's license.⁴³⁹ Despite the majority's stance on the Bookstore license, other developments kept the issue alive.⁴⁴⁰

On March 30, 1981, Sammy Wright agreed to guilty pleas before District Judge Leonard Kopowski on outstanding obscenity charges dating back to July 1980. At the plea hearing, and during an angry "tirade," Wright stated he had "torn up" the Bookstore's lease. Unconvinced, Steve Goetz insisted upon a formal license revocation, a proposal the majority defeated after hearing from City Solicitor Dennis Alerding that Lewallen intended to surrender the store license.⁴⁴¹

A1; Bill Straub, David Wecker, Steven Key, "State Troopers Arrest Three In Mousetrap Raid," Kentucky Post, March 13, 1981, 4K; Jeff Gutsell, "Cinema X Raided, Two Films Seized," Cincinnati Enquirer, March 15, 1981, A1; Stephen Key, Jim Dady, "Doubling Of Complaints Prompts Newport Raid," Kentucky Post, March 15, 1981, 4K

⁴³⁹ Newport City Commission: Hearing Minutes, "In Re: Stanley Marks," November 16, 1970; Newport City Commission: Minutes, May 12, 1971; Newport City Commission, Hearing Minutes: July 8, 1971, "In Re: The Matter of Stanley Marks"; Stanley Marks v. The Board of Commissioners for the City of Newport, Kentucky, 504 S.W. 2d 338 (Ky., 1974) (see previous discussion); Stanley Marks v. City of Newport, 344 F. Supp. at 675, 676 (E.D. Ky, 1972).

⁴⁴⁰ Paul Twehues interview, April 2, 2006; Newport Commission Minutes: March 18, 1981; Jim Dady, "Newport Refuses To Close Adult Bookstore," Kentucky Post, March 20, 1981, 3B; Jim Dady, "Adult Bookstore To Stay Closed," Kentucky Post, April 1, 1981, 7K; Newport Commission Minutes: March 18, 1981.

⁴⁴¹ Jeff Gutsell, "County Suits Not Likely On Obscenity," Cincinnati Enquirer, March 26, 1981, A2; Jeff Gutsell, "Wright, Others Plead Guilty," Cincinnati Enquirer, April 1, 1981, A1; Newport Commission Minutes: April 1, 1981; Jim Dady, "Adult Bookstore To Stay Closed," Kentucky Post, April 1, 1981, 7K; Jim Dady, "Wright Puts Bookstore Up For Sale," Kentucky Post, April 17, 1981, 6K; Cindy Schroeder, "Adult Bookstore Listed For Sale," Cincinnati Enquirer, April 18, 1981, A2; Kentucky Post, "Sammy Wright Faces Harassment Charges," (no author), August 20, 1981, 3K.

By late spring 1981, a growing anti-pornography sentiment inspired circulation of a petition to Kentucky Governor John Y. Brown. Petitioners hoped the Governor might assist in the anti-porn efforts.⁴⁴² On April 15, 1981, within a few weeks of the May primary in local elections, and after Lewallen's Bookstore was already closed, Commissioner Peluso sided with Mayor Deaton and Commissioner Goetz on the matter of Lewallen's occupational license. With Peluso providing a third vote, the Commission passed Resolution R-81-57 to start license revocation proceedings against James Lewallen. Owen Deaton was absent and Tony Warndorf cast the only "nay" vote. Newport never went forward with the revocation because Lewallen surrendered his license.⁴⁴³

Cinema X Trials Resume

Prosecutors Justin Verst and Bill Wehr got convictions in the third Cinema X trial during April 1981. Defense counsel Robert Smith again used his experts to tell jurors that the movies had therapeutic and educational value. Smith's experts maintained that Americans were generally "ill informed" about sexuality and that movies such as those on trial helped "educate and enrich." Prosecutors Verst and Wehr presented clinical mental health experts who offered another perspective. Verst and Wehr presented expert witnesses who testified that the films distorted the "reality of sexuality . . . unrealistically portrayed women as possessing . . . insatiable sexual appetites . . . [and] projected unreal views on

⁴⁴² Jim Dady, "Newport Group Turns To [Governor John Y.] Brown in Porn Battle," Kentucky Post, April 10, 1981, 1K; Cincinnati Enquirer, "Governor Brown Gets Cinema X Petition," (no author), August 11, 1981, B8; Jim Dady, "Pornography Foes Meet With [Justice Commissioner Neil] Welch," Kentucky Post, August 20, 1981, 13K.

⁴⁴³ Newport City Commission Minutes: April 1, 1981, April 15, 1981; Jim Dady, "Newport Commissioners Join Anti Porn Campaign," Kentucky Post, April 16, 1981, 1K; Jeff Gutsell, "Newport Doubles Bookstore Attack," Cincinnati Enquirer, April 17, 1981, A1; Jim Dady, "Adult Bookstore To Stay Closed," Kentucky Post, April 1, 1981, 7K.

male potency.”⁴⁴⁴ In addition to finding the corporate defendants guilty, the jury found Tom Hollis, Jr., guilty of facilitating the distribution of obscenity.⁴⁴⁵ The conviction represented the fourth Cinema X obscenity conviction since 1977, but the Commission majority remained steadfast against revoking the Cinema X license.⁴⁴⁶

Paul Twehues And The Grand Jury

Before the fourth jury trial prosecutors had been trying to discover more about the Cinema X ownership, but the corporations were evasive about company documents. As a solution, Paul Twehues convinced Circuit Judge John Diskin to empanel a special grand jury to probe Cinema X’s true ownership. Twehues’s May 1981 request was unusual because Commonwealth Attorneys usually conducted grand jury probes. Nevertheless, Judge Diskin granted Twehues’s request and gave the panel ninety days to complete the probe.⁴⁴⁷ For Harry Mohny, Twehues’s special grand jury probe came at an inopportune time. During February 1981, Mohny was one of several Florida federal indictees after the

⁴⁴⁴ Bill Straub, “Sex Films Often Beneficial, Jury Told,” Kentucky Post, April 21, 1981, 3K; Cincinnati Enquirer, “Cinema X Obscenity Trial Takes Off,” (no author), April 14, 1981, A3; Jim Dady, “Prosecutors Target Important Cinema X Defendants,” Kentucky Post, April 15, 1981, 6K.

⁴⁴⁵ Bill Straub, “Jury Agrees, Put Films In Trash Bag,” Kentucky Post, April 22, 1981, 1K; Jeff Gutsell, “Maximum Penalties Ordered In Cinema X Trial,” Cincinnati Enquirer, April 22, 1981, A1. Tom Hollis’ penalty was ninety days in jail and a \$250 fine.

⁴⁴⁶ Newport Commission Minutes: April 29, 1981; Jim Dady, “Test Obscenity Laws, Lawyer Says,” Kentucky Post, April 30, 1981, 12K.

⁴⁴⁷ Paul Twehues interview, April 2, 2006; Justin Verst Cinema-X files: Special Grand Jury papers: Report of Special Grand Jury, Case No. 81-CR-192; Order of July 17, 1981, holding Cinema X companies in contempt and ordering \$500 per day against each company until they comply with grand jury subpoenas; Findings of Fact and Conclusions of Law signed by Campbell County Circuit Judge John Diskin, October 9, 1981 and November 2, 1981, finding Cinema X companies in contempt and ordering fines of \$1000 per day against each of them until they comply with grand jury subpoenas; Campbell County Attorney Justin Verst interview, May 3, 2006; Hon. William Wehr interview, April 27, 2006 Gary Webb, “Who Is Behind The Cinema-X,” Kentucky Post, November 22, 1980, 1K; Jim Dady, “Cinema X Owners Are Jury Target,” Kentucky Post, June 6, 1981, 1K; Jim Dady, “Troopers Keep Pressure On Cinema X Theater,” Kentucky Post, September 16, 1981, 9K.

conducted a probe of the nation's porn industry.⁴⁴⁸

The Cinema X companies continued to resist disclosure. At first, the companies refused to comply with grand jury subpoenas, a costly tactic. Judge Diskin ordered contempt fines of approximately \$200,000. Meanwhile, Commissioner Goetz and Mayor Deaton continued proposing resolutions to revoke the theater's license, but the Commission majority rejected them.⁴⁴⁹

The fourth Cinema X trial went forward in July 1981. Prosecutors Verst and Wehr convinced jurors to find "Justine: A Matter of Innocence" obscene and all corporate defendants guilty.⁴⁵⁰ Total fines were now in excess of \$300,000 and the theater had accumulated five obscenity convictions since 1977. Yet, Peluso, Warndorf, or Owen Deaton stood their ground against revoking the theater's license. Consequently, State Police raids continued through November and December 1981.⁴⁵¹

The Cinema X faced two juries during January 1982. The fifth jury trial was the last

⁴⁴⁸ United States v. Harry Virgil Mohny, et al., 509 F.Supp. 127 (U.S. District Court, Miami, 2/19/81). (In 1977, the FBI began an undercover investigation of major publishers and distributors of porn. Agents posed as pornographers in Miami. This undercover operation became known as "Miporn," for Miami Pornography.); Gary Potter, The Porn Merchants (Dubuque, Iowa: Kendall Hunt Publishing Company, 1986), 26-33:

Especially revealing was the arrest of Harry Mohny, a Michigan-based pornographer who owns Wonderful World of Video, a leader in the video tape pornography industry. Mohny is widely regarded as a major regional pornography figure . . . as an importer of European pornography . . . [his] portfolio includes some sixty adult bookstores, a string of massage parlors, X-rated theaters and drive-in movies, go-go bars, and a topless billiard parlor . . .

The cases against almost all of the defendants in the "Miporn" sting operation were dismissed. U.S. v. DiBernardo, 775 F.2d 1470 (11th Cir., 1985); U.S. v. DiBernardo, 880 F.2d 1216, 1219 (11th Cir., 1989);

⁴⁴⁹ Cincinnati Enquirer, "Newport Theater Found In Contempt And Ordered To Pay Fine," (no author), October 10, 1981, 2K.

⁴⁵⁰ Kentucky Post, "Business As Usual At Cinema X, Guilty Again," July 31, 1981, (no author), 1K.

⁴⁵¹ Jim Dady, "Troopers Keep Pressure On Cinema X Theater," Kentucky Post, September 29, 1981, 9K.

Cinema X trial for prosecutors Justin Verst and Bill Wehr and they won convictions of all defendants. Bill Schoettelkotte and I tried the sixth Cinema X jury trial, at which jurors convicted the corporations and imposed a \$54,000 fine. In both trials, jurors found all movies obscene. After the sixth jury conviction, total fines amounted to over \$460,000.⁴⁵² There never was a seventh trial.

After seven obscenity convictions since 1977, and with more charges pending, the theater's corporate owners and licensees entered into a plea arrangement with Paul Twehues. One of the possible reasons for the theater's acquiescence was the recent political change in the composition of Newport's Board of Commissioners. In January 1982, an all reformer Commission took office and Paul Twehues won re-election for another four year term as County Attorney. Without the protections afforded by Commissioners Peluso, Warndorf, or Owen Deaton, Cinema X had no cause for optimism about the future of its business license.⁴⁵³ For outstanding obscenity charges pertaining to showings of "Toy Box" and "Pink Champagne," Cinema X lawyers and prosecutors agreed to a guilty plea and a suspended fine of \$100,000. Terms included that the theater ownership transfer the Cinema X property to state or local government in payment of outstanding fines. On February 2, 1982, approximately thirty people sat in the theater to view "Sex Boat" and "Hot Channels," Cinema X's final movies. When the screen went black for the last time, Greater Cincinnati became only the third major metropolitan area in the United States to have no pornographic

⁴⁵² Jeff Gutsell, "Cinema X Handed Fifth Obscenity Loss," Cincinnati Enquirer, January 16 1982, D1; Gary Webb, "Cinema X Firms Guilty On All Counts," Kentucky Post, January 16, 1982, 5K ("Manhattan Mistress"); Jeff Gutsell, "Cinema X Theater Fined \$54,000," Cincinnati Enquirer, January 21, 1982, A3 (The movie on trial was "Sheer Panties").

⁴⁵³ Steve Goetz interview, April 25, 2006.

theaters.⁴⁵⁴

After the Cinema X cases ended, City Solicitor Will Schroder accompanied City Manager Ralph Mussman in a “walk through” of the premises. During the inspection, the two men found numerous photographs of unsuspecting Cinema X patrons as they watched the movie screen. Former City Solicitor Schroder (now Associate Justice of the Kentucky Supreme Court) recalls the patrons were obviously unaware of the “surveillance” because several of the viewers were engaging in intimacies. Schroder surmises that the cameras appeared were situated on each side of the screen and angled to maximize a view of the audience. Mussman indicated that he knew many of the persons in the photos and he took the pictures with him.⁴⁵⁵ Neither the prosecutors nor State Police knew the theater was surveilling its audiences or knew of the photos’ existence.⁴⁵⁶

Only the first Cinema X trial’s appeal went to the United States Supreme Court, but the Court declined to hear it. Tom Hollis, Jr., unsuccessfully appealed his convictions for

⁴⁵⁴ Greg Paeth, “Twehues Wants Right To Seize Cinema X,” Kentucky Post, January 30, 1982, 1K; Gary Webb, Greg Paeth, “Dirty Film Era Ends Tomorrow At Cinema X,” Kentucky Post, February 2, 1982, 1K; Jeff Gutsell, “Cinema X May Try To Avoid Paying Penalties,” Cincinnati Enquirer, January 30, 1982, D2; William A. Weathers, “Commonwealth Is Now Owner of Cinema X,” Cincinnati Enquirer, March 10, 1982, D1; Greg Paeth, “Last Picture Show, Screen Goes Dark At Cinema,” Kentucky Post, February 3, 1982, 1K; Jeff Gutsell, “Cinema X May Close In Lieu Of Court Fines,” Cincinnati Enquirer, February 2, 1982, A1; Jeff Gutsell, “Prosecuting Porn A Duty - Twehues,” Cincinnati Enquirer, February 2, 1982, D1.

⁴⁵⁵ To the present day, the photos have never resurfaced. Mr. Mussman went to his grave without ever revealing the pictures’ whereabouts or the identities of those caught on camera. Hon. Wil Schroeder interview, May 9, 2006.

⁴⁵⁶ Kentucky State Police Detective interview; Al Garnick interview, May 24, 2006; Paul Twehues interview, April 2, 2006; Justin Verst interview, May 3, 2006. During my interview with him, former Kentucky Post reporter Bertram Workum related that he had once learned of the possibility of such photos.

the movies seized in July 1980.⁴⁵⁷ Denied relief in Kentucky's courts, Hollis sought review by the United State Supreme Court, but the Court declined to hear the case.⁴⁵⁸ Hollis then filed a petition for a writ of habeas corpus in federal court, but the federal District Court and Sixth Circuit Court of Appeals denied Hollis's petition.⁴⁵⁹

Bar Raids And Voters Reject the Past

Anti-vice efforts directed at adult bars did not take a hiatus during the obscenity trials. The State Police and County Attorney continued investigations and raids, and Newport's voters dealt a blow to adult entertainment in May 1981. Twenty-one candidates for the Newport City Commission appeared on the May primary ballots, but only the primary's top eight vote-getters get to the November ballot. Owen Deaton and Tony Warndorf placed tenth and fifteenth. Peluso survived to run in November, but all other candidates on the November ballot were reformers, thereby guaranteeing a reformer majority in the next Commission during 1982-83.⁴⁶⁰ Meanwhile, the State Police efforts continued at the adult bars.

In March 1981, over thirty State Troopers raided downtown adult bars, including the Mousetrap⁴⁶¹ and Dillinger's.⁴⁶² On September 11, 1981, seventy-four State Police troopers

⁴⁵⁷ Two unnamed films and two other movies, "Candy Goes To Hollywood" and Erotic Adventures of Candy." The two "Candy" films were never part of the prosecutors' case.

⁴⁵⁸ Kevin Cullen, "Court Denies Hearing," Cincinnati Enquirer, October 14, 1982, D1. The United States Supreme Court has the discretion whether to consider submitted cases. Reasons for accepting or refusing review are often not disclosed.

⁴⁵⁹ Hollis v. Campbell County Dist. Court, 829 F.2d 38 (6th Cir., 1987).

⁴⁶⁰ Cincinnati Enquirer, "Upsets Mark Primaries in Kentucky," (no author), May 27, 1981, C1; Steve Goetz interview, April 25, 2006; Cincinnati Enquirer, "Count Shows Upsets In Many Kentucky Races," (no author), November 4, 1981, E3.

⁴⁶¹ In March 1981, the Mousetrap license holder was a corporation, 924 Inc., with the names Edward Benton and Martha Wise listed as associated with the bar.

⁴⁶² Stephen Key and Jim Dady, "Doubling Of Complaints Prompts Newport Raid," Kentucky Post, March 16, 1981, 4K; Bill Straub and David Wecker, "State Troopers Arrest Three In Mousetrap Raid," Kentucky Post, March 13, 1981, 4K.

raided some of the more notorious sites for in-bar prostitution, including the Pink Panther, Body Shoppe, Mousetrap, and the Della Street Lounge. Several months of State Police undercover work preceded the September raid in which troopers had drug and prostitution warrants for over twenty-five individuals.⁴⁶³

Newport Police did not await the Commission's changing of the guard. The certainty of losing Commissioners Tony Warndorf and Owen Deaton meant that Newport Police officers and detective no longer had to fear Board retaliation for performing their duties in vice matters. For the remainder of 1981, Newport Police anti-vice initiatives added to the ongoing State Police efforts. During the summer of 1981, Newport Police initiated its own undercover investigation into adult bar activities and found what State Police troopers had been observing for two years. Owners and operators were neither stopping nor trying to stop in-bar prostitution and sex-for-drinks continued. Both departments found ongoing daytime as well as nighttime prostitution.⁴⁶⁴

In November 1981, State Police and Newport Police raided several adult establishments.⁴⁶⁵ The continued intensity of law enforcement efforts and the coming of a reformer majority prompted local media predictions that "hard times" were in the future for "Newport's adult establishments," but the owners still failed to change their ways.⁴⁶⁶ The

⁴⁶³ Cincinnati Enquirer, "Four Newport Bars Raided," (no author), September 11, 1981, B1; Cincinnati Post, "Two Charged With Prostitution," (no author), September 14, 1981, 11A; Bill Straub, Jim Dady, and David Wecker, "State Police Net Drugs, Prostitutes In Newport Raid," Kentucky Post, September 11, 1981, 1K (written by Jim Dady); Cincinnati Enquirer, "Two Brothers Surrender In Newport," (no author), September 15, 1981, D3 (Tom and Eddie Chambers of Dillingers and Body Shoppe).

⁴⁶⁴ Jim Dady, "Newport Sheds Light On Vice," Kentucky Post, August 27, 1981, 5K.

⁴⁶⁵ Cincinnati Enquirer, "Four Newport Bar Raids Part of KSP Year Long Investigation," (no author), November 9, 1981.

⁴⁶⁶ Editorial, "Newport: Signs Indicate Changes Are On The Way," Cincinnati Enquirer, September 26, 1981, A4; Jim Dady, "Reform Ticket Was Big In Newport," Kentucky Post,

media predictions proved not only true, but were understatements. Further, State Police had one final parting gift for a member of the 1980-81 majority.

The Tony Warndorf Bribe

By December 1981, the Board terms of Tony Warndorf, Johnny Peluso, and Owen Deaton were just weeks away from ending what had been a turbulent two year Commission term. Mayor Deaton was halfway through her four year term and Commissioner Steve Goetz had won re-election. Johnny Peluso did not. The new Board was going to be all reformers.⁴⁶⁷ Before Newport's last pro-adult entertainment majority left office, the State Police announced a video recording of Tony Warndorf taking a bribe.

At State Police request, Newport Police Lieutenant Rick Huck spoke openly of being upset by the Commission majority's replacing him in the Police Department's Criminal Investigation Division. Huck's acting performance was well done. His public expressions of discontent caused Commissioner Tony Warndorf not to question when former Jai Alai operator James Harris spoke of Huck's willingness to "pay" for a promotion. Unknown to Warndorf, Harris was also cooperating with State Police in hopes of getting a lesser sentence in pending criminal cases.⁴⁶⁸ State Police had suspected Warndorf of accepting payoffs, but, in late 1981, troopers got Warndorf on video. A bribery indictment ended Tony Warndorf's political career, but a plea bargain helped the long-time Newport politician

May 27, 1981, 7K; Cincinnati Enquirer, "Upsets Mark Primaries," (no author), May 27, 1981, C1; Cincinnati Enquirer, "County Shows Upsets In Many Ky Races," (no author), November 4, 1981, E3.

⁴⁶⁷ Editorial, "Newport: Signs Indicate Changes Are On The Way," Cincinnati Enquirer, September 26, 1981, A4; Jim Dady, "Reform Ticket Was Big In Newport," Kentucky Post, May 27, 1981, 7K; Cincinnati Enquirer, "Upsets Mark Primaries," (no author), May 27, 1981, C1; Cincinnati Enquirer, "County Shows Upsets In Many Ky Races," (no author), November 4, 1981, E3.

⁴⁶⁸ Rick Huck interview, March 23, 2006; Kentucky State Police Detective (retired) (must remain anonymous), interview March 14, 2006.

avoid serving a jail term.⁴⁶⁹

On January 1, 1982, an era ended in Newport. The last hurrah of adult entertainment's control over a Commission majority ended less than two years after Peluso, Warndorf, and Owen Deaton addressed the April 2, 1980, Commission meeting on the value and importance of adult businesses to Newport. Newport's entrenched adult businesses still operated on Monmouth Street, but law enforcement showed no signs of slowing or leaving the anti-vice campaign partially completed. In 1982, the City Commission had the composition to effect substantive changes, but, unlike reformers in the early 1960s, Commissioners had the advantage of knowing that whatever laws they passed would be enforced. One of the most important pieces of new legislation was a ban upon nude entertainment.

In the early 1970s Mayor Roland Vories called for a "war" against vice. Ten years later, police and prosecutors began waging that war. Newport's adult industry had just experienced a traumatic period during which the industry suffered. Before the end of the next City Commission term, the adult industry suffered a great deal more.

⁴⁶⁹ Rick Huck interview, March 23, 2006; Kentucky State Police (ret.) Detective interview, March 14, 2006; Jeff Gutsell, "Newport Official Indicted: Warndorf Charged In Bribery," Cincinnati Enquirer, December 4, 1981, B1; William A. Weathers, "Cameras Tape Offer Of Money," Cincinnati Enquirer, April 15, 1982, A1; Editorial, "Newport: Tape Transcripts Bring Pressures For Speedy Trial," Cincinnati Enquirer, April 18, 1982, E2; William A. Weathers, "Newport Mayor Wants Corruption Investigated," Cincinnati Enquirer, April 19, 1982, A1; Jeff Gutsell, "[Mayor] Deaton Hints She Has Information On Other Bribes," Cincinnati Enquirer, April 27, 1982, D1; Cincinnati Enquirer, "Warndorf Has Been Controversial Throughout Long Political Career," (no author), December 4, 1981, B3.

CHAPTER VII:

1982 COMMISSION: AN ERA ENDS — AN ERA BEGINS

Two years of intensive anti-vice operations ended Newport pornography and established an intensive, coordinated, and relentless anti-vice campaign against in-bar prostitution. Law enforcement had become effective at investigating and prosecuting vice cases, and Paul Twehues's office continued to successfully take vice cases to court. In 1982, a supportive city government became part of what was a winning combination. This chapter describes the adult entertainment related issues of the 1982-1983 Newport City Commission, the first fully reformer Board since Newport became Sin City. This Commission's legacy was the Anti-Nudity Ordinance, perhaps the most significant city ordinance in Newport's Sin City history and, once again, officials consulted a recent United States Supreme Court case.⁴⁷⁰ This Commission also introduced Michael Whitehead as the city's new Liquor License Administrator. Whitehead became one more indispensable element in the anti-vice campaign and he was instrumental in dispelling the long held belief that adult entertainment was essential to Newport's economic present and future well being. After 1982, the Sin City cloak did not fit nearly as well.

A Reform Commission Takes Over

Peluso, Warndorf, and Owen Deaton did not return to council, in part, because of the Newport Political Action Committee (NEWPAC). A coalition of Newport's

⁴⁷⁰ New York Liquor Authority v. Bellanca dba The Main Event, 452 U.S. 714 (1981).

neighborhoods, NEWPAC worked to end the liberal majority on the Commission and succeeded in helping elect an entirely reformer Board of Commissioners.⁴⁷¹

Neighborhood councils hoped that the new Commission, Mayor Irene Deaton and Commissioners Steve Goetz, Fred Osburg, Tom Ferrara, and Laura Bradley, would continue the momentum law enforcement created since April 1980. It was for the 1982-1983 Commission to begin the Herculean task of ending Newport as Sin City.⁴⁷²

Though not easy, the new Commission had advantages not available in earlier years. Commissioners had no cause to worry about a strong law enforcement response to present and future violations of vice and liquor laws. Paul Twehues's office, along with local and state police, remained committed to a policy of intolerance pertaining to illegal vice. Former mayor Steve Goetz recalls attending meetings in other towns and noting reactions about his “being from Newport,” and he was not the only Newport official who endured the cynicism and stigma.⁴⁷³ The new Commission set out to reverse what had been.

One of the first orders of business was selection of a City Solicitor. Commissioners chose an attorney from neighboring Kenton County who had no “contacts” in Newport. Commissioners chose Wil Schroder, a law professor at Northern Kentucky University’s Chase College of Law and had a strong educational background in urban law and planning , including an LL.M. from the University of Missouri at Kansas City (1971). Schroder took the job despite friends’ warnings that “getting involved” in

⁴⁷¹ Former City Commissioner and City Mayor Steve Goetz interview, April 25, 2006.

⁴⁷² Former City Solicitor and current Associate Justice of Kentucky’s Supreme Court Hon. Wil Schroder interview, May 9, 2006; Steve Goetz interview, April 25, 2006.

⁴⁷³ Steve Goetz interview, April 25, 2006; interview with City of Newport License Administrator [1982 – present], Michael Whitehead, March 9, 2007.

Newport would damage his career.⁴⁷⁴

Pressure On The Bars

Adult bars' troubles continued, but the adult businesses had to cope without help from inside city government. Newport Captain Rick Huck led investigations into adult bars' compliance with the Adult Zoning Ordinance of 1977 (O-77-9).⁴⁷⁵ Huck and the other officers looked at minimum distances between establishments and whether any adult business had started adult entertainment⁴⁷⁶ after March 1977. Two bars initially marked for a closer look were the Kit Kat Club and the Dream Bar (formerly Mary Dell Wright's Nite Life Lounge). The Chambers family, Ray and his two sons, Tom and Eddie, operated both.⁴⁷⁷ In January and May 1982, police cited the two businesses for having adult entertainment that began after the 1977 Adult Zoning Amendment.⁴⁷⁸

The same issue arose during the 1980-81 Commission term. Tom Chambers sued to challenge the constitutionality of the Amendment, O-77-9. Not surprisingly, the 1980-81 Commission majority of Johnny Peluso, Tony Warndorf, and Owen Deaton agreed not to enforce the ordinance against Chambers. The decision rendered the 1977 Zoning Amendment ineffective, if not a nullity. After January 1982, the Chambers' businesses

⁴⁷⁴ Hon. Wil Schroder interview, May 9, 2006; Steve Goetz interview, April 25, 2006.

⁴⁷⁵ Newport Commission Meeting Minutes, March 28, 1977; Ordinance O-77-9. Newport amended its entire Comprehensive Plan and Zoning Map on March 22, 1982, Ordinance O-82-35. The amendment, in effect, repealed and replaced all prior ordinances since 1974 and adopted all of them still in existence within the new Plan. See, Newport City Commission Minutes: March 22, 1982.

⁴⁷⁶ “. . . dance routines, strip performances or other gyrational choreography provided by the establishment which appeals to the prurient interest of the patron . . . “ O-77-9, Section II (Definitions: Adult Entertainment Establishment).

⁴⁷⁷ Other Chambers' adult businesses were Dillinger's Lounge and the Body Shoppe.

⁴⁷⁸ Jeff Gutsell, “Newport Cracks Down On Bar Dancers,” Cincinnati Enquirer, January 8, 1982, A2; Rick Huck interview, March 23, 2006.

were frequent police targets.⁴⁷⁹

A New Local Liquor Administrator: Michael Whitehead

In February 1982, the City Commission appointed Michael Whitehead as Liquor Administrator. Whitehead served time in the Army and earned an undergraduate degree in Political Science from University of Kentucky. When appointed, he was enrolled in Xavier University's Masters in Business Administration program. Having once worked with the Newport Citizens Advisory Council and Brighton Center, Whitehead appreciated that adult businesses' profits from illegal activities such as prostitution made mere fines and suspensions of little deterrence value. The new Liquor Administrator was an advocate for better controls over unruly and obstreperous bars.⁴⁸⁰

After entering office, Whitehead opened the lines of communication with Newport Police and local courts by arranging notifications to his office whenever licensed establishments were involved with police and the courts.⁴⁸¹ In 1982, some

⁴⁷⁹ Kentucky State Police Detective (retired) (to remain anonymous) interview, March 14, 2006; Jeff Gutsell, "Lawyer Asks Halt To Bar Citations," Cincinnati Enquirer, January 9, 1982, D1; Jeff Gutsell, "Newport's Adult Entertainment Zoning Challenged," Cincinnati Enquirer, March 21, 1982, A1; Gary Webb, "Newport Raids Despite Legal Warnings," Kentucky Post, May 25, 1982, 1; Howard Mintz, "Criminal Charges Against Managers and Dancers of Three Clubs from May Raids Dismissed," Cincinnati Enquirer, June 24, 1982, D1.

⁴⁸⁰ Michael Whitehead files: Interview with Ky. ABC Board Commissioner Bernard Keene (for Liquor License Review Committee, Newport Citizens Advisory Council, 1978), transcribed by Brighton Center, Inc., September 11, 1978 for Brighton Street's Newport News; Livingston Taylor, "Kentucky Closes Only A Few Violators of Liquor Laws," Courier-Journal and Times, March 27, 1977, A1 (no closing required for bar that employed sixteen yr old female go-go dancer); Kentucky Post, "New Liquor Officer Plans Crackdown," (no author), February 3, 1982, 1k.

⁴⁸¹ "New Liquor Officer Plans Crackdown," Kentucky Post, no author, February 3, 1982, 1k; Whitehead Memo to Police Chief John Warndorf, February 19, 1982, Whitehead Papers: Whitehead letter to Hon. George Muhlenkamp, Judge, Campbell District Court, February 22, 1982; Whitehead Memo to City Manager Ralph Mussman, May 20, 1982; Whitehead Letters to Churches, May 27, 1982;

doubts existed that adult entertainment was a profitable tourist draw for Newport.⁴⁸² By May 1982, the small town of Newport had 111 liquor establishments, a number of them with adult entertainment. Whitehead suspected that often heard claims of adult businesses' importance to the local economy were exaggerated or false. The notion defied local tradition that Newport's economy depended upon revenues from adult businesses. Liquor Administrator Whitehead hypothesized that claims of adult entertainment's economic importance were without substance – a myth.⁴⁸³

The Newport Citizens Advisory Council

During early 1982, the Board of Commissioners started considering options for a ban on nude entertainment. The end of nude dancing was a bold step because Newport's nude shows remained unique in Greater Cincinnati. Nudity brought crowds. Ban opponents cautioned that Newport's economic well-being depended upon nude entertainment and a ban might discourage the crowds and the money they brought. Some believed Newport should embrace adult entertainment and allow it to prosper in the manner of a New Orleans Bourbon Street.⁴⁸⁴ Supporters of a nudity ban cited problems adult businesses caused, including deterrence of mainstream investment.

City Manager Ralph Mussman was Mayor during 1961, the year of the George Ratterman scandal, the reform efforts, and Governor Bert Combs's Campbell County intervention. Mussman acknowledged Newport's unique forms of adult entertainment, especially the prevalence of nudity and recognized that strip bars brought crowds.

⁴⁸² Kevin Cullen, "After The Big Cleanup, Will Newport Change?", Cincinnati Enquirer, October 3, 1982, B1; Steve Goetz interview, April 25, 2006; Former Newport Economic Development Director Laura Long interview, April 4, 2006; Hon. Wil Schroder, May 9, 2006.

⁴⁸³ Michael Whitehead papers: Memo to Commission, May 17, 1982; Newport City Commission minutes: May 17, 1982; Michael Whitehead interview, March 9, 2007.

⁴⁸⁴ Wil Schroder interview, May 9, 2006; Steve Goetz interview, April 25, 2006.

Nevertheless, the City Manager explained, that same uniqueness discouraged “legitimate businesses” from considering Newport as a place to “settle and raise a family.”⁴⁸⁵

The Newport Citizens Advisory Council made certain Board members understood that citizens wanted to rid the town of its playground image and reputation.⁴⁸⁶ At the May 17, 1982, Commission meeting, the Advisory Council set out what the group thought were Newport’s most important goals and priorities.⁴⁸⁷ In a strongly worded resolution, the Advisory Council cited the “deteriorating effects” of Monmouth Street’s adult businesses and adult entertainment’s “climate of lawlessness.” Asserting that adult entertainment contributed to a poor “moral environment and deterred making Newport a place to live and work,” the Council considered adult businesses an “insult to . . . the citizens of Newport and [violations] of established community standards.” The resolution commended the “Campbell County Attorney,” the “Kentucky State Police,” and “those past and present” for efforts to rid Newport of “pornographic businesses.” The Council also reminded Commissioners of the many “campaign promises” about a nudity ban and mentioned a recent grand jury recommended that Newport take “necessary steps” to control illegal activities in liquor licensed premises.⁴⁸⁸ The Advisory Council’s gave Commissioners no options to do otherwise.

The Anti-Nudity Ordinance

Notwithstanding substantial support for more controls over adult entertainment, there was always the matter of a long held belief about the adult industry’s importance to

⁴⁸⁵ Steve Goetz interview, April 25, 2006; Hon. Wil Schroder interview, May 9, 2006; Kevin Cullen, “After the Big Cleanup, Will Newport Change,” Cincinnati Enquirer, October 3 1982, B1; Laura Long interview, April 4, 2006.

⁴⁸⁶ Hon. Wil Schroder interview, May 9, 2006; Steve Goetz interview, April 25, 2006.
⁴⁸⁷ Newport Commission Minutes: May 17, 1982.

⁴⁸⁸ Michael Whitehead files: Memo to Commission, May 17, 1982; Newport City Commission minutes: May 17, 1982.

Newport's economy. During the May 17, 1982, meeting, License Administrator Mike Whitehead shared what he had discovered about adult entertainment's alleged economic importance. Whitehead offered that, "as a whole," the adult industry had never paid its "fair share" and that nude entertainment did not necessarily generate more revenues than businesses without nude dancing. For example, Whitehead found that restaurants and cafés without adult entertainment averaged \$3,333 in quarterly license and payroll tax payments but adult bars with live entertainment averaged less, only \$2,359. Package liquor stores without adult entertainment or a "liquor by the drink" license averaged \$3,258 per business. Furthermore, Mike Whitehead explained that adult bar owners falsely claimed that most dancers were not employees, but were "independent contractors," a claim police investigators knew was untrue. Since the city had no occupational license for dancers, the women and the bar owners avoided paying payroll taxes and fees. Consequently, Newport lost revenues.⁴⁸⁹ Commissioners decided to move ahead with a ban on nude adult entertainment, a decision promptly supported by the Ministerial Association and the Southwest Ohio Northeast Kentucky Division of the Salvation Army. Salvation Army's Paul Kelly labeled Newport as a "good place for a warfare for decency."⁴⁹⁰

As much as certain groups wished it so, Newport had to be cautious about how to effect a ban on nudity. Generally, mere nudity without corresponding sexual conduct was protected speech and broad bans had difficulties surviving constitutional

⁴⁸⁹ Newport Commission Minutes, May 17, 1982; William A. Weathers, "Panel Urges Newport Ban on Nude Dance," Cincinnati Enquirer, May 18, 1982, D2.

⁴⁹⁰ Newport Commission Minutes, August 30, 1982; William A. Weathers, "Panel Urges Newport Ban on Nude Dance," Cincinnati Enquirer, May 18, 1982, D2; Cindy Schroeder, "Salvationists Back Nude Dance Ban," Cincinnati Enquirer, August 7, 1982, C1.

challenges.⁴⁹¹ The Mayor and Commissioners agreed upon the concept of a nude ban, but disagreed about language. Mayor Irene Deaton insisted upon a ban based upon obscenity criteria. Commissioners disagreed. The four Commissioners preferred not to incorporate the 1973 Miller v. California 1977 obscenity definition into an ordinance banning nudity. If obscenity was a required element, the ordinance would have to cope with the complexities and uncertainties of obscenity definitions that had frequently changed in the past. The most recent experience that affected Newport was federal authorities' experience in the 1970s "Deep Throat" litigation when a definitional change required the court and prosecutors to do the trial over again. Minimum dress requirements were also divisive questions for Board members. Ideas ranged from pasties and G-strings to conservative one and two piece outfits resembling modest swimsuits.⁴⁹² Newport tried to resolve the conflict by considering a recent United States Supreme Court opinion.

The Bellanca Case: Newport Finds The Solution

In 1981 the Supreme Court issued the New York Liquor Authority v. Bellanca dba The Main Event opinion.⁴⁹³ The State of New York's alcoholic beverage regulatory agency, the New York State Liquor Authority, banned nudity in liquor licensed businesses and set pasties and G-strings as minimum dress:

No retail licensee for on premises consumption shall suffer or permit any person to appear on licensed premises in such manner or attire as to expose to view any

⁴⁹¹ See, Southeastern Promotions, LTD v. Conrad, 420 U.S. 546 (1975); Erznoznik v. City of Jacksonville, Fla., 422 U.S. 205, 211-12 (1975); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952); Jenkins v. Georgia, 418 U.S. 153, 161 (1974) California v. LaRue, 409 U.S. 109, 118 (1972); Doran v. Salem Inn, Inc., 422 U.S. 922, 932 (1975).

⁴⁹² Interview with Hon. Wil Schroder, May 9, 2006.

⁴⁹³ 452 U.S. 714 (1981); William A. Weathers, "Lawyers Say Newport Ban On Solid Ground," Cincinnati Enquirer, August 10 1982, C1. The Bellanca bar owner asserted his First Amendment rights to continue offering nude and partial nude dance.

portion of the pubic area, anus, vulva or genitals, or any simulation thereof, nor shall suffer or permit any female to appear on licensed premises in such manner or attire as to expose to view any portion of the breast below the top of the areola, or any simulation thereof." (N. Y. Alco. Bev. Cont. Law, § 106, subdivision. 6-a (McKinney Supp. 1980-1981)).⁴⁹⁴

The New York nudity ban no criminal penalties but the Liquor Authority had license suspensions and revocations options. To prove a violation occurred, the New York law needed no proof of an obscene performance because "obscene" was not an element of the law. Instead, a breach of the minimum dress requirements constituted a violation in most instances.⁴⁹⁵ In its analysis, the Supreme Court recognized nude dance as a form of protected expression and conceded that "not all the [New York Liquor Authority's] prohibited acts would be found obscene and were entitled to some measure of First Amendment protection."⁴⁹⁶ Nevertheless, the Supreme Court upheld the Liquor Authority's ban, reasoning that the United States Constitution's Twenty-First Amendment⁴⁹⁷ gave state licensing authorities discretion to regulate sales and distribution of alcohol in licensed businesses. The Supreme Court took note of a "New York State

⁴⁹⁴ Bellanca, at 714 (footnote 1).

⁴⁹⁵ "Partial nudity" commonly refers to "topless."

⁴⁹⁶ Bellanca, 452 U.S., at 715-16.

⁴⁹⁷ Amendment XXI:

Section. 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed; Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Kentucky ratified in November 1933. See, Brewing Company v. Liquor Commission, 305 U.S. 391 (1939) United States v. Frankfort Distilleries, 324 U.S. 293, 299 (1945); Nippert v. Richmond, 327 U.S. 416, 425 (1946); Hostetter v. Idlewild Liquor Corp., 377 U.S. 324, 330 (1964); State Bd. of Equalization v. Young's Market Co., 299 U.S. 59 (1936). Note: the Eighteenth Amendment imposed Prohibition (Amendment XVIII:

Section. 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Legislative Annual 150 (1977)” memorandum that concluded:

Nudity is the kind of conduct that is a proper subject for legislative action as well as regulation by the State Liquor Authority as a phase of liquor licensing. It has long been held that sexual acts and performances may constitute disorderly behavior within the meaning of the [New York] Alcoholic Beverage Control Law. Common sense indicates that any form of nudity coupled with alcohol in a public place begets undesirable behavior. This legislation prohibiting nudity in public will once and for all, outlaw conduct which is now quite out of hand.⁴⁹⁸

After Bellanca, the law supported decisions by an appropriate liquor authority to insist women refrain from nude dancing in licensed establishments.⁴⁹⁹

City Solicitor Wil Schroder was experienced enough to recognize what strip bar owners would do if Newport imposed a ban on nude dance. Schroder recommended adoption of an ordinance that closely followed Bellanca, cautioning that a nudity ban would prompt federal lawsuits and requests by bar owners to delay a ban’s enforcement until all appeals ended, a process of several years. If Newport’s ban was too restrictive, a federal judge might grant owners’ request to stay enforcement. If a judge did so, Newport would have no ban whatsoever and owners would have few restrictions upon in-bar entertainment. Schroder urged that an ordinance closely patterned after Bellanca would survive bar owners’ challenges and Newport could enforce its ordinance.⁵⁰⁰

⁴⁹⁸ Bellanca, at 717-718. . Note: The Memorandum is dated shortly after the Supreme Court’s decision in Young v. American Mini-Theatres, 427 U.S. 50 (1976).. . .

⁴⁹⁹ The Supreme Court cited the following: Doran v. Salem, Inn., Inc., 422 U.S. 922; Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 557-558; California v. LaRue, 409 U.S. 109, 118; Schad v. Mount Ephraim, 452 U.S. 61 (1981).

⁵⁰⁰ William A. Weathers, “Newport To Study Ban on Nudity,” Cincinnati Enquirer, June 30, 1982, B1; William A. Weathers, “Panel Slates Public Hearing For Anti Nudity Proposal,” Cincinnati Enquirer, July 7, 1982, D1; Howard Mintz, “Newport Board Divided On How To Ban Nudity,” Cincinnati Enquirer, August 11, 1982, C1; Kevin Cullen, “Newport Puts Off Nude Dance Ban,” Cincinnati Enquirer, August 17, 1982, C1; Steve Goetz interview, April 25, 2006; Hon. Wil Schroder interview, May 9, 2006; William A. Weathers, “Lawyers Say Newport Ban On Solid Ground,” Cincinnati

Mayor Deaton's obscenity based proposal had constitutional and practical problems, but some of her concerns were valid. The Mayor preferred that a nudity ban's enforcement success did not depend upon the Alcoholic Beverage Control Commission, because the agency's enforcement history lacked consistency and offered no significant deterrence value.⁵⁰¹ Deaton believed sanctions against bar owners' occupational licenses, their license to operate their businesses, have a greater impact and more of a deterrence value.⁵⁰² As the issuing and regulatory agency for the city's businesses, suspensions and revocations of occupational licenses would be within Newport's, not the ABC Board's, discretion. Furthermore, appeals from a decision on occupational licenses were to the Campbell County Circuit Court, not to a court or agency one hundred miles away in Franklin County. Mayor Deaton correctly reasoned that, regardless of the owner's liquor license status, the absence of an occupational license deprived a liquor licensee had no place to use the liquor permit.⁵⁰³ Liquor Administrator Whitehead shared the Mayor's concerns. In earlier inquiries about possible ABC Board enforcement assistance, Whitehead learned that Newport could expect no Board help.⁵⁰⁴

Enquirer, August 10, 1982, C1; William A. Weathers, "Speakers For Nude Dance Ban," Cincinnati Enquirer, August 10, 1982, C1. Hon. Wil Schroder interview, May 9, 2006.

⁵⁰¹ Mayor Deaton's comments at Newport City Commission Minutes: August 16, 1982. For a review of the ABC Board's history relative to enforcement, see Kentucky Post reporter Al Salvato's 1985 series: Al Salvato, "Cities, State Clash Over Bar Troubles," Kentucky Post, March 6, 1985, 1K; Al Salvato, Cities Wage Long, Tiring War Against Bars," Kentucky Post, March 7, 1985, 1K; Al Salvato, "Alcohol Board: Cities Don't Understand," Kentucky Post, March 8, 1985, 1K.

⁵⁰² Howard Mintz, "Newport Board Divided On How To Ban Nudity," Cincinnati Enquirer, August 11, 1982, C1.

⁵⁰³ Newport City Commission Minutes: August 16, 1982; Michael Whitehead interview, March 9, 2007.

⁵⁰⁴ Michael Whitehead interview, March 9, 2007; Michael Whitehead Papers: Memo to Mayor and Board of Commissioners, April 29, 1982: Re: Charles Cole Correspondence; Michael Whitehead, Letter to ABC Commissioner Richard Lewis – July

Prior to passage of a nudity ban, Newport hosted a crowded public hearing on August 9, 1982. Persons on both sides of the issue appeared and offered sentiments. Justice Wil Schroder recalls that the “Bourbon Street” concept for Newport never was a realistic option.⁵⁰⁵ Mousetrap Lounge’s operator Tom Sexton presented a “petition” supporting the sixteen adult bars in operation during 1982. Sexton claimed he had over two hundred fifty signatures of “business and property owners” opposed to a nudity ban. Ban supporters outnumbered ban opponents. Supporters included community and church leaders and Advisory Council representatives. Reverend John Seiter of St. Stephen’s Catholic Church stated that at least fifteen of Newport’s downtown adult bars regularly offered nude dancing. Father Seiter echoed the concerns of many about adult entertainment’s effects upon Newport’s “quality of life.”⁵⁰⁶

Through mid-August, the Board remained divided, but, on August 30, 1982, the Commission adopted a nudity ban (Ordinance O-82-85). The ban relied almost entirely upon the Supreme Court’s Bellanca decision and contained no obscenity element.⁵⁰⁷

3, 1982: Re: Agent Cole’s Response; Michael Whitehead’s correspondence to ABC Commissioner Edward Farris, October 7, 1982; Michael Whitehead’s Letter to State Senator James Bunning, December 8, 1982; ABC Board Attorney Catherine Staib letter to James Bunning, January 24, 1983. Note: James Bunning later became a United States Senator from Kentucky.

⁵⁰⁵ Laura Long interview, April 4, 2006; Phil Ciafardini interview, April 1, 2007; Hon. Hon. Wil Schroder interview, May 9, 2006; Steve Goetz interview, April 25, 2006.

⁵⁰⁶ William A. Weathers, “Speakers For Nude Dance Ban,” Cincinnati Enquirer, August 10, 1982, C1; Purvis, Bicentennial History, 286-287.

⁵⁰⁷ Debbie Creemers, “G-String Strategies: Newport Dancing Hearing Tonight,” Kentucky Post, August 9, 1982, 1K; Newport Commission Minutes, August 16, 1982, August 30, 1982; Kevin Cullen, “Newport Puts Off Nude Dance Ban,” Cincinnati Enquirer, August 17, 1982, C1; Kevin Cullen, “Newport Sets Anti-Nudity Law For August 30 Vote,” Cincinnati Enquirer, August 24, 1982, A1; Editorial, “Newport: The City Commission Is Making Good On Its Campaign Promise Of Reforms,” August 29, 1982, G2; Jack Hicks, “Life on Monmouth Street May Go On Long After Storm Over,” Cincinnati Enquirer, August 18, 1982, F1; Debbie Creemers, “Board Splits With Mayor

County Attorney Twehues agreed with City Solicitor Schroder that a court challenge was inevitable and reminded Commissioners that “nude dancing [was] not [necessarily] pornographic [or obscene].” Absent language that tried to define “what’s obscene and not obscene,” Twehues opined the proposed ban had “no constitutional cracks.”⁵⁰⁸

The Anti-Nudity Ordinance’s first reading on August 30, 1982, attracted another crowd. Tom Sexton threatened lawsuits, but ban supporters again outnumbered those who opposed the new law. Ministerial Association President, Reverend Wayne Nelson⁵⁰⁹ commended the Board and commented about all the “kinds of filth and garbage” associated with Newport’s adult businesses, asking rhetorically “. . . what do the children think of adults when they see this allowed?” Reverend Nelson announced that local churches and parishioners supported the ban.⁵¹⁰

The ordinance’s “Preamble” set forth Newport’s goals and identified problems associated with adult businesses, specifically property value decline, blight, and higher law enforcement costs from increased crime.⁵¹¹ Optional sanctions available included

On Nudity Ban,” Kentucky Post, August 10, 1982, 1K (discussion of Commissioners’ caucus of August 9, 1982).

⁵⁰⁸ Debbie Creemers, “Nude Plan Bares Fangs,” Kentucky Post, October 24, 1982, 1K; Paul Twehues interview, April 2, 2006.

⁵⁰⁹ Newport’s Ministerial Association.

⁵¹⁰ Debbie Creemers, “Foes Vow To Test Nude Dance Law,” Kentucky Post, August 31, 1982, 1K; Paul Knue, “Good People Are The Key To Altering A Bad Image,” Kentucky Post, August 21, 1982, 4K; Debbie Creemers, “Newport Writing New Nudity Ordinance,” Kentucky Post, August 17, 1982, 1K; Newport City Commission Minutes: August 30, 1982; Kevin Cullen, “Session On Nudity Provides A Show Of Controversy,” Cincinnati Enquirer, August 31, 1982, C1; Commissioners Ordinance O-82-85. See also, Commissioners Ordinance, No. O-82-56: “An Ordinance Providing For The Registration, Photographing And Finger Printing Of All Employees Of Establishments That Sell Liquor Or Beer By The Drink Within The City Of Newport,” passed May 24, 1982.

⁵¹¹ Commissioners Ordinance Number O-82-85:

finances, suspensions, and revocations of liquor and occupational licenses possible actions against the liquor license and occupational licenses.⁵¹² Unlike the New York Liquor Authority's law the Supreme Court addressed in Bellanca, Newport's Anti-Nudity Ordinance contained criminal penalties. As the number of offenses increased during any twelve month period, so did the severity of possible penalties, the most severe being jail terms and license revocations.⁵¹³

Final reading of the Anti-Nudity Ordinance was on September 20, 1982, but not before ban opponents again tried to discourage passage.⁵¹⁴ A week earlier, on September 13, 1983, the City Clerk read a tendered statement that purported to have fourteen hundred signatures of business owners and residents opposing the Anti-Nudity Ordinance. The signatories professed support for adult businesses, suggesting nude performances were a "vital component of the Newport business community [that generated] substantial revenues for both the city and other businesses . . . [in] central

Preamble . . . To protect property values; To prevent blight and deterioration of the City neighborhoods; To promote a climate conducive to a return of residences and businesses to the city's neighborhoods; To enhance the quality of life within the City; To presume and stabilize the City neighborhoods; and, To decrease the incidence of crime disorderly conduct and juvenile delinquency.

⁵¹² Ordinance No. O-82-85, Section V (Liquor License) and Section VI (Occupational License); Ordinance No. O-82-85, Section VI (Occupational License):

[The] City Manager shall prefer charges against the retail license pursuant to the Newport Code of Ordinances sections 2456 et seq and after notice a hearing etc held by the Board of Commissioners the occupational license shall either be revoked or suspended . . . In the event that three or more violations . . . occur at a business establishment within a twelve month period after notice and hearing etc pursuant to the Newport Code of Ordinances sections 2456 et seq. the Board of Commissioners shall revoke the occupational license of the retail licensee.

⁵¹³ Commissioners Ordinance, No. O-82-85 (Published September 23, 1982); Debbie Creemers, "Nude Plan Bares Fangs," Kentucky Post, August 24, 1982, 1K.

⁵¹⁴ Newport City Commission Minutes: September 13, 1982. Final passage was a week later than originally planned because but City Solicitor Wil Schroder suggested changes to avoid outlawing "low cut evening gowns." Hon. Wil Schroder interview, May 9, 2006.

business district.” Commissioner Laura Bradley and Mayor Deaton expressed skepticism about the statement’s authenticity. After debates ended, the Board unanimously passed the Anti-Nudity Ordinance.⁵¹⁵ The effective date was October 1, 1982, and, as City Solicitor Schroder predicted, lawsuits followed.

Nudity Ban Becomes Effective -- A Federal Challenge

On September 30, 1982, Cincinnati lawyer Andrew Dennison filed suit in the United States District Court on behalf of several bar owners and operators.⁵¹⁶ Plaintiffs challenged the Anti-Nudity Ordinance’s on First Amendment and other grounds and asked Judge William Bertlesman to enjoin the ban’s enforcement pending the case’s final outcome.⁵¹⁷ At the initial hearings for a stay of enforcement, bar owners did not do well. Judge Bertlesman denied owners their injunction.

The Court found Newport’s ordinance was so similar to the New York law considered in Bellanca that, in effect, the Supreme Court had already decided the Newport ordinance.⁵¹⁸ Will Schroder’s advice had been sound. Pending final resolution

⁵¹⁵ Newport City Commission Minutes: September 13, 1982, September 20, 1982; Interview with Wil Schroder, May 9, 2006; Kevin Cullen, “Nudity Under Wraps,” Cincinnati Enquirer, October 1, 1982, A1.

⁵¹⁶ References to this suit will be in the name of “Iacobucci.” Nick Iacobucci was an adult establishment owner, operator, and liquor licensee for more than one adult club. Although several plaintiffs joined in the action, identification in the case reporting system is City of Newport v. Iacobucci, et al. v. et al., 479 U.S. 92 (1986). Prior to reaching the United States Supreme Court, the United States Court of Appeals for the Sixth Circuit decided Nicholas A. Iacobucci, D/B/A Talk Of The Town, Et Al., Plaintiffs-Appellants, V. City Of Newport, Kentucky, Et Al., Defendants-Appellees, 785 F.2d 1354 (6th Cir., 1986) (Iacobucci v. Newport).

⁵¹⁷ Kevin Cullen, “Challenge Law,” Cincinnati Enquirer, October 1, 1982, A1; Hon. Wil Schroder interview, May 9, 2006.

⁵¹⁸ Hon. Wil Schroder interview, May 9, 1982; Kevin Cullen, “Court Upholds Ban On Nude Shows,” Cincinnati Enquirer, October 8, 1982, D1.

of the case, Newport could enforce the ordinance⁵¹⁹

Legal nude dance ended at midnight on September 30, 1982. By ten o'clock that evening, bars were turning away patrons as men crowded into the strip bars for final glimpses of Sin City's nude dancers. Bar owners exploited the opportunity to mock the ban. A Brass Mule dancer dressed as a 1950s "Sock Hopper." walked around "licking large lollipops" and, at midnight, "stuck" them to her breasts, calling them her "pasties."⁵²⁰ Mousetrap dancers dressed as "angels," wore makeshift halos, and passed out milk and cookies. At the stroke of twelve, dancers and B-girls donned bikinis, swimsuits, or G-strings and pasties. A Mousetrap dancer wore a t-shirt that read "Impeach [Mayor] Irene Deaton."⁵²¹ After midnight, the ban's success depended upon enforcement by police, prosecutors, and Liquor Administrator Mike Whitehead. Meanwhile, city officials, awaited what would happen to the city's economy.

The significance of what occurred after midnight on October 1, 1982, cannot be overstated. Newport had had turned a corner in the efforts to change its image. A ban on nude entertainment was a rejection of Newport as Sin City. Law enforcement's anti-vice work since 1980 was an unequivocal statement that authorities intended to maintain an intolerant posture against prostitution and other in-bar violations. By 1982, Paul

⁵¹⁹ Hon. Wil Schroder interview, May 9, 2006; Kevin Cullen, "Court Upholds Ban On Nude Shows," Cincinnati Enquirer, October 8, 1982, D1. Most of the discussion herein will be about the Anti-Nudity Ordinance; however, plaintiffs also sued in a challenge to another ordinance, Ordinance, No. O-82-56, passed in May 1982, which mandated required fingerprinting, photographs, and employee registration in "liquor by the drink" establishments.

⁵²⁰ According to the ordinance's guidelines, pasties and G-strings would not violate the Anti-Nudity Ordinance.

⁵²¹ Gary Webb, "Nude Dancers Put It Back On In Newport," Kentucky Post, October 1, 1982, 1K; Kevin Cullen, "Naughty Days May Be Ending; Dancing Law Takes Effect," Cincinnati Enquirer, October 1, 1982, C1; Kevin Cullen, "After The Big Cleanup, Will Newport Change," Cincinnati Enquirer, October 3, 1982, B1.

Twehues and the Kentucky State Police had demonstrated that if the laws existed, there would be aggressive enforcement, and, after mid-1981, Newport Police were free to become part of the effort. The Anti-Nudity Ordinance was the city's demonstration of commitment to shedding the Sin City cloak that Newport had worn for so long and was a giant step toward a goal for which the 1961 reformers could only have hoped. Newport was closing the playground.

CHAPTER VIII

ENFORCEMENT OF NUDITY BAN AND PROSTITUTION FIGHT CONTINUES

This chapter discusses the Anti-Nudity Ordinance's effects upon Newport's adult industry and the early enforcement efforts. The ban had an immediate effect, but predictions of economic collapse proved incorrect. The belief that Newport needed adult entertainment for economic survival was a myth.

The bar owners were not ready to surrender to the new ban. In addition to the pending lawsuit, adult bar operators and the dancers themselves began challenging the limits of the new law. Their efforts achieved some early successes because some juries were reluctant to convict women of nudity violations. Despite a few court setbacks, convictions became the rule rather than the exception.

In-bar prostitution continued, but Paul Twehues began employing state nuisance laws to close adult bars that had arrogantly continued to permit prostitution on the premises. Owners discovered that earlier prostitution convictions had a devastating cumulative effect. The earlier convictions were evidence that the establishments were nuisances and vulnerable to closures, but bar owners remained stubborn. By the end of the 1980s, adult entertainment had suffered one court setback after another and law enforcement persisted in the investigations and prosecutions. By 1990, it was no longer correct to apply the term "adult entertainment industry" to downtown Newport's adult bars.

The Decline: Bar Owners' Lost Cause

The nude ban's immediate effect was the rapid and dramatic decline of crowds into Monmouth Street adult bars. Bars that once catered to wall to wall patrons watching strippers transformed into nearly empty establishments that featured women dancing to jukeboxes. Echoing the sentiments of other adult bar owners, Casablanca owner Jo Ann Smith lamented that "men won't come . . . if women don't undress."⁵²² Nick Iacobucci was one of the seven plaintiffs in the pending federal suit that bore his name.⁵²³ He had clubs in Newport since the early 1960s and during the mid-1970s, was a person of interest in federal grand jury investigations. Iacobucci complained that shrinking crowds may cause the closing of two of his three bars. The club owner also lamented that Newport's mandatory registration⁵²⁴ of employees was "scaring off dancers."⁵²⁵

During February 1983, Kentucky Post reporter visited Monmouth Street's adult bars and chronicled what he observed. Reporter David Wecker found that the neon signs still advertised "promises of girls," but Monmouth Street had "changed . . . [and] looked deserted on Saturday night . . . like a town after the gold rush was over." Visits to bars that had enjoyed patrons "packed wall to wall" revealed "women in bras and G-strings" soliciting for "mere quarters" to feed jukeboxes. At the former nude bar, the Casablanca, a "For Sale" sign appeared in the window. Wecker found only eight patrons at the Chambers' Kit Kat Club and they "wished they had stayed at home." Concluding that the

⁵²² Tom Williams, "Draped By Nude Law, Clubs Close Down," Kentucky Post, October 15, 1982, 1k.

⁵²³ City of Newport v. Iacobucci, et al. v. , et al. , 479 U.S. 92 (1986). The three clubs were the Talk Of The Town, the Alley Kat, and La Madame's. La Madame's had already been closed a week prior to Iacobucci's announcement, but the bar eventually reopened.

⁵²⁴ Ordinance O-82-56.

⁵²⁵ Tom Williams, "Draped By Nude Law, Clubs Close Down," Kentucky Post, October 15, 1982, 1k.

nudity ban had “truly hurt” the adult industry, Wecker surmised that the sight of “high heeled women dancing naked” was the draw that had brought “men to Newport.”⁵²⁶ Casablanca owner Smith, her liquor license revoked and no longer subject to the Anti-Nudity Ordinance, considered bringing back nude dancers to her alcohol free club.⁵²⁷

Police closely monitored Newport’s remaining fourteen adult bars.⁵²⁸ By mid-March 1983, some adult owners noted slight increases in patronage, but volume was nowhere near that of pre-ban days. The Mousetrap’s Tom Sexton reported a seventy-five percent improvement after an initial fifty percent drop in business, but most adult owners grumbled about their suffering businesses.

A veteran of Newport’s highs and lows since the 1950s, City Manager Ralph Mussman believed Newport citizens had reached a point where they were willing to risk economic troubles to change the community’s Sin City image and reputation. To change Newport, Mussman suggested that Newport needed to “suffer through another transition.”⁵²⁹

A Kentucky Post editorial employed a metaphor to describe Newport’s post-ban circumstances. Comparing the nude dancing, alcohol and drugs, and prostitution along Monmouth Street as symptoms of an “infectious disease,” the editorial explained that Newport “underwent a surgery and recovery would take time.” Voters, “wielded a surgical knife” in ousting from office the “80-81 commission majority of Johnny Peluso,

⁵²⁶ David Wecker, “New Strip: Quiet Nights At Lonely Bars,” Kentucky Post, February 7, 1983, 1K.

⁵²⁷ Bertram Workum, “Casablanca Manager May Retaliate Against Newport With Nude Dancing,” Kentucky Post, April 29, 1983, 1b.

⁵²⁸ Kevin Cullen, “Police Check Finds Newport Clubs Obeying Law,” Cincinnati Enquirer, October 5, 1982, C1.

⁵²⁹ Kevin Cullen, “Newport Unsure of Dancing Ban’s Effect,” Cincinnati Enquirer, March 20, 1983, B1.

Tony Warndorf, and Owen Deaton.” With the Anti-Nudity Ordinance, Commissioners “cut out a primary cause of the disease...not a pleasant operation because the area now was stripped of the veil of false glamour which ... [left] Monmouth Street...stinking in the light of day.” The Post observed that the process of recovery would be “painful for Monmouth and the entire city [however] it was a necessary stage in a long and painful healing process.” The Editorial also reported that weekend crime was only one-third of the pre-ban years.⁵³⁰

Court Challenge: Baxley Suit

Owner Michael Baxley of Monmouth Street’s Nite Life Lounge filed suit challenging the city’s authority to ban dancing, nude or otherwise. Baxley contended the Twenty-First Amendment granted its “broad powers” to states, not cities, to regulate alcoholic beverages. Absent state government’s specific delegation of that authority to cities, Baxley asserted the ban was void. City Solicitor Schroder observed that Baxley’s suit “directly addresses” Twenty-First Amendment issues not found within the pending federal suit.⁵³¹ The Baxley suit was unsuccessful.

Ban Survives Court Challenge

On June 6, 1983, federal Judge William Bertlesman issued his decision in the Iacobucci et al. case. The Court noted that the Commissioners who passed the Anti-Nudity Ordinance were members of a “Reform Commission” elected to “clean up Newport’s long tarnished image...and the ordinance [was] part of that program.” Judge Bertlesman found adult entertainment establishments were “unusually susceptible to

⁵³⁰ Editorial, “Despite Pains After Surgery, Newport Begun To Heal,” Kentucky Post, February 8, 1983, (no author), 4K.

⁵³¹ Associate Justice on Kentucky Supreme Court and former Newport City Solicitor, Wil Schroder interview, May 9, 2006; Bertram Workum, “Nudity Law Faces New Test,” Kentucky Post, June 1, 1983, 1K.

illegal activities or activities requiring close regulation.” Considering Newport’s “illustrious history,” the Court concluded as “obvious” Newport’s right to “closely regulate the establishments” through the nudity ordinance, that Judge Bertlesman decided “must be upheld.”⁵³² Since “obscene” or “obscenity” were not at issue, the Court decided there was no need to accept plaintiff owners’ offer that the Court review dancers’ performances or to see their costumes.⁵³³ Newport’s Anti-Nudity Ordinance had survived the second round and the case moved to the appellate courts.

Dispelling A Myth

Newport businesses paid certain taxes and fees on a fiscal quarter basis. The ban’s first fiscal quarter was October-December 1982. Both sides to the controversy awaited the figures on whether Newport’s economy had suffered.⁵³⁴ In a March 1983 report, Mike Whitehead proved ban opponents wrong about the nude ban’s causing a fiscal crisis. Instead, the opposite occurred.

The October-December payroll 1982 withholding taxes for adult businesses showed an increase of \$2499 over the same three month period in 1981. Whitehead found no discernible decreases in adult entertainment’s revenues during the ban’s first three months, but he advised caution. Newport’s recent mandates for improved reporting protocols may have accounted for the increases. Nevertheless, the ban was not yet

⁵³² Judge’s references to “secondary effects.” Michael Whitehead papers: Michael Whitehead Memo to Newport Commission, April 29, 1983; Bertram Workum, “Lawyers Spar Over Legality Of Newport Nude Dancing Ban,” Kentucky Post, April 30, 1983, 7k;

⁵³³ Bob Fogarty, “Nude Dancers Are Spared A Trip To Court,” Cincinnati Enquirer, March 11, 1983, C1.

⁵³⁴ Newport was on a “fiscal year”; that is, the tax year went from July 1 to June 30 each year. Business taxes were due quarterly, and compiling the results, due to late payments and the like, too three months, an entire quarter to complete. Consequently, the results for the first three months of the ban, October-December 1982, became available on March 30, 1983, the end of the January-March fiscal quarter (the third fiscal quarter of the tax year).

proving destructive to Newport's economy.⁵³⁵

The March 1983 figures contained other revelations. Whitehead found that adult businesses "overall benefit" to Newport had been, at best, minimal to the point of being nearly insignificant. Adult businesses' fees and taxes of \$32,774 accounted for only 4%-5% of the city's total business revenues. Mike Whitehead concluded adult bars had neither "contributed significantly" to the city's total revenue nor, after 1961, had adult businesses ever been the "backbone of Newport's economy."⁵³⁶

The second post-ban quarter was January-March 1983. Figures for the ban's second quarter showed no significant differences from the first three months, and adult businesses still represented a mere 5%-5.5% of total business revenues. Of that percentage, two bars accounted for over half (54%) of those businesses "with dancing." During the nudity ban's first six months, the central business district experienced a 4.5% overall increase and adult bars that formerly offered nude dance paid 8% more payroll taxes than during the pre-ban period.⁵³⁷ Furthermore, downtown businesses not selling alcoholic beverages increased their post-ban payroll withholding and predicted layoffs never occurred.⁵³⁸ Whitehead's figures confirmed that the long held belief about Newport's economic dependence upon adult entertainment had been a myth. Reformers

⁵³⁵ Bertram Workum, "Newport Isn't Losing Its Shirt Over Nudity Ban," Kentucky Post, March 29, 1983, 1k; Mike Whitehead interview, March 9, 2007.

⁵³⁶ Bertram Workum, "Newport Isn't Losing Its Shirt Over Nudity Ban," Kentucky Post, March 29, 1983, 1k.

⁵³⁷ Michael Whitehead papers, handwritten notes on calculations of adult bar revenues.

⁵³⁸ Whitehead Papers: Michael Whitehead, "Report To Newport City Commission: Second Quarter – Central Business District, July 26, 1983,"; Bertram Workum, "Nude Ban No Harm To Taxes," Kentucky Post, July 9, 1983, 1k; Tom Williams, "Talking Business: Monmouth Boosters," Kentucky Post, March 3, 1983, 12K. See, Bertram Workum, "Newport Booster - Attracting Development Is Her Job," Kentucky Post, June 10, 1983, 5K.

had been correct. Newport's economy did not need sexually oriented bars, bookstores, or cinemas.

Adult Businesses Look For Loopholes And Test The Limits

The first criminal test of the nudity ordinance came in June, 1983, when Newport Det. Marc Brandt saw, "CC," expose her "bottom" while performing "spread legged pushups" on a stage at the Spotted Calf adult bar. CC's potential punishment was a fine on the first offense, but additional offenses carried incrementally higher penalties.⁵³⁹ Assistant County Attorney Bill Schoettelkotte prosecuted CC and won a conviction, but jurors recommended only the minimum one dollar fine.⁵⁴⁰ The minimum nature of the fine was deceptive because graver consequences awaited repeat offenders. The consequences were especially weighty for licensees and owners. In addition to fines from \$500 to \$10,000, licensees faced license suspensions and revocations of occupational and liquor licenses.⁵⁴¹

Simulated Nudity

The matter of Newport's nudity ban took a strange turn in mid-1983. During August and September, District Court Judge Timothy Nolan heard the cases of two dancers charged with violating the Anti-Nudity Ordinance's prohibitions against "simulated nudity." Newport's nudity ban proscribed not only actual nudity; that is, exposure of specified body parts, but also the "simulated" exposure of enumerated

⁵³⁹ Incarceration was up to a year, and the allowable fine was up to \$500.

⁵⁴⁰ Bertram Workum, "Dancer's Fine Is As Skimpy As Her Costume," Kentucky Post, July 9, 1983, 3K; Bret Cullen, "Jury Says Stripper Disrobed Dollars Worth Too Much," Cincinnati Enquirer, July 8, 1983, C1.

⁵⁴¹ Interview with Michael Whitehead, March 9, 2007; Bret Cullen, "Newport Police Charge Dancer With Violating Nude Dancing Law," Cincinnati Enquirer, June 18, 1983, C1; Bertram Workum, "First Newport Dancer Cited Under New Law," Kentucky Post, June 18, 1983, 1K.

portions of the female anatomy.⁵⁴² Police charged that the two dancers had simulated “a . . . nipple [or] aerola.”⁵⁴³ Arresting officers at first thought the dancers were topless. Instead, the women wore translucent band-aids over their nipples. To audiences, and the police, the bar’s special lighting rendered the band-aids “invisible” and the performers appeared topless.⁵⁴⁴

Judge Nolan found the simulated nudity portion of the Anti-Nudity Ordinance too vague and dismissed the cases.⁵⁴⁵ For awhile, Judge Nolan’s decision put him at loggerheads with County Attorney Paul Twehues but the controversy did not slow enforcement efforts. To enhance the proof available after an arrest for violations of the nude ban, Twehues and City Solicitor Wil Schroder recommend that officers photograph female arrestees as they found them in their costumes and outfits. The photos permitted

⁵⁴² Ordinance O-82-85, Section II:

It shall be unlawful for and a person is guilty of performing nude or nearly nude activity . . . when that person appears on a business establishment premises in such a manner or attire as to expose to view any portion of the pubic area anus vulva or genitals or any simulation thereof or when any female appears on a business establishment premises in such manner or attire as to view portion of the breast referred to as the areola nipple or simulation thereof. (emphasis added).

Interview with former Newport City Solicitor and former Campbell County District Court Judge Tim Nolan, May 25, 2007. Note: the prohibition of “simulated” nudity was also part of the New York Liquor Authority’s ban addressed in New York Liquor Authority v. Bellanca dba The Main Event, 452 U.S. 714 (1981).

⁵⁴³ Newport Ord. No. 0-82-85, Sec. II, III; Bertram Workum, “First Newport Dancer Cited Under New Law,” Kentucky Post, June 18, 1983, 1K.

⁵⁴⁴ Interview with Kentucky State Police Detective (retired), March 14, 2006, (upon request, name must remain undisclosed).

⁵⁴⁵ Bertram Workum, “Nolan Acquits Dancers, Says Nude Ban Unjust,” Kentucky Post, September 7, 1983, 1K; Judith Clabbes, “In Interest of Fairness,” Kentucky Post, September 29, 1983, 4K; Bertram Workum, “Newport Says Nolan Won’t Stop Nude Ban,” September 21, 1983, 1K; Editorial, “Nolan Steering Too Far In Battle With Twehues,” Kentucky Post, September 23, 1983, 4K; Timothy Nolan, Judge, “Letter To (Kentucky Post) Editor,” September 29, 1983, 4K; Mark Neikirk, “Newport Dancers Charged,” Kentucky Post, September 21, 1983, 1K.

judges and juries to see for themselves how a dancer appeared at the time of arrest.⁵⁴⁶

The simulated nudity issue temporarily created problems for prosecutors. During 1983-1984, four of six juries acquitted women charged with violations of the simulated nudity portions of the law.⁵⁴⁷ One dancer used the “band-aid defense” by telling jurors that pasties “irritated her skin.”⁵⁴⁸ Undeterred, law enforcement persisted and reversed the acquittal trend. In April, 1984, Assistant County Attorney Bill Schoettelkotte convicted a La Madame’s bar dancer who used the “band-aid defense.” A few days later, jurors convicted Mousetrap dancer NLK on simulated nudity charges. The dancer had cut the “flesh colored band-aid” to the approximate dimensions of her areola. Other dancers used this device, suggesting that dancers and bar operators did not intend to comply with the nudity ban, but, through it all, owners professed ignorance about what their dancers were doing. The efforts to avoid compliance with the nudity had only limited successes. Jury acquittals became rare when police and prosecutors produced photo evidence of dancers and their costumes.⁵⁴⁹ Authorities resolved the band-aid issue, at least temporarily, with an agreement in May 1984. If dancers used “glitter” on the band-aids, officials would not pursue simulated nudity violations. The agreement

⁵⁴⁶ ; Mark Neikirk, “Newport Dancers Charged,” Kentucky Post, September 21, 1983, 1K; Kevin Cullen, “City Says Club Violated Ordinance,” Cincinnati Enquirer, September 16, 1983, D1.

⁵⁴⁷ John C.K. Fisher, “Dancers, Club Owners Charged In Newport,” Kentucky Post, January 27, 1984, 3K; John C.K. Fisher, “Newport Dancer Cleared,” Kentucky Post, February 18, 1984, 6K; John C.K. Fisher, “Newport Nude Ban Wins 2, Loses 4,” Kentucky Post, February 15, 1984, 3K.

⁵⁴⁸ John C. K. Fisher, “Newport Dancer Cleared,” Kentucky Post, February 8, 1984, 6K (jurors said verdict “easy to reach”).

⁵⁴⁹ John C.K. Fisher, “Fourth Trial Ends In Conviction Of 3rd Newport Nightclub Dancer,” Kentucky Post, April 3, 1984, 7K; Kentucky Post, “4th Dancer Convicted,” (no author), April 7, 1984, 5K.

provided that other portions of the anatomy must remain covered as set out in O-82-85.⁵⁵⁰

Concurrent with the several criminal prosecutions were Liquor Administrator Whitehead's citations for liquor violations. By May 1984, some adult bars had already pled guilty to liquor violations as "first offenders." Businesses included the Spotted Calf, La Madames, and the Nite Life. La Madames' nude dance transgressions were in addition to three recent prostitution convictions from the bar. Whitehead issued suspensions, but state regulations permitted owners to "buy back" their suspensions at \$35/day for each day penalized and all imposed sanctions were appealable to the ABC Board and beyond.⁵⁵¹ Of the ABC Board's tendency to side with offending bar owners and to lessen or reverse local sanctions, Commissioner Steve Goetz suggested the state Board was "useless."⁵⁵²

Newport received another motivation for ending adult entertainment and changing the town's image, but from an unlikely source. During a 1982 visit to Cincinnati, President Ronald Reagan joked about Cincinnati's reputation for conservatism. The President quipped that Cincinnati was "so . . . straight that its citizens had to cross the [Ohio] river to have a good time." Reagan's remarks did not amuse Newport officials

⁵⁵⁰ Bertram Workum, "Newport Bar Licenses Suspended," Kentucky Post, May 23, 1984, 5K; Michael Whitehead papers: memorandum outlining agreement between city, per Assistant City Solicitor Dan Braun, and Robert Lotz, Attorney for Nite Life, May 1984 (date not discernible).

⁵⁵¹ Kentucky Post, "Clubs Could Lose License For Nude Dancing Violation," (no author), May 9, 1984, 5K; Bertram Workum, "Newport Bar Licenses Suspended," Kentucky Post, May 23, 1984, 5K.

⁵⁵² Michael Whitehead interview, March 9, 2007; Steve Goetz interview, April 25, 2006.

and citizens.⁵⁵³

The Ben Kraft Suit

No sooner did the clamor over Judge Nolan's dismissal subside when another bar owner sued, but not over the Anti-Nudity Ordinance. Sparkle Plenty's owner, Ben Kraft, sued in Campbell Circuit Court to prevent enforcement of Newport's adult zoning regulations, alleging that a March 1982 zoning amendment⁵⁵⁴ was "vague and overbroad." Kraft wanted to add live entertainment, but the ordinance forbade adding live performances if the business did not offer dancing prior to the ordinance's effective date in late March 1982. Kraft testified that Sparkle's business, without dancers, had dropped seventy-five percent, but Kraft's bar had not offered dancing prior to the ordinance's effective date. Circuit Judge Thomas Schnorr denied Kraft's relief.⁵⁵⁵ The city's efforts to control the adult industry had survived another challenge.

Paul Twehues Closes "Houses Of Prostitution"

Pending the appeals in the Iacobucci et al. v. City of Newport case, the adult bars were hanging on, but the in-bar prostitution, the sex-for-drinks scheme, was also continuing. Fines and liquor license suspensions had only limited effect because the businesses could remain open during the long appellate process. By the fall of 1984, law enforcement, including Newport's Liquor Administrator Mike Whitehead, had been

⁵⁵³ Interview with Steve Goetz; John C.K. Fisher, "Nude Dance Ban, Wins 2, Loses 4," Kentucky Post, February 15, 1984, 1K; Tim Stein, "Newport Mayor Says President Reagan Was Insulting," Kentucky Post, August 25, 1984, 1K.

⁵⁵⁴ Newport Commissioner's Ordinance No. O-82-35, Newport Commission Minutes March 29, 1982. Newport updated the city's zoning laws and passed the new ordinance, incorporating most of the former zoning ordinances.

⁵⁵⁵ Kevin Cullen, "City Attorney Fighting Adult Entertainment," Cincinnati Enquirer, September 30 1983, D2; Kevin Cullen, "Adult Entertainment Ordinance Challenged," Cincinnati Enquirer, September 28, 1983, D1; Kevin Cullen, "City Says Strip Club Violates Ordinance," Cincinnati Enquirer, September 16, 1983, D1; Bertram Workum, "Nightclub Zone In Newport Stands For Now," Kentucky Post, October 5, 1983, 6K.

successfully investigating and prosecuting adult businesses, but the bars continued their illegal activities.⁵⁵⁶ In latter 1984, Paul Twehues employed a legal weapon that had the potential to wreak havoc upon the adult entertainment community and that imposed some responsibility and consequences upon property owners for illegal activities upon their properties. .

By September 1984, Twehues and the State Police had convicted downtown massage parlor personnel of prostitution. The Yoko Health Spa advertised “health massages,” but, the owners and employees were using the business to engage in prostitution. After winning convictions, Twehues filed a Circuit Court civil suit alleging Yoko’s was a “house of prostitution.” Kentucky Revised Statutes Chapter 233 (‘Houses of Prostitution’) permitted nuisance suits when property became sites for “lewdness, assignation, or prostitution.”⁵⁵⁷ If a Circuit Judge found a premises was a “house of prostitution” as set out in Chapter 233, the Court’s options included immediate temporary closure pending the case’s final outcome. If, at the case’s conclusion, the Circuit Judge decided the property was a “house of prostitution,” the Court could order forfeiture of business assets.

Property owners who had no involvement in the illegal activities were also vulnerable to the consequences of court-ordered forfeitures. It was not a defense that the landowner was not directly involved.⁵⁵⁸ The trial judge also had discretion to close the

⁵⁵⁶ Michael Whitehead interview, March 9, 2007; Paul Twehues interview, April 2, 2006.

⁵⁵⁷ KRS Chapter 233, KRS 233.030; KRS 233.010 (Definitions).

⁵⁵⁸ Interview with Campbell County Attorney Justin Verst, May 3, 2006; interview with Paul Twehues, April 2, 2006; Kentucky Post, “Campbell County Moves To Close Yoko Health Spa,” (no author), September 15, 1984, 2K. Kentucky Revised Statutes 233.030. Kentucky Revised Statutes 233.090.

offending premises and terminate all business activities for one year.⁵⁵⁹ The Court might soften the sanctions if owners made “good faith” efforts to prevent prostitution,⁵⁶⁰ but most offending owners tended to be stubborn and preferred to exploit opportunities to profit from prostitution.. Instead, most of Newport’s offending bar owners.⁵⁶¹

A Chapter 233 action had more dire legal consequences if the premises was a nonconforming use due to Newport’s passage of the 1977 Adult Zoning Ordinance (O-77-9) and its successor ordinance, O-82-35(passed March 29, 1982).⁵⁶² If a Circuit Judge’s found a nonconforming use was a “house of prostitution,” the business was subject to loss of the protective zoning classification. A court ordered closure of more than six months exceeded the six month closure conditions for nonconforming uses and made the business vulnerable to permanent closure. Further, a “house of prostitution” finding was also a finding that the premises had become a nuisance, an additional legal basis to permanently revoke a zoning classification and a business license. For Newport officials wishing to end an adult business’s existence, a Chapter 233 finding was a means

⁵⁵⁹ Kentucky Revised Statutes 233.050No. (“Temporary injunction granted if house of prostitution shown to exist.”).

⁵⁶⁰ KRS 233.090:

Injunction not to issue if owner tries to prevent nuisance. No injunction shall issue against an owner, nor shall an order be entered requiring any premises to close or be kept closed, if the owner and his agent have in good faith attempted to prevent those premises from being used as a house of prostitution.

⁵⁶¹ Interview with Newport License Administrator Michael Whitehead, March 9, 2007; former Campbell County Attorney Paul Twehues interview, April 2, 2006; former Kentucky State Police Detective (retired) interview March 14, 2006, (upon request, identity must remain undisclosed).

⁵⁶² When a city rewrites a zoning code, and subject to a number of state and local laws and criteria, the simplest way to adopt a new code was to officially repeal the former one and replace it with the newer zoning code. The new code retained all the substantive portions of O-77-9, the Adult Zoning Amendment. See, the Official Zoning Ordinance for the City of Newport, July 2006, section10.3-F-2 (a-e).

of doing so.⁵⁶³

County Attorney filed Chapter 233 actions against the Tom Chambers's Mousetrap and Dillingers⁵⁶⁴ chronic prostitution offenders.⁵⁶⁵ Circuit Judge Leonard Kopowski ordered the Mousetrap temporarily closed, but the Court of Appeals set aside the temporary closure.⁵⁶⁶ As disappointing as the reversal of the temporary closure order was, the Alcoholic Beverage Commission Board added to the disappointment and frustrations of local authorities by giving Tom Chambers a liquor license for the Mousetrap. Michael Whitehead had previously denied Chambers the license and, at first, the ABC Board supported the denial. That changed in November 1984. The Board disregarded Chambers's history of prostitution and other liquor law violations within his establishments to grace him with another license. The reversal was yet another example of the Board's insensitivity to local officials' efforts to deal with persons' in their communities who abused the privilege of having a liquor license. Whitehead had to

⁵⁶³ Paul Twehues interview, April 2, 2006; KRS Chapter 100, KRS 100.253 "Existing non-conforming use, continuance – Change –Effect of non-conforming use of ten years' duration – Application"; City of Euclid v. Amber Realty Company, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed.2d 303 (1926); Darlington v. Board of Councilmen, 282 Ky. 778, 140 S.W.2d 392 (1940); Newport Zoning Ord. §9.11.; Michael Whitehead interview, March 9, 2007; Kentucky State Police Detective (retired) interview, March 14, 2006, (upon request, identity must remain undisclosed).

⁵⁶⁴ When Paul Twehues filed the Chapter 233 actions, Tom Chambers owned or managed "at least four clubs in the Newport area descriptively named The Body Shop, The Kit-Kat Club, The Mousetrap, and Dillinger's Lounge. Glenn Realty owned an equitable interest in The Mousetrap," Tom Chambers, et al. v. Paul Twehues, et al., 723 S.W.2d 868, 870 (Ky. App., 1986).

⁵⁶⁵ At or near the same time, Twehues filed a Chapter 233 action on Chambers' Dillinger's nightclub.

⁵⁶⁶ John C.K. Fisher, "Mousetrap Stays Open – At Least For Now," Kentucky Post, September 27, 1984, 7K; John C.K. Fisher, "Mousetrap Liquor Sales Halted," Kentucky Post, October 6, 1984, 3K; Michael Whitehead papers.

await the outcome of another Tom Chambers “permitting prostitution”⁵⁶⁷ that was set for trial in December 1984. In the meantime, Twehues proceeded with Chapter 233 cases against Chambers’s clubs.⁵⁶⁸

Tom Chambers’s December 1984 District Court trial resulted in his conviction for “permitting prostitution.” The case originated at Chambers’s Body Shoppe when female employees offered undercover officers sex-for-drinks. In the Mousetrap’s Chapter 233 case, Judge Kopowski found that a history of prostitution and a lack of good faith efforts to abate prostitution made the Mousetrap a “house of prostitution.” In both the Mousetrap and Dillinger’s cases, the Court ordered the clubs closed for a year.⁵⁶⁹ The Court of Appeals did not decide Chambers’ case until 1986, during which time the clubs remained closed.⁵⁷⁰

Calling the Campbell County Circuit Court decision a “victory for Puritanism,”⁵⁷¹ Tom Chambers’s lawyers presented an ingenious argument on appeal. Asserting that “prostitution” pertaining to KRS Chapter 233 applied only to “sexual intercourse” and

⁵⁶⁷ KRS 529.070, Permitting prostitution:

A person is guilty of permitting prostitution when, having possession or control of premises which he knows or has reasonable cause to know are being used for prostitution purposes, he fails to make reasonable and timely effort to halt or abate such use.

⁵⁶⁸ John C.K. Fisher, “State Clears Transfer Of Newport Liquor License,” Kentucky Post, November 9, 1984, 2K; Interview with Michael Whitehead, March 9, 2006. See also, Connie Remlinger, “ABC Board Rules In Favor Of Newport,” Kentucky Post, July 10, 1984, 1K; Mike Whitehead interview, March 9, 2007.

⁵⁶⁹ Cincinnati Enquirer, “Club Owner Plans Appeal Of Prostitution Verdict,” (no author), December 5, 1984, C1; John C.K. Fisher, “Mousetrap Operator Sentenced To Jail-Fined,” Kentucky Post, December 6, 1984, 3K; Paul Twehues interview, April 2, 2006; Campbell County Attorney Justin Verst interview, May 3, 2006; Michael Whitehead interview, March 9, 2007.

⁵⁷⁰ Thomas Chambers, et al. v. Commonwealth of Kentucky, ex rel. Paul H. Twehues, Jr., et al., 723 S.W.2d 868 (1986), discretionary review denied, March 3, 1987.

⁵⁷¹ Chambers v. Twehues, et al., at 870.

not to the “manual stimulation” performed inside Chambers’s bars for prices of \$16-\$55.⁵⁷² Chambers’ arguments did not impress the appellate judges.⁵⁷³ The Court of Appeals found the legislature intended Chapter 233 as a means for communities to rid themselves of “commercialized sexual activity,” a “moral pestilence,” when the criminal laws were ineffective in doing so.⁵⁷⁴

Twehues did not await the outcome of Chambers’s appeals before filing Chapter 233 actions against other adult bars. By late 1985, Twehues’ abatement actions had closed half of Newport’s remaining adult bars, and more followed thereafter. Mike Whitehead considered Twehues’ suits more effective than trying to regulate through liquor license actions.⁵⁷⁵

⁵⁷² Chambers v. Twehues, et al., at 870.

⁵⁷³ Chambers v. Twehues, et al., 870-871:

It is our opinion that the narrow interpretation urged by the [Chambers] . . . would result in an absurdity . . . "Prostitution" is not a technical word. It has meant, for centuries, the commercial gratification of sexual desires. The word has never referred . . . exclusively to conventional sexual intercourse but to sexual acts of every sort. To hold that our legislature intended to prohibit houses where only conventional sexual intercourse took place seriously underestimates our lawmakers' knowledge of human nature as well as the various activities that take place in such establishments.

⁵⁷⁴ Chambers v. Twehues, at 870. For the “moral pestilence” discussion, see King v. Commonwealth, 194 Ky. 143, 238 S.W. 373, 377 (1922); see, Slone v. Commonwealth ex rel. Justice, 225 Ky. 218, 7 S.W.2d 1037 (1928) (The fact that the Mousetrap was an adult bar and not the traditional bordello or brothel made no difference. The Court concluded that it was not the “characterization of the business that triggered . . . Chapter 233, but the existence of [prostitution]”).

⁵⁷⁵ Connie Remlinger, “Prosecutor Targets Two Newport Bars,” Kentucky Post, May 15, 1985, 1K; Michael Whitehead's Papers: John C.K. Fisher, “Newport Bar Operator Appeals To U.S. Supreme Court,” Kentucky Post, October 10, 1985; Connie Remlinger and Bertram Workum, “Twehues Files To Close Pink Garter,” Kentucky Post, June 6, 1985, 1K; Connie Remlinger, “Judge Shuts Down Newport Nightclub,” Kentucky Post, June 21 1985, 3K (Pink Garter); Cindy Schroeder, “Judge Closes Lounge; Prostitution Charged,” Cincinnati Enquirer, May 10, 1985, C1; John C.K. Fisher, “Judge’s Order To Close Sixth Newport Nightclub,” Kentucky Post, October 24, 1985, 14K, (there were five nightclubs and the Yoko Health Spa); Connie Remlinger, “Newport Clubs To Close,”

The Anti-Vice Efforts During The Latter 80s — Numbers Mount

From 1985 through 1989, Newport Police conducted several anti-prostitution operations, giving offending adult bars no relief from police scrutiny.⁵⁷⁶ In addition to combating in-bar prostitution, Newport Police targeted men who solicited women for paid sex. Police used a female officers as a decoy and local newspapers added an additional deterrence. The Kentucky Post published the names of men arrested for soliciting the undercover officer.⁵⁷⁷ Newport's efforts resulted in more than sixty prostitution convictions between 1982 and 1986. Defendants included bar owners and operators as well as the women who solicited.⁵⁷⁸ In 1989, Police Chief Rick Huck reported 212 arrests on prostitution-related charges since early 1986: eighty-five in 1986,

Kentucky Post, June 12, 1985, 1K; Shiri Short, "Spotted Calf, Body Shoppe Close As Building Owners Refuse New Lease," Kentucky Post, August 1, 1985, 7K;

⁵⁷⁶ Bertram Workum, "Ten Charged After Club Raid In Newport," Kentucky Post, May 30, 1985, 1K; Bertram Workum, "Anti-Prostitution Efforts By Newport," Kentucky Post, April 29, 1985, 1K; John C. K. Fisher, "Newport Police Cite Four Men For Solicitation," Kentucky Post, August 2, 1985, 1K; Kentucky Post, "Two Charged With Solicitation," (no author), August 14, 1985, 6K; Shiri Short, "Clubs Close As Building Owners Refuse Lease," Kentucky Post, August 8 1985, 7K; Bertram Workum, "Police Raid Nightclubs On Monmouth," Kentucky Post, April 5 1986, 1K; Kentucky Post, "Lounge Employees Charged," (no author), October 2, 1986, 6K; John C. K. Fisher, "Newport Nabs Seven For Soliciting," Kentucky Post, October 3, 1986, 3K; Kentucky Post, "Prostitution Raid Nets Four In Newport," (no author), October 29, 1986, 3K; Kentucky Post, "Eight Held On Prostitution Charges," (no author), November 14, 1986, 3B; Paul Long and William Weathers, "Newport Police Raid Eight Bars," Kentucky Post, February 13 1987, 3K; Kentucky Post, "Police Charge Prostitution Solicitors," (no author), April 22, 1988, 3B; Tom Williams, "Newport Arrested Fewer Prostitution," Kentucky Post, March 13, 1989, 2K.

⁵⁷⁷ Tom Williams, "Newport Arresting Hookers' Customers," Kentucky Post, July 27, 1985, 1K; John C. K. Fisher, "Newport Nabs Seven For Soliciting," Kentucky Post, October 3, 1986, 3K; Kentucky Post, "Police Charge Prostitution Solicitors," (no author), April 22, 1988, 3B; Kentucky Post, "Men Charged With Solicitation," (no author), July 28, 1985, 6K; John C. K. Fisher, "Newport Police Cite Four Men For Soliciting," Kentucky Post, August 23, 1985, 3K.

⁵⁷⁸ Whitehead papers: Whitehead memo to Mayor and Commissioners, September 23, 1986; October 23, 1986. Note: the figures do not reflect the convictions that resulted from the Kentucky State Police efforts from 1980 through 1981.

eighty-seven in 1987, and forty prostitution arrests in 1988. Chief Huck surmised the 1988 drop was due to the intensity of his Department's work to curb prostitution and that prostitutes were going elsewhere to avoid the crackdowns. During the first two months of 1989, Huck reported sixteen prostitution arrests and predicted that the ninety percent conviction rates achieved thus far would continue.⁵⁷⁹ Newport was determined that the decade long anti-vice efforts would not conclude with only a partial cleanup.

Court Decisions Enhance Anti-Prostitution Efforts

In addition to Paul Twehues' Chapter 233 actions, two other cases of importance to Newport's adult entertainment and prostitution issues became final during 1986.⁵⁸⁰ One came from the Kentucky Supreme Court and the other from the United States Supreme Court. The Kentucky case did not originate in Newport, but in neighboring Kenton County. The United States Supreme Court case was the 1986 Iacobucci decision that decided the constitutionality of Newport's Anti-Nudity Ordinance.

The Kentucky case, Alcoholic Beverage Commission Board of Kentucky, and the Kentucky Department of Alcoholic Beverage Control, et al. v. Ken-Pad, Inc (ABC Board v. Ken-Pad)⁵⁸¹ settled an issue that had been yet another source of frustration for Michael Whitehead. Before the Ken-Pad case, neither the ABC Board nor the appellate courts were consistent about whether sex-for-drinks constituted a "liquor law"

⁵⁷⁹ Former Newport Police Chief Rick Huck interview, March 13, 2006; Newport City Commission Minutes: March 13, 1989; Tom Williams, "Newport Arresting Fewer Prostitutes," Kentucky Post, March 13, 1989, 1K.

⁵⁸⁰ Thomas Chambers, et al. v. Commonwealth of Kentucky, ex rel. Paul H. Twehues, Jr., et al, 723 S.W.2d 868 (1986), discretionary review denied, March 3.

⁵⁸¹ Richard H. Lewis, Edward Farris, The Alcoholic Beverage Commission Board of Kentucky, and the Kentucky Department of Alcoholic Beverage Control v. Ken-Pad, Inc, a Ky. Corporation, 716 S.W.2d 252 (Ky., 1986).

violation.⁵⁸² If a “liquor law” violation, Whitehead, as Liquor Administrator, could invoke sanctions under state and local regulations applicable to liquor licensees.

Whitehead always maintained that the practice was clearly an infraction of state and local liquor laws. In Ken-Pad, the Kentucky Supreme Court decided that Whitehead’s position had been correct. The Court found that in-bar prostitution was a liquor law violation when alcohol was part of a sexual solicitation. “By any test,” the Court held, solicitation for prostitution within licensed premises constituted “lewd and immoral activities” and was, in the context of a bar, “disorderly” within Kentucky Administrative Regulations for liquor establishments.⁵⁸³ The Court decided that owners’ non-participation in the unlawful solicitations was no defense if ownership “tacitly encouraged the clearly established sexual solicitation.”⁵⁸⁴

The other helpful court decision was in the case of Iacobucci et al. v. City of Newport.⁵⁸⁵ After a brief setback by the United States Sixth Circuit Court of Appeals, the United States Supreme Court decided Newport’s ordinance was a constitutional exercise of the city’s police powers. The Court took notice of the Anti-Nudity Ordinance’s “Preamble” that expressed “legitimate concerns about Newport’s susceptibility to blight, increased crime and the “deterioration of [Newport’s] neighborhoods...[and that] . . . the interest in maintaining order outweighs the interest [of

⁵⁸² Kentucky Revised Statutes Chapter 244; Kentucky Administrative Regulations, KAR 804 (804 KAR 5: 060); Michael Whitehead interview, March 9, 2006.

⁵⁸³ KRS 244.120, 804 KAR 5: 060; Ken-Pad, at 262-63.

⁵⁸⁴ Not all vice violations proceeded to jury trials. Most cases ended through an arrangement between prosecutors and defendants, and by subsequent approval by the District Judge.

⁵⁸⁵ Newport v. Iacobucci, 479 U.S. 92 (1986) (November 17, 1986), reversing, Iacobucci, d/b/a Talk of the Town, et al., v. City of Newport, et al., 785 F.2d 1354 (6th Cir., 1986) (the Sixth Circuit Court of Appeals had decided in favor of plaintiff bar owners).

the bar owners] in free expression by dancing nude.”⁵⁸⁶ The Court concluded Newport had banned nude entertainment as part of a legitimate and continuing program of “liquor license control.” The Supreme Court found the Anti-Nudity Ordinance ban fell within the Twenty-First Amendment’s “regulatory powers” to control the marketing of alcoholic beverages.⁵⁸⁷ Henceforth, watching nude dancing and drinking alcohol required going somewhere other than Newport as the adult entertainment industry continued to steadily lose ground.

More From Mike Whitehead

Mike Whitehead never stopped considering ways to end the illegal activities within the remaining adult businesses. Court successes and administrative sanctions had made some impact, but several remaining bars continued pandering to prostitution. Further, and for reasons that remain unclear, Newport was not pursuing revocation of adult bars’ nonconforming use status in the wake of successful Chapter 233 actions.⁵⁸⁸ Among Whitehead’s other concerns were costs associated with policing establishments.⁵⁸⁹

According to Michael Whitehead’s calculations, two 1986 undercover investigations cost Newport an average of \$1400 per bar. The figure did not include costs associated with two of Newport’s more troublesome adult bars, Dillingers and Mousetrap, both of which were closed during the period of Whitehead’s calculations due

⁵⁸⁶ Iacobucci, 479 U.S., 97.

⁵⁸⁷ Iacobucci, 479 U.S., 96; Connie Remlinger, “U.S. Supreme Court Supports Newport Ordinance,” Kentucky Post, November 18, 1986, 1K; Kentucky Post, “Nude Dancing Ban In Court Again,” (no author), March 6, 1987, 3B; T.C. Brown, “Nude Dance Ban Stands Up: Nightclub Owners Drop Challenge To Newport Law,” Kentucky Post, September 17, 1987, 1K.

⁵⁸⁸ Paul Twehues interview, April 2, 2006; Michael Whitehead interview, March 9, 2007.

⁵⁸⁹ Whitehead was also the city’s “License Administrator.”

to Chapter 233 judgments.⁵⁹⁰ The Liquor Administrator suggested Newport needed to recoup some costs specific to policing and regulating adult bars, but Commissioners rejected his earlier suggestions of a special adult entertainment license fee and elimination of B-girl practices of soliciting drinks. Whitehead argued that the practice was the “central part of the [prostitution] problem [in the adult entertainment bars].”⁵⁹¹

Despite earlier frustrations with the Alcoholic Beverage Commission Board, Whitehead tried again to garner support from the ABC Board against Newport’s in-bar prostitution, arguing the nexus between liquor licensing and prostitution problem. Of the twenty-eight adult bars that had been in Newport since 1978, twenty-one had at least one prostitution conviction, eighteen had two or more, and alcohol was the medium of exchange in each conviction. Further, ninety-eight percent of all Newport prostitution occurred in a central business district that included the Monmouth Street adult bar community. Mike Whitehead argued that the ownership of liquor licenses and the sale of drinks facilitated the sexual solicitations,⁵⁹² but his efforts were not successful.⁵⁹³

Notwithstanding Newport’s failure to act on Mike Whitehead’s suggestion for a special adult entertainment license and the prohibition of B-girls’ drink solicitations, Newport had come far in the anti-vice campaign. With a supportive city government,

⁵⁹⁰ Chambers v. Paul Twehues, et al., 723 S.W.2d 868 (Ky. App., 1986); Whitehead papers: Whitehead memoranda to Mayor and Commissioners, May 20, 1986, July 18, 1986; Whitehead memo to City Solicitor James Parsons, March 3, 1986; Laurie Laymen, “Nightclubs Cost City, Study Shows,” Kentucky Post, July 19, 1986, 2K.

⁵⁹¹ Whitehead papers: Whitehead memo to Mayor and Commissioners, July 18, 1986; Mike Whitehead interview, March 9, 2007.

⁵⁹² A reference to Whitehead’s report is contained within United States District Judge William Bertlesman’s opinion in the case of Bright Lights, Inc. v. City of Newport, 830 F. Supp. 378, 380 (United States District Court, Eastern District of Kentucky, Covington Division, 1993).

⁵⁹³ Whitehead interview, March 9, 2007; Whitehead papers: Whitehead letter to ABC Commissioner, October 23, 1986.

State and Newport Police efforts kept the recalcitrant adult business community under siege. By 1989, the number of adult bars had dwindled to twelve,⁵⁹⁴ and adult entertainment no longer dominated the downtown. What did not happen in the early 1960s⁵⁹⁵ was happening in the 1980s, and law enforcement remained resolute and afforded offending businesses no quarter. Sin City and its adult industries prevailed for six decades. Law enforcement and reformer City Commission majorities brought it to a halt in less than one decade. By the end of the 1980s, there no longer was an “adult industry.” The adult bars that remained had gone through trying times since April 1980, but times were about to get much worse.

⁵⁹⁴ Any specific numbers of adult bars must be considered as close approximations, probably within one or two bars, because temporary suspensions, Chapter 233 closures, and other legal problems for bars kept the actual number of strip bars on any given month a fluid number.

⁵⁹⁵ Robert Gioielli, “Suburbs v. Slot Machines: The Committee of 500 and the Battle over Gambling In Northern Kentucky,” Ohio Valley History 5, no. 2 (Summer 2005): 61, 64-66, 69,

CHAPTER IX:
**1990: A NEW DECADE DAWNS, BUT SUN SETS ON THE ADULT
ENTERTAINMENT INDUSTRY**

By the end of the 1980s, Newport's remaining adult businesses numbered about twelve, but they hardly constituted an "industry." The anti-vice efforts of the decade had given adult business owners no respite from constant police monitoring. In the post-nudity ban years from 1984 through October 1990, police arrests for violations occurring in adult bars exceeded one hundred and the County Attorneys' conviction rate exceeded ninety-seven percent.⁵⁹⁶ During the same period, Paul Twehues continued using Chapter 233 suits to shut the doors on transgressors in the shrinking adult entertainment community. The crowds never returned, but the businesses remained open, perhaps hoping for a development that might bring back nude entertainment.⁵⁹⁷ Though adult owners claimed not to permit, promote, or tolerate prostitution, police kept finding active

⁵⁹⁶ Newport City Commission Minutes: public hearing on adult entertainment legislation, November 5, 1990, evidence presented by Newport Police Chief Rick Huck. NOTE: The number of prostitution arrests and convictions never represented the true volume of bar prostitution in Newport. Undercover officers routinely saw obvious prostitution transactions in bars, but, because of the legal requirements for an arrest and conviction, officers only charged those women who, on a one-to-one basis with the undercover officer, solicited sex for drinks. Kentucky State Police Detective (Retired) interview, April 4, 2006

⁵⁹⁷ Newport License Administrator Michael Whitehead interview, March 9, 2007; John C. K. Fisher, "City Halts Transfer Of Liquor License, Owner Plans To Appeal," Kentucky Post, June 27, 1990, 4K; Whitehead papers: memo to Mayor and Commissioners, October 31, 1990, presented as evidence during public hearing on sexually oriented businesses in Newport, November 5, 1990. Commission Minutes: public hearing of November 5, 1990.

prostitution in adult establishments.

The renewal never came, but adult owners were not yet resigned to close. Remaining innovative during the early 1990s, adult bars explored ways to avoid the Anti-Nudity Ordinance. Since the nude ban only applied to establishments selling alcoholic beverages, one way was surrendering the liquor license. Another way was to experiment with the concept of “private clubs.” During it all, in-bar prostitution continued. Though adult owners claimed not to permit, promote, or tolerate prostitution, police kept finding active prostitution in adult establishments.

City Commissions with pro-adult entertainment leanings never made an appearance after 1981 and Newport’s economy was steadily improving. Efforts within city administration, including those by Newport’s Economic Development Director Laura Long and Finance Director Phil Ciafardini, kept the city from economically backsliding as mainstream investors took an interest in Newport and its panoramic riverfront.⁵⁹⁸

Newport had changed but the perception of the town had not, but the town was becoming less deserving of the Sin City moniker. Biz Cain of the Northern Kentucky Chamber of Commerce commented that Newport’s “image [was] not the issue it once was . . . You don’t hear much talk about Sin City anymore.” A telling yardstick was a Cincinnati Yellow Cab official who said “fewer visitors are calling for rides to Monmouth Street.” A 1988 survey performed by Dr. Lynn Langmeyer concluded that forty-nine downtown “Newport merchants felt the adult bars projected a negative image and half the merchants felt the bars should close.” University of Cincinnati’s Community Planning and Design Center consultant Duraid Da’as stated that it was a “misperception”

⁵⁹⁸ Former Newport Economic Development Director Laura Long interview, April 4, 2006.

of Newport as a red light district . . . Newport does not deserve that image.”⁵⁹⁹

Michael Whitehead and a new City Solicitor, Michael Schulkens agreed that Newport needed to become more aggressive at control and regulation of what remained of the adult industry. During 1990 and 1991, a series of new ordinances appeared that imposed more restrictions upon adult businesses, one of the ordinances being a new adult entertainment occupational license. The Commission finally decided that adult businesses needed to pay their “fair share.” City Solicitor Schulkens also began to invoke the city’s zoning code and pursue revocation of offending businesses’ nonconforming use status of businesses found to be “houses of prostitution” in the County Attorney’s Chapter 233 cases.

This chapter describes the final few years of adult entertainment in Newport and the adult businesses’ last struggles against oblivion. Adult entertainment no longer dominated Newport’s economy and culture, but the dropping number of remaining adult bars tried to overcome anti-nudity and other laws. A few of the bars introduced “couch dancing” and “lap dancing”⁶⁰⁰ and surrendered liquor licenses in order to place themselves outside the reaches of the Anti-Nudity Ordinance. Officials found these developments intolerable, but not invulnerable to law enforcement. There would not be another unfinished reform effort. As Newport had done in 1982 when it used the United States Supreme Court’s decision in New York State Liquor Authority v. Bellanca, d.b.a.

⁵⁹⁹ John C. K. Fisher, “Dimming The Red Light – Goetz To Phil: Cleanup To Stay,” Kentucky Post, September 29, 1990, 1K.

⁶⁰⁰ Private dances in which dancers performed for individual patrons seated on furniture. Couch dancing need not involve personal contact, but lap dancing did. John C. K. Fisher, “Couch Dancing Arouses New Spat,” Kentucky Post, October 20, 1990, 1K; John C. K. Fisher, “Dance Issue Rolls On: City Calls Hearing On Couch Dancing,” Kentucky Post, October 23, 1990, 1K.

The Main Event, Newport lawmakers turned to a Supreme Court decision that originated in South Bend, Indiana. The playground was about to permanently close.

Adult Bars Get Resourceful: Liquor Out – Nudity In

Undercover police investigations, raids, and arrests had been ongoing each year since April 1980, and 1990 was no exception. An April 20, 1990, raid by thirty-four Newport officers ended a six week undercover investigation of the remaining adult bars. Police targets included the Brass Ass, Brass Mule, LaMadame's, Chic's, Trixie Delight, the reopened Mousetrap, and the Nite Life Lounge. To avoid bar employees' recognizing undercover officers, Newport used rookies. Officers found B-girls more cautious, but the women still offered sex for the purchase of a drink at prices of \$20 to \$500.⁶⁰¹ At some establishments, officers noted that neither the women nor the managers appeared to fear detection or arrest, a surprise considering the experiences of the past decade.⁶⁰² The April raid prompted usual claims of political motivation and claims of unfairness on the part of elected as owners pleaded ignorance of illegal behavior within their businesses. The observations of the undercover officers rendered protestations of ignorance devoid of credibility. Owners' and operators' "I did not know" argument became a tedious drone. Most importantly, juries did not believe the claims of ignorance.⁶⁰³

In 1990, Newport's newest City Solicitor was Mike Schulkens, an experienced

⁶⁰¹ Michael Whitehead papers: handwritten reports and notes by undercover officers of the encounters with B-girls and their conversations; Michael Whitehead interview, March 9, 2007.

⁶⁰² William Weathers, "Sweep Of Bars Nets Fifteen," Kentucky Post, April 21, 1990, 1K; Whitehead papers: notes made by undercover officers during investigations predating sweep of April 20, 1990; Paul A. Long, "Accused Nude Dancer: City Ordinance Unclear," Kentucky Post, May 19, 1990, 7K; Kentucky Post, "Warrant Out On Charges Of Prostitution," (no author), June 26, 1990, 6K.

⁶⁰³ John C. K. Fisher, "Bar Owner Blames Politics For Sweep," Kentucky Post, April 24, 1990, 1K; Paul A. Long, "Women Admit Prostitution Charges," Kentucky Post, May 10, 1990, 5K; interview with Kentucky State Police Detective (retired), March 14, 2006.

trial lawyer who, prior to his appointment, had defended persons charged with offenses related to adult businesses. Schulken echoed Mike Whitehead's earlier ideas about stiffer penalties and more effective regulatory ordinances.⁶⁰⁴ The issue of regulations and fines assumed a greater urgency when the financially troubled Dillingers and Mousetrap establishments began offering nude entertainment after an eight year hiatus.⁶⁰⁵ In addition to nude dancers, the bars offered lap and couch dancing.⁶⁰⁶ Without liquor sales, the establishments were beyond the reach of Newport's Anti-Nudity Ordinance (O-82-85⁶⁰⁷. On Newport's apparent powerlessness under existing law to stop the bars' revivals of nude entertainment, Mayor Stave Goetz commented that owners could open a "topless doughnut shop" and not be outside the law.⁶⁰⁸

That Mousetrap and Dillingers had an opportunity to offer nude entertainment of

⁶⁰⁴ Crystal Harden, "Dance Ban Change – Newport May Add to Jail Time, Kentucky Post, May 7, 1990, 1K; Whitehead papers: City Manager James Parsons' memo to Mayor and Commissioners recommending executive session to address adult entertainment issues, June 21, 1990.

⁶⁰⁵ John C. K. Fisher and Dan Hassert, "Newport Nude Dancing A Sobering Experience," Kentucky Post, July 7, 1990, 1K; John C. K. Fisher, "Dancing Arouses New Spat," Kentucky Post, October 20, 1990, 1K; Newport City Commission Minutes: public hearing on adult entertainment legislation, November 5, 1990 (evidence presented by Newport Police Chief Rick Huck).

⁶⁰⁶ Kentucky Post, "Third Club Drops Booze To Go Nude," (no author), October 25, 1990, 1K. See, Judith Lynne Hanna, "Undressing the First Amendment and Corsetting the Striptease Dancer," The Drama Review 42, no. 2 (Summer 1998): 38-69; Danielle Linz, Eva Blumenthal, Edward Darmerstein, Dale Kunkel, Bradley J. Shafer, Allan Lichtenstein, "Testing Legal Assumptions Regarding the Affects of Dancer Nudity in Proximity to Patron on Erotic Expression," Law and Human Behavior 24, no. 5 (October 2000): 507-33; Keith McWalter, "Couch Dancing," New York Times Sunday Magazine, December 6, 1987, 138; Katherine Liepe-Levinson, Performances of Gender and Desire (New York: Routledge Publishing, 2001), 1.

⁶⁰⁷ O-82-85: . . . requiring all erotic dancers working where alcohol was served to wear, at a minimum, "pasties" and a G-string . . . " (emphasis added). See Bright Lights, Inc. et al. v. City of Newport, et al., 830 F.Supp. 378, 380 (United States District Court, Eastern District of Kentucky, Covington Division, 1993).

⁶⁰⁸ John C. K. Fisher, "Newport To Fight Dancers," Kentucky Post, September 6, 1990, 1K.

any kind or, for that matter, that the two businesses were open at all was a source of frustration for Paul Twehues and his staff. Chapter 233 nuisance actions led to findings that both bars were houses of prostitution, and Circuit Judges ordered the businesses closed for a year. As he had done during 1980-81 during the Cinema X prosecutions, Twehues urged Newport officials to invoke city ordinances and to permanently close Dillingers and Mousetrap.⁶⁰⁹ Had Newport done so, a revival of nude entertainment at the two sites would likely not have happened.

Notwithstanding Paul Twehues's Chapter 233 successes, in his 1990 recommendations to the Commission for dealing with adult businesses, City Manager and former City Solicitor James Parsons did not include revocation of a nonconforming use status as a strategy or tactic.⁶¹⁰ Consequently, offending bars previously closed after a Chapter 233 suit could reopen, and with a fresh start. Unfortunately for law enforcement, the reopened businesses reverted to the same unlawful conduct. Mike Whitehead was in agreement that liquor license suspensions and revocations remained a lengthy and often

⁶⁰⁹ Ordinance O-77-9, Adult Zoning Amendment (1977); Newport Zoning Ordinance, Section 9.1 (Nonconforming uses); Darlington v. Board of Councilmen, 282 Ky. 778, 140 S.W.2d 392 (1940); Bowling v. Commonwealth, Ky., 255 S.W.2d 984 (1953) (property used for illegal purposes, gambling and drinking, constituted common-law nuisance); King v. Commonwealth, 194 Ky. 143, 238 S.W. 373, 377 (1922); Cheek v. Commonwealth, 271 Ky. 464, 112 S.W.2d 681 (1938); Thomas Chambers v. Commonwealth of Kentucky, ex rel. Paul H. Twehues, Jr., Ky. App., 723 S.W.2d 868, 870 (1986), discretionary review denied, March 3 1987; Newport City Commission Minutes: statements of Paul Twehues during public hearing on sexually oriented businesses, November 5, 1990; Whitehead papers: Whitehead memo to City Finance Director Phil Ciafardini, May 7, 1991; Paul Twehues interview, April 6, 2006.

⁶¹⁰ Whitehead papers: City Manager James Parsons memo to Mayor and Commissioners, "Re: Monmouth Street," August 9, 1990; Michael Whitehead interview, March 9, 2007.

ineffective strategy due to ABC Board reversals and modifications of local decisions.⁶¹¹

Until Mike Schulken became City Solicitor, Newport did not begin revoking nonconforming uses, but Twehues's office continued to pursue the Chapter 233 actions and Liquor Administrator Whitehead continued his efforts against liquor law violations.⁶¹² The Liquor Administrator cited the Nite Life Lounge for ten violations that included in-bar prostitution. Chic's and Brass Bull faced license revocations for prostitution and other violations, and the Commission considered revocation of the liquor license for Spanky's Bar. In a rare appeal victory, the Franklin County Circuit Court reversed the ABC Board and upheld Newport's liquor license revocation against adult bar Cocktails and Dreams. The Centerfold Lounge, another bar with multiple citations by Whitehead, agreed to a temporary closure. The relentless pressure on adult bars was continuing.⁶¹³

⁶¹¹ Michael Whitehead interview, March 9, 2007; Whitehead papers: copy of Kentucky Post article by Connie Remlinger, "Prosecutor Targets Two Bars," May 15, 1985; Paul Twehues interview, April 6, 2006; Newport City Commission Minutes: statements of Paul Twehues during public hearing on sexually oriented businesses, November 5, 1990, ; Whitehead papers: Whitehead memo to City Finance Director Phil Ciafardini, May 7, 1991.

⁶¹² Bars were Chic's, La Madame's, and Dillinger's; Campbell County Circuit Court Civil Action No. 90-CI-874; Campbell County Circuit Court Civil Action 90-CI 873; John C. K. Fisher, "State: Newport Right To Close Chic's," Kentucky Post, March 22, 1991, 2K; John C. K. Fisher, "Government Targets Nightclubs," Kentucky Post, August 15, 1990, 1K; John C. K. Fisher, "Newport Bar's Liquor License Revoked," Kentucky Post, October 20, 1990, 2K; John C. K. Fisher, "Dancers Re-Clothe At Club," November 11, 1990, 1K; John C. K. Fisher, "Suit Targets Three Newport Nightclubs," Kentucky Post, August 15, 1990, 1K; Editorial, "Opinion: Continuing The Fight," Kentucky Post, August 24, 1990, 4K; John C. K. Fisher and Dan Hassert, "Newport Nude Dancing A Sobering Experience," Kentucky Post, July 7, 1990, 1K.

⁶¹³ John C. K. Fisher, "Newport Bar Cited 10 Times: Nite Life Charged With Prostitution," Kentucky Post, January 5, 1991, 5K; John C. K. Fisher, "Newport Nightclub Closes May Appeal Revoked License," Kentucky Post, January 26, 1991, 5K; John C. K. Fisher, "State: Newport Right To Close Chic's," Kentucky Post, March 22, 1991, 2K; Newport City Commission Minutes: February 4, 1991, hearing on Chic's

By July 1990, the need to compete with the alcohol free nude bars prompted two more adult bars, Chic's and Brass Bull, to follow Dillinger's and Mousetrap's example and surrender their liquor licenses. The resurgence of nudity prompted Commissioners to reconsider Mike Whitehead's previous ideas about more regulatory ordinances, especially the idea about an adult business occupational license and fee.⁶¹⁴

Newport's immediate neighbor to the east, the City of Bellevue, passed ordinances resembling those of which Newport was interested. The Bellevue ordinances had already survived court challenges.⁶¹⁵ Reasserting his earlier suggestions about Newport's getting more aggressive, City Solicitor Schulken recommended adoption of an ordinance based upon Bellevue's.⁶¹⁶ Reminding Commissioners that so long as B-girls were free to solicit drinks in the darkened bars, prostitution would continue, and Whitehead suggested that existing Newport ordinances were not insufficient to address

occupational license; John C.K. Fisher, "Charges Put Newport Bars' Licenses in Jeopardy," Kentucky Post, August 7, 1990, 6K. John C. K. Fisher, "Two Clubs Losing Dances Revokes Their Licenses," Kentucky Post, January 22, 1991, 1; John C. K. Fisher, "Newport Nightclub Closes May Appeal Revoked License," Kentucky Post, January 26, 1991, 5K; John C. K. Fisher, "State: Newport Right To Close Chic's," Kentucky Post, March 22, 1991, 2K; Kentucky Post, "Newport Wins Fight With Bar License," (no author), September 25, 1990, 1K; John C. K. Fisher, "Bar Agrees To Close For Ten Days," Kentucky Post, January 24, 1991, 3K.

⁶¹⁴ John C. K. Fisher, "Newport To Fight Dancers-Nude Shows Revived At Two Drinkless Bars," Kentucky Post, July 6, 1990, 1K; Dan Hassert, "Newport Reviews Laws To Limit Nude Dancing," Kentucky Post, July 10, 1990, 1K; Kentucky Post, "The Year In Review: Nude Dancing," (no author), January 1, 1991, 2K; John C. K. Fisher, "Newport To Fight Dancers: Nude Shows Revived At Two Drinkless Bars," Kentucky Post, July 6, 1990, 1K (After a short experience without a liquor license, Chic decided to return to pasties and G-strings).

⁶¹⁵ Whitehead papers: City Manager James Parsons memo to Mayor and Commissioners, "Re: Monmouth Street," August 9, 1990.

⁶¹⁶ Interview with Newport City Solicitor Michael Schulken, May 16, 2006; John C. K. Fisher, "Newport To Fight Dancers," Kentucky Post, September 6, 1990, 1K.

the problem.⁶¹⁷ Bar owners argued that B-girls kept drink sales up and that any “sex talk” was merely a ruse to encourage more drink purchases, a claim at odds with what undercover investigations showed.⁶¹⁸

During September and October 1990, Newport Commissioners created a special adult entertainment license, one with a fee commensurate with the actual costs unique to adult businesses. Establishing an appropriate fee was a challenge because the amount needed to help set off the costs of enforcement and not be arbitrary.⁶¹⁹ In other words, the fee amount needed to withstand a probable court challenge.

Whatever fee the Commission passed needed to bear some relationship to the actual costs associated with the adult businesses:

Where a license fee is imposed under the police power, the fee exacted must not be so large as to charge the ordinance with the imputation of a revenue-producing purpose. The fee that may be imposed under the police power is one that is sufficient only to compensate the municipality for issuing the license and for exercising a supervisory regulation over the subjects thereof.⁶²⁰

Mike Whitehead calculated that Newport’s occupational license fees and payroll

⁶¹⁷ The City Commission passed Ordinance No. O-89-40 on May 15, 1989: “. . . shall be unlawful for any employee [at establishment with liquor license] . . . to solicit patrons for purchase alcoholic beverage for consumption by the employee . . .”; Newport City Commission Minutes: April 17, 1989; May 1, 1989; May 15, 1989. At April 17, 1989, meeting, Campbell County Attorney Paul Twehues and Newport Police officers and detectives Howard Niemeyer, Lieutenant Rick Sears, Officer William Moore, Detective Mark Brandt, Detective Rick Huck, and Officer Mark Henry submitted affidavits attesting to the practice of prostitution associated with the solicitation of drinks.

⁶¹⁸ Michael Whitehead interview, March 9, 2007; Newport City Commission Minutes: April 29, 1991.

⁶¹⁹ Mr. B's Bar & Lounge, Inc. v. Louisville, 630 S.W.2d 564 (Ky. App., 1982)(Discretionary Review Denied April 13, 1982); Envy, Ltd. v. Louisville, 734 F. Supp. 785 (United States District Court, Western District of Kentucky, 1990) (license fee to help recoup costs to police adult businesses).

⁶²⁰ Mr. B's Bar and Lounge, Inc. v. Louisville, 630 S.W.2d 564, 567-568 (Ky. App., 1982) (Discretionary Review denied, April 13, 1982; citing, City of Henderson v. Lockett, 157 Ky. 366, 163 S.W. 199 (1914) as quoted in Roe v. Commonwealth, Ky., 405 S.W.2d 25 (1966)

taxes received from adult businesses were far less the actual costs of policing and regulating adult businesses. Occupational license fees for adult businesses, Whitehead argued, approximated the same occupational license fee for the “corner grocery store.” Newport expended approximately \$60,000 per year policing the twelve remaining adult businesses, making the average for each adult business \$5000. For all twelve adult bars, the average city cost per adult businesses far exceeded the \$11,000 total fees paid by adult businesses prior to October 1990. The combined total of the \$11,000 in ordinary administrative costs and the extra \$60,000 expended to deal with problems generated by adult businesses⁶²¹ revealed Newport was losing large sums of money policing businesses not paying their proportional share. Even more egregious was the fact that most adult businesses continued to ignore state and local laws.⁶²² Finance Director Phil Ciafardini added that adult businesses, for all the troubles associated with the mostly “cash only” operations, brought the city only \$39,000 in taxes during the most recent tax

⁶²¹ Costs associated with police calls, investigations, court time, and so on. These figures found in Michael Whitehead papers.

⁶²² Whitehead papers: Whitehead memo to Mayor and Commissioners on “costs of policing adult entertainment,” October 31, 1990; Newport City Commission Minutes: Public hearing on sexually oriented businesses, Michael Whitehead statements, November 5, 1990; John C. K. Fisher, “3d Club Drops Booze To Go Nude,” Kentucky Post, October 25, 1990, 1K. Whitehead’s report is cited as an exhibit in United States District Judge William Bertlesman’s decision in the case of Bright Lights, Inc. v. City of Newport, 830 F. Supp. 378, 380 (United States District Court, Eastern District of Kentucky, Covington Division, 1993):

[In] 1990, adult entertainment establishments caused the City to incur \$ 71,147.00 in policing and surveillance costs, but only paid \$ 16,400.00 in alcohol licensing fees. . . . The record indicates that the increased surveillance measures were taken in good faith. Between the years 1978 through 1986, there were 81 criminal convictions for criminal acts committed on the premises of adult entertainment establishments. This figure represents 65 prostitution-related convictions, and also includes several convictions for possession of controlled substances, trafficking in controlled substances, assault, disorderly conduct, an, unlawful nude activity. See Whitehead Mem. to Mayor and Bd. of Comm., dated Sept. 24, 1986 (Def. Ex. K). Bright Lights, at 385.

year.⁶²³

Prior to passage of the new adult entertainment ordinances, Newport had a public hearing on November 5, 1990, and over three hundred citizens attended. Commissioners and citizens voiced concerns about issues that included what patrons' motivations for visiting adult bars, the city's poor image, patron-female employee contact, the resurgence of nudity, and the introduction of lap and couch dancing.⁶²⁴ Attendees heard Commissioners promise that adult businesses would start "paying their way."⁶²⁵

Adult owners warned that costly and restrictive ordinances would compel other bars to surrender their licenses and offer full nudity and inspire more court litigation. The warnings did not dissuade Commissioners.⁶²⁶

On December 18, 1990, the Newport Planning and Zoning Commission modified zoning laws to prohibit the establishment of new businesses offering "eating and drinking" in Newport's central business district. The prohibition applied only to new establishments and not to future businesses whose "primary purposes" was the serving of good and prevented businesses whose serving food cloaked the business of adult

⁶²³ John C. K. Fisher, "3d Club Drops Booze To Go Nude," Kentucky Post, October 25, 1990, 1K.

⁶²⁴ John C. K. Fisher, "Nudity Sells Says Club Owner," Kentucky Post, November 6, 1990, 1K.

⁶²⁵ John C. K. Fisher, "Monmouth Merchants Fight Back," Kentucky Post, November 14, 1990, 1K; files of Campbell County Attorney Justin Verst: Record of Public Hearing On Adult Entertainment, November 5, 1990; Kentucky Post, "Newport Cries Out: Crack Down On Bars," (no author), November 6, 1990, 1K; John C. K. Fisher, "Newport Mulls Nude Dancing," Kentucky Post, December 18, 1990, 8K; Newport City Solicitor Michael Schulkens interview, May 16, 2006; John C.K. Fisher, "Dance Issue Rolls On: City Calls Hearing on Couch Dancing," Kentucky Post, October 23, 1990, 1K; Dan Hassert, "Newport to Ban New Bars: New Laws Aimed at Nude Dancing," Kentucky Post, December 4, 1990, 1K; John C.K. Fisher, "Plan to Stop Newport Bars Moves Ahead," Kentucky Post, December 19, 1990, 1K.

⁶²⁶ John C.K. Fisher, "Public to Consider Plan for New Bars in Newport,," Kentucky Post, January 10, 1991, 6K.

entertainment.⁶²⁷

Later, during April 1991, Newport adopted Ordinance O-91-14, the Adult Entertainment Ordinance.⁶²⁸ The ordinance imposed mandatory physical changes in adult bars, such as elevated dance stages, and prohibited physical contacts between employees and patrons under circumstances as described within the ordinance.⁶²⁹ Ordinance O-91-14 also provided for a more modern mandate for fingerprinting and photographing adult bar employees. Another ordinance prohibited women from soliciting drinks, the B-Girl Ordinance (Ordinance O-91-17).⁶³⁰ Commissioners passed

⁶²⁷ John C.K. Fisher, "Newport Mulls Nude Dancing Ordinance," Kentucky Post, December 18, 1980, 8K; John C.K. Fisher, "Plan to Stop Newport Bars Moves Ahead," Kentucky Post, December 19, 1990, 1K.

⁶²⁸ Ordinance O-91-14, Section 31-1:

the City of Newport is to establish reasonable and uniform regulations that will reduce the adverse impact that such adult entertainment has had in the City of Newport Kentucky and to protect the health safety moral and general welfare of the citizens of Newport . . . ;

See case of Bright Lights et al. v. City of Newport et al., Bright Lights et al. v. City of Newport. 830 F.Supp. 378, 381 (1993)(United States District Court, Eastern District of Kentucky, Covington Division). Note: some references in the case to the "Bikini Ordinance" are incorrect. The Bikini Ordinance was O-91-21, not O-91-25(Clear View Ordinance).

⁶²⁹ Newport Ordinance O-91-14, Section 31.2(g):

Findings of Fact: Physical contact . . . between persons exhibiting specified anatomical areas and patrons or spectators poses a threat to the individual health of both individuals and promotes the spread of communicable and social diseases . . . ;

Newport Ordinance O-91-14, Section 31.4(i)(1):

. . . straddle dancing lap dancing face dancing or any similar type of dancing known by any other name in which an employee agent or independent contractor whether clothed or not uses any part of his or her body whether directly or through a medium to massage rub stroke knead caress or fondle the genitals or pubic area of a patron while on the premises or the placing of the genitalia or pubic area of an employee in contact with or approximate contact with the face or any other area of the body of a patron while on the premises.

⁶³⁰ Ordinance O-91-17, section 4-11:

the Clear View Ordinance (Ordinance 0-91-25) that mandated provided for more “open views” of adult clubs’ interiors and mandated stricter registration and photographing of female employees. The license fee for an adult entertainment occupational license became \$5000.⁶³¹ The 1991 “Bikini Ordinance” (O-91-21) amounted to a revision of Newport’s original Anti-Nudity Ordinance of 1982. The 1991 ordinance mandated a minimum dress that eliminated pasties and G-strings as an acceptable costume.⁶³² Other ordinances prohibited occupational license transfers when criminal charges were pending.⁶³³ The ordinances generated controversy and lawsuits, but as upset as adult

Consumption of Alcoholic Beverages by Employees a That it shall be unlawful for any employee or independent contractor of an establishment with a liquor by the drink license to solicit patrons of said establishment to purchase any beverage for consumption by any employee or independent contractor of the establishment with the liquor by the drink license.

See, Michael Whitehead papers: form letter sent to adult entertainment clubs, May 28, 1991.

⁶³¹ Newport City Commission Minutes: April 1, 1991, April 15, 1991; Purvis, Bicentennial History, 286-287. Note: The April 1, 1991, meeting included a discussion about whether nudity ordinances ought to be “obscenity based.”

⁶³² Ordinance O-91-21 (Section 4-81):

It shall be unlawful for, and a person is guilty of, performing nude or nearly nude activity when that person appears on a business establishment's premises in such a manner or attire as to expose to view any portion of the pubic area, anus, vulva or genitals, or any simulation thereof, or when any female appears on a business establishment's premises in such manner or attire as to expose to view the portion of the breast below a horizontal line across the top of the areola at its highest point or simulation thereof. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, shirt; leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

Section 4.82 specifically prohibited licensees from “permitting” violations of the Bikini Ordinance. See, John C. K. Fisher, “Newport May Expand Dancer Cover Up,” Kentucky Post, April 9, 1991, 1K.

⁶³³ John C. K. Fisher, “Newport To Review Rules That May Affect Nude Bars,” Kentucky Post, December 21, 1990, 1K; John C. K. Fisher, “City Has One More Rule For Bars,” Kentucky Post, December 24, 1990, 7K. As the Cinema X companies had

owners were over the aforementioned new ordinances, the United States Supreme Court made matters a great deal worse for remaining adult businesses.

A New Ordinance And Help From The High Court

Based on experiences since 1980, City Commissioners and adult business owners had reason to expect strict enforcement,⁶³⁴ but the new ordinances did not directly address the issue of nudity in the alcohol free businesses. The United States Supreme Court helped fill that void on June 21, 1991.

Newport's adult entertainment ordinance had little time to be effective before the United States Supreme Court decided the case of Michael Barnes, Prosecuting Attorney For St. Joseph County, Indiana v. et al. v. Glen Theatre Inc., et al.⁶³⁵ The case arose in South Bend, Indiana, when adult business owners challenged the constitutionality of Indiana's anti-nudity statute that banned all public nudity, including nudity not associated with alcoholic beverage licenses.

Barnes considered government's responsibility to preserve and protect public morals and general welfare, a responsibility that included protection of "public peace and welfare" from speech and conduct considered harmful.⁶³⁶ The Court distinguished the 1957 precedent setting Roth v. United States⁶³⁷ case. Roth addressed the constitutionality

done, so too were the adult bar owners trying to transfer occupational licenses during the pendency of criminal charges.

⁶³⁴ John C. K. Fisher, "Monmouth Merchants Fight Back," Kentucky Post, November 14, 1990, 1K; John C. K. Fisher, "Nude Dancing Crackdown: Commission Considers Get-Tough Laws," Kentucky Post, December 3, 1990, 7K;

⁶³⁵ Barnes v. Glen Theatre, 501 U.S. 560 (1991). Glen Theatre, Inc. was a a company within the Harry Mohnney empire. The case originated when Mohnney lawyer and business associate Lee J. Klein filed a federal lawsuit challenging an Indiana indecency statute, Ind. Stat. 35-45-4-1. Hereinafter, references will be to Barnes.

⁶³⁶ Barnes, at 569; citing the case of Roth v. United States, 354 U.S. 476, 480-81 (1957).

⁶³⁷ Roth v. United States, 354 U.S. 476, 480-81 (1957).

of 18 U.S.C. 1461,⁶³⁸, a federal law that punished the mailing of “obscene, lewd, lascivious, or filthy” publications.”⁶³⁹ Roth did not deal with the expressive conduct of live dance and other live performing arts. Barnes dealt with nude performances on stages, live models in peep booths performing behind glass partitions, and the dress of female employees in adult businesses. Supreme Court found that “long standing public decency issues” were involved, not obscenity issues.⁶⁴⁰ To prove a violation of the Indiana law, the state did not need to prove that the conduct met a legal definition of obscene or obscenity. The Supreme Court concluded the Indiana anti-nudity statutes did not unconstitutionally suppress “expressive conduct.” Suppressing only nudity, Indiana did not deprive audiences of the “message” or dancers’ freedom of expression, only the amount of clothing worn. The Court observed:

[requirements] that the dancers don pasties and a G-string does not deprive the dance of whatever erotic message it conveys; it simply makes the message slightly less graphic. The perceived evil that Indiana seeks to address is not erotic dancing, but public nudity. The appearance of people of all shapes, sizes and ages in the nude at a beach, for example, would convey little if any erotic message, yet the state still seeks to prevent it. Public nudity is the evil the state seeks to prevent, whether or not it is combined with expressive activity. Since Indiana only suppressed nudity, the state law did not deprive audiences of the message.⁶⁴¹

Concurring, Associate Supreme Court Justice David Souter discussed adult entertainment’s adverse secondary effects upon a community. Identifying lower property values, increased crime, less business investment, and general property deterioration where adult businesses existed, Justice Souter acknowledged the numerous cases and empirical studies on adult entertainment’s “secondary effects” such as “prostitution,

⁶³⁸ “U.S.C.” stands for “United States Code.”

⁶³⁹ Roth, 479-480

⁶⁴⁰ Citing Leroy v. Sidley, a 1664 English case, 82 Eng. Rep. 1036 (public nudity held as an act “malum en se”, “the act is wrong”), Barnes, at 568-69.

⁶⁴¹ Barnes, 571.

sexual assaults, and other crimes.” Justice Souter’s opinion was significant for Newport leaders plagued by adult entertainment problems for decades. Justice Souter noted the character of the [Barnes] plaintiffs’ businesses were of the same character as those in Young, Renton, and LaRue, and that it was “. . . no leap to say that live nude dancing of the sort at issue in South Bend was likely to produce the same pernicious secondary effects . . .”.⁶⁴² Justice Souter doubted the Constitution required local lawmakers to ignore that “concentrations of crowds of men predisposed to adult entertainment” was part of a “chain of causation . . . a correlation” between adult establishments and higher incidences of sexual assaults, neighborhood deteriorations, and other social and economic ills.⁶⁴³

Newport wasted little time in enacting anti-nudity measures based upon Barnes. On July 15, 1991, Newport passed Ordinance O-91-40 (Nude in Public Ordinance) that prohibited all public nudity⁶⁴⁴. There were no entertainment exceptions.⁶⁴⁵ Minimum

⁶⁴² Barnes, 582, 584. Citing Young v. Mini Theatres, Inc., 427 U.S. 50 (1976)(theaters); Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986)(theaters); and, California v. LaRue, 409 U.S. 109 (1972)(actual and simulated sexual acts performed on a bar’s stage).

⁶⁴³ Barnes, at 585-86.

⁶⁴⁴ Newport City Commission Minutes: July 8, 1991, July 15, 1991, July 22, 1991. Commissioners Ordinance No. O-91-40, July 15, 1991:

It shall be unlawful for a person to appear in any public place in such a manner or attire as to expose to view any portion of the pubic area anus vulva or genitals or any simulation thereof or for any female to appear in such manner or attire as to expose to view the portion of the breast below a horizontal line across the top of the areola at its highest point or simulation thereof This definition shall include the entire lower portion of the human female breast but shall not include any portion of the cleavage of the human female breast exhibited by a dress blouse shirt leotard bathing suit or other wearing apparel provided the areola is not exposed in whole or in part. (Full text of Ordinance found in Newport’s Code of Ordinances, Chapter 17, Section 17.44)

Note: O-91-40 does not contain the following language from the Bikini Ordinance (O-91-21): “performing nude or nearly nude activity when that person appears on a business

dress for employees, including dancers, remained similar to bikini bathing suits, and the ordinance maintained prohibitions against pasties and G-strings.⁶⁴⁶ Insofar as public nudity was thereafter concerned in Newport, there were no distinctions between businesses that had liquor licenses and those that did not. Although the Barnes decision and Newport's Nude in Public Place ordinance might appear to have exhausted adult owners' options relative to nude entertainment, some owners remained resourceful.

Bar Owners Remain Resourceful

Barnes did cause all adult business owners to concede defeat. Newport had six adult businesses remaining after recent closures of LaMadame's, Chic's, and the Nite Life's Chapter 233 case was pending in Circuit Court.⁶⁴⁷ On May 7, 1991, Mike Whitehead predicted that Mousetrap and Dillingers would soon suffer Chapter 233 closures⁶⁴⁸ and reminded officials that the closures were a basis for revocation of the businesses' nonconforming use status, an argument County Attorney Paul Twehues had

establishment's premises." The post-Barnes ordinance does not limit violations to business premises or dance performance related conduct.

⁶⁴⁵ Sacha Devroomen, "Newport Approves Public Nudity Ban," Kentucky Post, July 16, 1991, 5K; Paul A. Long, "Newport Vows To Ban Public Nudity," Kentucky Post, July 9, 1991, 1K;

⁶⁴⁶ Bright Lights et al. v. City of Newport. 830 F.Supp. 378, 381-382, 385-386 (1993)(United States District Court, Eastern District of Kentucky, Covington Division); Paul A. Long, "Nudity Ban Kicks In," Kentucky Post, July 25, 1991, 1K; John C. K. Fisher, "Newport Nudity: A Year Later," Kentucky Post, July 1, 1991, 1K.

⁶⁴⁷ Campbell County Circuit Court, Civil Action 91-CI-133.

⁶⁴⁸ Michael Whitehead did an investigation into the possible fraudulent application for a liquor license to Tom Chambers' transferee when Mousetrap reopened in 1987. Whitehead investigated whether Tom Chambers maintained any continuing interests in the bar and whether Lucille Henson, the transferee misrepresented such fact in the license application. John C. K. Fisher, "Newport Lounge's Liquor License Suspended," Kentucky Post, 24 August 1989, 6K; Whitehead papers: Whitehead memo to file, Re: Investigation Mousetrap - Interview with Boschert Bookkeeping Services, October 23, 1990.

been making.⁶⁴⁹

Shortly after the July 15, 1991, passage of the Nude in Public Ordinance, three clubs, the Mousetrap, Centerfold Lounge, and Cocktails and Dream , filed a federal suit to enjoin the new ordinances' enforcement on grounds that the laws were unconstitutional restrictions of free speech and expression.⁶⁵⁰ An additional plaintiff later entered the Bright Lights case, the Mousetrap Burlesque and Artistic Dance Preservation Society, Inc. (Dance Society). Dance Society claimed the status of a non-stock, non-profit corporation operating as a private club at the Mousetrap. Dance Society argued its professed "private" status exempted it from anti-nudity laws.⁶⁵¹ Prosecutors and city officials did not agree.⁶⁵²

The evidence presented before the Court did not support Mousetrap claims of a "private club." No one had filed the Dance Society's incorporation papers until July 19, 1991; however, the private club façade began weeks earlier. "Membership fees" were five dollars per day admissions, and the Dance Society maintained no members' lists or

⁶⁴⁹ Paul Twehues interview, April 2, 2006; Michael Whitehead papers: Whitehead memorandum to City Finance Director, Phil Ciafardini, May 7, 1991. Whitehead's request had some urgency because Paul Twehues was considering no further Chapter 233 suits unless Newport took efforts to prevent the businesses' reopening.

⁶⁵⁰ The case of Bright Lights et al. v. City of Newport. 830 F.Supp. 378, 381-382, 385-386 (1993)(United States District Court, Eastern District of Kentucky, Covington Division). Plaintiffs were Bright Lights, Inc. d/b/a Mousetrap Lounge; Ruth Everett, Individually and d/b/a Centerfold; Sheryl Lynn Villardo, Individually and d/b/a Cocktails & Dreams; and Mousetrap Burlesque and Artistic Dance Preservation Society, Inc. [Dance Society], Plaintiffs.

⁶⁵¹ Dance Society operated out of the same address as the Mousetrap Lounge, but "purports to be a nonprofit corporation operating as a private club and promoting, in its own words, nude dancing as an art form." Bright Lights, at 380.

⁶⁵² Bright Lights, at 384; Hendricks v. Commonwealth, 865 S.W.2d 332 (Ky., 1993); Paul A. Long, "Newport Votes To Ban Public Nudity," Kentucky Post, July 9, 1991, 1K; Michael Collins, "Three Newport Bars Sue City Over Business Restrictions," Kentucky Post, July 18, 1991, 2K; Newport City Commission Minutes: July 8, 1991.

admission criteria.⁶⁵³ The Mousetrap continued to offer totally nude entertainment and couch or lap dances in the club portion called the “Jungle.”⁶⁵⁴

Within days of the July 1991 Nude in a Public Place ordinance, an undercover Kentucky State trooper saw nude performances at the Mousetrap. Authorities charged two dancers with violation of the Nudity in Public Place Ordinance and infractions related to unlawful employee-patron contact. Shortly thereafter, prosecutors charged ten Mousetrap workers for failing to have proper employee identifications. The two dancers, CH and JH, entered “conditional” guilty pleas⁶⁵⁵ in Campbell District Court, and the cases began their journey through the appellate system under the name Hendricks v. Commonwealth.⁶⁵⁶

Both cases, the federal suit before United States District Court Judge William Bertlesman and the dancers’ cases in the Kentucky court system, raised constitutionality issues pertinent to regulations and ordinances applicable to adult bars, but the federal case was broader in scope. Not only was Newport’s public nudity law at issue in federal court, so were other ordinances, including the Bikini Ordinance, the Adult Entertainment Ordinance, and the Nude In Public Ordinance. The Bright Lights plaintiffs challenged Newport’s right to regulate dancers’ costumes, nude entertainment in general, the five

⁶⁵³ Hendricks, at 333-334.

⁶⁵⁴ Paul A. Long, “Court Helps Douse Heat On Sin City, But Newport Winning War On Own,” Kentucky Post, June 24, 1991, 1K; Hendricks, at 333.

⁶⁵⁵ Kentucky Rules of Court permitted a defendant to conditionally enter a plea of guilty in which a legal issue existed that would entitle a defendant to appeal and, if successful withdraw the guilty plea later.

⁶⁵⁶ Hendricks v. Commonwealth, 865 S.W.2d 332, 333-334 (Ky., 1993); Kentucky Post, “Nude Bar Workers Cited,” (no author), August 9, 1991, 5K; William Weathers and John C. K. Fisher, “First Raid Under New Law Nets 2 Newport Dancers,” Kentucky Post, July 26, 1991, 1K; Kentucky Post, “8 Convicted Under Bar I-D Law,” (no author), August 31, 1991, 13K;

thousand dollar registration fee, and other new requirements and restrictions. Issues in Hendricks v. Commonwealth, the state criminal case were the specific anti-nudity ordinances under which CH and JH pled guilty. CH and JH argued the Mousetrap's private club status protected them from conviction.

Judge Bertlesman ruled in the Bright Lights case in August 1993. Three months later, the Kentucky Supreme Court ruled in Hendricks. Bar owners and dancers did poorly in each. Newport's ordinances remained mostly intact and the Kentucky Supreme Court affirmed the dancers' convictions in Hendricks. Judge Bertlesman found a few sections of the Adult Entertainment Ordinance unconstitutional, but Newport made the needed changes.⁶⁵⁷

Both courts upheld the constitutionality of the Bikini and Nude in Public ordinances, and both courts supported Newport's following Barnes. In his opinion, Judge Bertlesman highlighted Newport's struggles against vice:

Having considered the matter carefully, the court concludes that some leeway must be afforded the reform efforts of the City Council of Newport. This body has been elected by the citizens to attempt to "clean up the image" of the City. To do this, it must overcome the sleazy impression of Newport and Northern Kentucky that survives from "the heyday" when things ran wide open; reform candidates were literally drugged and framed for morals offenses by public officials and police officers; the members of reform citizens groups were vilified and harassed; and a "liberal" in local parlance was a person favoring the continued open and notorious violation of the gambling and morals laws. To illustrate that the Council's perception of a need to clean up the image of the City is not paranoid, the court notes the following statements in a national magazine's satirical article on Newport's big sister, the city of Cincinnati. "The city's streets fairly shine; the odd litterer draws a scornful stare. Wide avenues, bosky side streets, the most inviting of thoroughfares. And clean. So

⁶⁵⁷ Bright Lights, at , 383, 386-388, 390. Judge Bertlesman held that: "the Bikini Ordinance is clearly within the constitutional police power of the City and furthers the substantial governmental interest in regulating evils such as prostitution and "bust-out" activities, which tend to parasitically attach themselves to adult entertainment.", at 383; Newport City Commission Minutes: August 30, 1993, September 7, 1993.

clean. No X-rated movie theaters, no adult-book stores, no bare-breasted night joints soil these streets, all of them long ago jettisoned over to the Kentucky side of the river." Peter Richmond, "Town Without Pity," Gentlemen's Quarterly, July 1993, at 102, 104. . . . This court holds that the City of Newport has the right to secede as Cincinnati's combat zone.⁶⁵⁸

Neither the Bright Lights plaintiffs nor the Mousetrap dancers appealed. The Mousetrap's alleged status as a private club did not do well before the Kentucky Supreme Court. Concluding that neither the Dance Society nor the Mousetrap were private clubs, the Supreme Court found Mousetrap's ownership established the private club status "for the sole purpose of avoiding the requirements of a newly enacted city ordinance regarding nudity in a public place."⁶⁵⁹ Adult businesses interested in reprising nude entertainment in Newport were out of legal options.

Epilogue

After 1993, all but two of Newport's adult businesses went through a lingering demise. Before the conclusions of the Hendricks and Bright Lights cases, Paul Twehues' Chapter 233 cases and Mike Whitehead's license actions kept LaMadame's, Chic's Lounge, Dillinger's, and the Nite Life Lounge closed.⁶⁶⁰ When the closure terms neared an end, City Solicitor Mike Schulkens convinced Newport officials to invoke zoning regulations and end the businesses' nonconforming use status. The establishments stayed

⁶⁵⁸ Bright Lights, at 384

⁶⁵⁹ Hendricks, at 335.

⁶⁶⁰ John C. K. Fisher, "Newport Bar Needs License," Kentucky Post, April 9, 1992, 4K (Dillinger's); Kentucky Post, "Protest Aired At Newport Liquor License Hearing," (no author), April 16, 1992, 2K; Kentucky Post, "Newport's LaMadame Closure Set For Spring," (no author), March 6, 1991, 6K; John C. K. Fisher, "Newport Right To Close Chic's," Kentucky Post, March 22, 1991, 2K; John C. K. Fisher, "Order Could Close Two Bars For Months," Kentucky Post, March 2, 1991, 16K; John C. K. Fisher, "Judge Closes Lounge . . . Tied To Prostitution," Kentucky Post, September 17, 1993, 1K.

closed.⁶⁶¹

The number of adult establishments dwindled during the remainder of the 1990s. The troublesome Mousetrap suffered an inglorious end in late 1995. Newport purchased the property in the 900 block of Monmouth Street for a new city building and the Mousetrap fell victim to the need for a parking lot.⁶⁶² In May 1997, a joint FBI, Newport Police, and State Police conducted operations against adult establishments in Covington and Newport, including Newport's Trixie's Delight and Cocktails and Dreams. Trixie's had been the site of prostitution and drugs and County Attorney Twehues wasted little time before filing a Chapter 233 abatement suit and Whitehead moved against the liquor license. In 1997, three more adult bars shut down when local developer David Hosea purchased the sites of Talk Of The Town, Sparkle Plenty's, and, later, Cocktails and Dreams.⁶⁶³ None reopened. Before the Millennium, Trixie's was gone.⁶⁶⁴

When the nineties' ended, three adult bars bearing little resemblance to the notorious strip clubs of the past remained on Monmouth Street: Brass Bull, Brass Mule,

⁶⁶¹ C. K. Fisher, "Zoning Law May Close Bars," Kentucky Post, August 23, 1991, 1K; John C. K. Fisher, "Bars Challenge Over Order To Close Down," Kentucky Post, September 12, 1991, 6K; John C. K. Fisher, "Newport Asks Rule On Law . . . Seeks To Close Three Nude Bars," Kentucky Post, December 13, 1991, 3K; Dan Hassert, "Newport Suing Own Board To Keep Club From Reopening," Kentucky Post, April 20, 1993, 7K (Mousetrap).

⁶⁶² Kentucky Post, "Mousetrap Faces The Wrecking Ball," (no author), December 19, 1995, 1K; John C. K. Fisher, "Sin City No More: A Relic Meets The Wrecking Ball," Kentucky Post, December 16, 1995, 1K; Dan Hassert, "A Fresh New Image For Newport: Past Reputation In Final Retreat," Kentucky Post, March 4, 1995, 1K.

⁶⁶³ Paul A. Long, "Tower Planners Buy Talk Of The Town," Kentucky Post, June 17, 1997, 3K; Editorial, "Buying Out Newport Bars," Kentucky Post, August 4, 1997, 2K; Dan Hassert, "Strip Clubs Refuse To Die," Kentucky Post, January 23, 1999, 1K.

⁶⁶⁴ Paul A. Long, "Newport Club Fined \$10,000 For Public Nudity," Kentucky Post, September 16, 1997, 1K; Jeanne Houck, "Police Padlock Trixie Delight Lounge," Kentucky Post, December 12, 1997, 2K; Bob Driehaus, "Bar Owners, Dancers, Indicted - Prostitution Charged," Kentucky Post, September 20, 1997, 2K; Jeanne Houck, "County Sues To Close Newport Strip Bar," Kentucky Post, May 29, 1997, 1K; John C. K. Fisher, "Strip Club Likely To Stay Closed," Kentucky Post, February 4, 1998, 2K.

and the Centerfold Lounge. Within a few years, Campbell County Fiscal Court purchased and razed the Centerfold property for a new administration building. The Brass Bull and Brass Ass remain on Monmouth, across the street from each other, the only visible remnants of Sin City. The two do not often attract media attention unless in the context of discussions or articles about Newport's colorful past. From the mid-1990s through the present time, news about Newport focused upon Newport's remarkable economic development. News stories about new business development, Newport on the Levee, and an influx of family oriented stores and shops replaced the front page sensationalism of bar raids, downtown pornography, and prostitution. Sin City was gone and Newport was acquiring a new moniker: "envy of the region."⁶⁶⁵

⁶⁶⁵ David Wecker, "Casinos Did Not Go Quietly Into The Night," Kentucky Post, September 6, 2004, 1K; David Wecker, "Newport: Envy Of The Region," Kentucky Post, September 7, 2004, 1K; Shelly Whitehead, "No Fish Story: Aquarium A Hit," Kentucky Post, June 18, 2001, 1K; John C. K. Fisher, "New Image For Newport – City Continues To Target Families," Kentucky Post, January 9, 1996, 2K; Patrick Crowley, "Northern Kentucky In Midst Of Booming Development," Kentucky Monthly, Vol. 2, Issue 3 (March 1999), 13; Deborah Kohl Kremer, "Newport On The Levee," Kentucky Monthly, Vol. 5, Issue 11 (November 2002), 30; Tom Daykin, "Newport Evolved From Seedy Town To Hip Hangout," Knight Ridder Tribune Business News, October 20, 2002, 1; Kentucky Post, "Newport Reforming Its Sin City Image," Associated Press News, May 28, 2000, 7B.

CONCLUSION

By the New Millennium, the Sin City of blackmail, scandal, prostitution, brothels, illegal gaming, and pornography, had become part of Newport's colorful past. No longer did Newport identify with illegal vice. Instead, the former Sin City identified with progress and prosperity as epitomized by Newport on the Levee. Newport was now the "envy of the region." Monmouth Street, once the avenue of strip bars and places for pornography, was now the home to only two adult bars, the Brass Bull and Brass Ass. Neither offer entertainment remotely resembling the days when crowds of men jammed onto the sidewalks and into the adult bars for nude dancers and B-girls. By the New Millennium, a person needed to be over eighty years old to remember a time before downtown Newport was dominated by adult entertainment. By 2008, a person needed to be over thirty years old to remember when it ever was. The city's economy and development became models of initiative and innovation. Newport is a town to be taken seriously.

This thesis presented two contentions about how and when Newport transformed from being Sin City to becoming the "envy of the region." Popular local tradition adopts the early 1960s as the point in Newport's history when the city became a "reformed" or "cleaned up" town. This thesis concludes that local tradition is incorrect. The reform efforts during 1961 and through the end of Sheriff George Ratterman's four year term brought organized gaming to an end, but not Sin City. The reform groups, the Social Action Committee (SAC) and the Committee of 500 took advantage of organized crime

syndicates' disposition to locate gaming rackets in more friendly locations and exploited the foolish efforts by pro-gaming persons to smear reform Sheriff's candidate George Ratterman. The attempted blackmail attempt, in the end, helped rather than hurt reformers' chances to put their candidate into office. Further, the publicity gave Governor Bert Combs little option but to intervene in Newport. Nevertheless, true reform did not happen.

Without question, 1961 was an opportunity to reform Newport; that is, to begin the transformation of Newport from a raunchy border town to a community where vice did not dominate the political, economic, cultural, and social spheres. Reform efforts failed because 1961 reform City Commission candidates were unable to unseat the incumbent (and indicted) Commissioners. Newport's pre-1961 city government remained intact. For the next seventeen years, no City Commission majority undertook intensive and enduring anti-vice efforts. Also, during the next seventeen years, no City Commission acted to prevent the growth and prosperity of the sexually oriented adult entertainment industry that evolved and reaffirmed Newport's status as a town burdened with a reputation for strippers and prostitutes, not quite indicia of "cleaned up."

From 1965 through 1975, Newport experienced the coming of pornography establishments with their hard-core movies, books, and peepshow booths. During the same time period, state and federal grand juries exposed that corruption still hung about. Nevertheless, Sin City went on. The evidence supports this thesis's first contention. Newport was not a reformed or cleaned up city after 1961-1965.

A corollary to the first contention is that the evidence does not support claims of a direct nexus between the 1961 reform efforts and the Newport that entered the twenty-

first century. So much occurred that reinforced and exacerbated Newport's Sin City status and playground image that there cannot be anything but the most tenuous link, if any link at all. Until 1978, vice, both legal and illegal, was legally entrenched into Newport's landscape. Only the pre-1961 gambling and brothels were missing.

Notwithstanding Newport's devolution from plush casinos and Las Vegas style nightclubs to shabby and disreputable strip bars with roving B-girl prostitution, there were signs that some individuals were tired of their city's circumstances. Charles Sarakatsannis, Irene Deaton, and a few others challenged Newport's status quo and made vice frequent Commission topics. In the local Circuit Court, and Circuit Judges and the Commonwealth Attorney prompted investigations into what ongoing news reports claimed was a serious downtown vice problem. Prior to 1961, these inquiries would have been merely pro forma. In 1977, the Adult Zoning Amendment gave Newport's adult industry a blueprint for its own self destruction, but despite these flashes of reform intentions, evidence reveals there were other factors that held back any real cleanup.

The Newport City Commission continued to hold sway over what happened relative to adult entertainment. There were laws prohibiting most, if not nearly all, of the vice activities in Newport; however, without enforcement of those laws, the prohibitions remained meaningless. So long as the majority of elected officials refused to support anti-vice efforts by Newport Police, Newport's status quo did not show serious change.

Further still, the adult bars and the pornography businesses enjoyed the protections of state and federal constitutions and statutes. This thesis explained that only through intensive law enforcement efforts was evidence found that permitted law enforcement to pierce adult entertainment's facades of legitimacy and compel closures of

offending establishments. This began happening after January 1978.

This thesis's second contention is that Newport's real reform happened during the early 1990s. The date does not refer to a specific event or series of events that suddenly brought about the demise of Sin City. The end of the adult industry's grip on downtown Newport was the result of a process that gathered momentum after 1977. Changes in the Commonwealth's court system, the election of County Attorney Paul Twehues, the emergence of the neighborhood councils and Newport Citizens Advisory Council, and the commitment of the Kentucky State Police converged between January 1978 and April 1980.

1980-1981 was a pivotal period in Newport's Sin City history because law enforcement demonstrated how vulnerable the adult industries had always been to independent and aggressive police and prosecutors. Once before, during 1961-1965, an opportunity presented itself to Newport to shed its playground image and begin to distance itself from Sin City. The opportunity passed. After 1980, police, prosecutors, an organized citizenry, and, after 1981, a City Commission were determined that the opportunity to end Sin City would not again be missed. These elements converged in force during 1980 and marked what truly was the beginning of Sin City's demise. The evidence shows an uninterrupted, enduring, and relentless anti-vice campaign against in-bar prostitution and pornography during 1980-1981 in spite of a three member pro-adult entertainment Commission majority. Thereafter, the momentum carried forward through the early 1990s.

Enjoying an advantage that laws passed would be enforced, the all reformer 1982-1983 Newport Board of Commissioners passed the Anti-Nudity Ordinance, the law that

forever changed the complexion of the city's adult entertainment industry and did real damage to the adult industry. State Police, Newport Police, County Attorney Paul Twehues, and, after January 1982, Newport's Liquor License Administrator, Michael Whitehead, provided Newport's Commissioners with the certainty that the city once again had a government of laws, not of men. The results of those team efforts are easily seen at Newport on the Levee and along Monmouth Street.

By 1993, the adult industry was no more and Newport's economic development teams could promote the city without the specter of corruption, sleaze, and vice hanging about. The remnants of the adult entertainment industry began to disappear and, finally, only the Brass Bull and Brass remain as tame reminders of a city's colorful past.

Former Liquor Administrator Ken Rechtin, now a Campbell County Commissioner, recalls that he still hears from some "older" members of the community about how Newport was "better when the Mob ran things" during the boomtown years of casinos and nightclubs. Apparently these persons wax nostalgically about how the Cleveland Syndicate's presence kept street crime away from the downtown and how mainstream businesses did so well from the crowds of gambling patrons, all of which is was probably true.⁶⁶⁶ Such comments reflect romantic notions about organized crime and fail to consider the horrendous reputation and image Newport endured because of illegal gaming, brothels, bust-outs, and B-girls. Newport made a choice between a city that attracted crowds in search of sexually oriented fun and crowds of families enjoying a Newport On The Levee and the shops and stores that now line Monmouth. Law enforcement made certain that Newport had that choice to make, and once Newport made

⁶⁶⁶ Interview with Kenneth Rechtin on July 18, 2008. Note: several of the persons interviewed for this thesis have the same recollections.

the choice, saw to its implementation. Now, Newport was “cleaned up.”

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Robert Sidell, et al. v. Edward G. Hill, Special Judge [for Campbell County], 357 S.W.2d 318 (1962)

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Schad v. Mount Ephram, 452 U.S. 61 (1981)

Shearer v. Dailey, 312 Ky. 226, 226 S.W.2d 955 (1950)

Shelton v. Tucker, 364 U.S. 479, 488 (1960)

Slone v. Commonwealth ex rel. Justice, 225 Ky. 218, 7 S.W.2d 1037 (1928)

Smith v. California, 361 U.S. 147 (1959)

Smith v. Commonwealth, 465 S.W.2d 918 (1971)

Smith, James v. Commonwealth, Ky., 465 S.W. 2d 918 (1971)

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Stanley Marks v. The Board of Commissioners for the City of Newport, Kentucky, 504 S.W.2d 338 (1974)

Stanley Marks, et al. v. United States, 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977)

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State ex rel Keating v "Vixen," 35 Ohio St 2d 215, 218-219; 301 NE2d 880, 882 (1973)

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Tabor v. Com. ex rel. Peterson; 303 Ky. 810, 194 S.W.2d 501(1946)

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Thomas Chambers, et al. v. Commonwealth of Kentucky, ex rel. Paul H. Twehues, Jr., et al, 723 S.W.2d 868 (1986), discretionary review denied, March 3, 1987

Treigle v. Acme Homestead Assn., 297 U.S. 189, 197 (1936)

Tucker v. Com. ex rel. Atty. Gen.; 299 Ky. 820, 821-822, 187 S.W.2d 291 (1945)

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U.S. v. Eisner, 533 F.2d 987 (C.A.6 (Ky.), 1976)

United States v Reuben Sturman, 951 F.2d 1466, 1474 (6th Cir., 1991), cert. denied, 112 S.Ct. 2964 (1992)

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United States v. Harry V. Mohney, Thomas T. Tomkins, Elizabeth L. Scribner, and Lee J. Klein, 723 F.Supp. 1197 (1989)(United States District Court, E.D. Michigan)

United States v. Harry Virgil Mohney, et al., 509 F.Supp. 127 (U.S. District Court, Miami, 2/19/81)

United States v. Lee J. Klein, 19 F.3d 20 (6th Cir., 1994)

United States v. Lester, 363 F.2d 68, 70-72 (6th Cir., 1966)

United States v. Maius, et al., 378 F.2d 716 (6th Cir., 1967)

United States v. Mohney, 949 F.2d 1397 (6th Cir. 1992)

United States v. Mohney, et. al., 723 F.Supp. 1197 (United States District Court, Eastern District, Michigan, 1989)

United States v. O'Brien, 391 U.S. 367 (1968)

United States v. One Reel of Film, 360 F.Supp. 1067 (Mass. 1973), 481 F.2d 206 (First Cir., 1973)

United States v. Remus, 12 F.2d 239 (6th Cir., 1926);

United States v. Stanley Marks, et al., 364 F. Supp. 1022 (1973)(U.S. District Court, Eastern District, Kentucky, Covington Division)

United States v. Stanley Marks, et al., 520 F.2d 913 (6th Cir., 1975)

United States v. Stanley Marks, et al., 520 F.2d 913 (6th Cir., 1975)

United States v. Thirty-seven (37) Photographs, 402 U.S. 363 (1971)

Walker v. Commonwealth, 117 Ky. 727 (Ky. App., 1904)

Walter v. United States, 447 U.S. 649 (1980)

Wells v Commonwealth, 203 Ky. 373 (Ky. App. 1923

Western Corp. v. Commonwealth of Kentucky, Ky., 558 S.W.2d 605 (1977)

Western Corporation v. Commonwealth, 558 S.W.2d 605 (Ky., 1977).

Western Corporation v. Commonwealth, Ky. 558 S.W. 2d 605 (1977)

Whitehead v. Estate of Bravard, 719 S.W.2d 720 (Ky., 1986)

Whitfield v. Commonwealth, 265 Ky. 640, 97 S.W.2d 565 (1936)

Whitfield v. Commonwealth, 278 Ky. 111, 128 S.W.2d 208 (1939)

Winters v. New York, 333 U.S. 507, 510 (1948)

Young v. American Mini Theatres, 427 U.S. 50, 77 (1976)

Persons Interviewed⁶⁶⁷

Ciafardin, Phil: former Newport Finance Director and City Manager.

Garnick, Al: former Newport Police Detective (retired).

Goetz, Steve: former Newport Mayor and City Commissioner.

Huck, Rick: former Newport Detective and Police Chief.

KSP Detective (retired): must remain anonymous; was part of State Police investigative efforts. during latter 1970s and early 1990s

Long, Laura: former Newport Economic Development Director, Newport's first.

Nolan, Timothy: former Newport City Solicitor and Campbell County District Judge.

Kenneth Rehtin, former Newport Liquor Administrator and City Ombudsman (1978-1979).

Sarakatsannis, Charles: former Newport City Commissioner.

⁶⁶⁷ Interviews recorded digitally and maintained in possession of candidate.

Schroder, Wil: former Newport City Solicitor and currently Associate Justice of Kentucky Supreme Court; formerly a Kenton County District Court Judge and Kentucky Court of Appeals Judge.

Schulkens, Michael: Newport City Solicitor.

Twehues, Paul former Campbell County Attorney.

Verst, Justin: Campbell County Attorney (succeeded Paul Twehues).

Von Stohe, William: former United States Marshall and, previously, a local law enforcement officer.

Wehr, William: former Assistant County Attorney and Campbell County Circuit Judge (retired)

Whitehead, Michael: Newport License Administrator and Liquor License Administrator, appointed in 1982.

Workum, Bertram: former Kentucky Post reporter (retired).

Newport City Commission Meetings: Minutes Cited

April 5, 1959	November 16, 1970	January 5, 1976
April 5, 1959	May 12, 1971	January 19, 1976
March 22, 1960,	May 12 1971	February 2, 1976
November 22, 1960	July 8, 1971	March 1, 1976
November 25, 1964	October 11, 1971	March 15, 1976
November 25, 1964	November 8, 1971	March 29, 1976
September 7, 1966	April 14, 1972	May 24, 1976
October 5, 1966	April 17, 1972	June 14, 1976
October 26, 1966	July 17, 1972	September 13, 1976
September 30, 1968	September 11, 1972	September 27, 1976
September 30, 1968	June 4, 1973	October 25, 1976

March 28, 1977	March 18, 1981
March 28, 1977	April 1 1981
April 25, 1977	April 15, 1981
October 11, 1977	April 29, 1981
October 14, 1977	March 22, 1982
January 9, 1978	March 29, 1982
January 16, 1978	May 17, 1982
October 30, 1978	August 16, 1982
December 11, 1978	August 16, 1982.
August 9, 1979	August 30, 1982
August 10 1979	August 30, 1982
February 20, 1980	September 13, 1982
March 12,1980	September 13, 1982
April, 2, 1980	September 20, 1982
April 7, 1980	March 13, 1989
April 30, 1980	April 17, 1989
June 11, 1980	April 17, 1989
June 25, 1980	November 5, 1990.
July 23, 1980	February 4, 1991
August 6, 1980	April 29, 1991
October 15, 1980	July 8, 1991
October 29, 1980	July 15, 1991
November 12, 1980	July 22, 1991
November 25, 1980	August 30, 1993
December 10, 1980	September 7, 1993

Records of Campbell County Attorney Justin Verst:

Agreement” [Of Sale of Assets] Between Happy Day, Inc., Tom Hollis Sr., President, and Brown Bear, Inc., Tom Hollis, Sr., President, dated July 1, 1978.

Articles of Incorporation Of Combined Entertainment Ventures, Ltd., filed with Kentucky Secretary of State, April 8, 1980, executed by Susianne Hollis Burchette, “Sole Director,” on April 8, 1980

Articles of Incorporation Of Combined Entertainment Ventures, Ltd., filed with Kentucky Secretary of State, April 8, 1980, executed by Susianne Hollis Burchette, “sole Director,” on April 8, 1980.

Attested copy of “Trial and Verdict” Court Order in Commonwealth of Kentucky vs. Happy Day, Inc., Brown Bear, Inc., and Pauline Mullins (Case No. 80 – M – 767, 768, 706, Campbell County District Judge Timothy L. Nolan presiding, July 9, 1980.

Bill of Sale by Happy Day, Inc. Tom Hollis Sr., President, to Combined Entertainment Ventures, Ltd., Inc., Susianne [Hollis] Burchette, “sole director,” April 7, 1980

Bill of Sale by Happy Day, Inc. Tom Hollis Sr., President, to Combined Entertainment Ventures, Ltd., Inc., Susianne Hollis Burchette, “sole director,” April 7, 1980.

Campbell County Circuit Court Case No. 80-57, Combined Entertainment Ventures, Ltd. v. City of Newport and Irene Deaton, Complaint for Declaratory Relief.

City of Newport Questionnaire for Payment of Occupational Tax, dated June 27, 1980.

Complaint For Declaratory Relief, Injunction And Money Damages, United States District Court, Eastern District of Kentucky, Covington Division, Case No. 80-57, Combined Entertainment Ventures, Ltd., vs. The City of Newport, And Irene Deaton, Mayor, filed May 8, 1980.

Corporate Resolution for Transfer of Cinema X business from Brown Bear, Inc., to Happy Day, Inc., Corporate Resolution of Brown Bear, Inc., June 30, 1978, effective July 1, 1978, by “Thomas Hollis, Sr., Seller to Thomas Hollis, Sr. Purchaser.”

Employers’ Quarterly Return Of License Fee Withheld, Quarter Ending March 30, 1980.

Findings of Fact and Conclusions of Law, November 2, 1981.

Findings of Fact and Conclusions of Law, October 9, 1981.

Letter from attorney Mott V. Plummer, “Agent,” to David Bogart, City of Newport License Inspector and Bert Berg, City of Newport City Manager (notification of Happy Day’s transfer of business and contents to Combined Entertainment and request for license transfer, Application To Establish An Account For Occupational License Taxes For City of Newport, attached to Mott Plummer’s letter, April 9, 1980.

License Transfer from Brown Bear, Inc. to Happy Day, Inc., July 1, 1978.

Minutes Of A Special Meeting Of The Board Of Directors Of Brown Bear, Inc., Tom Hollis, Sr., President, June 30, 1978.

Minutes of Special Meeting Of The Board Of Directors Of Combined Entertainment Ventures, Ltd., Susianne Hollis Burchette, "Secretary" and "Chairman," April 9, 1980, for purchase of "business and contents" of Cinema X Theatre, 716 Monmouth Street, Newport, Kentucky, consummated on April 7, 1980.

Minutes Of Special Meeting Of The Board Of Directors Of Combined Entertainment Ventures, Ltd., Susianne Hollis Burchette, "Secretary" and "Chairman," dated April 9, 1980 for purchase of "business and contents" of Cinema X Theatre, 716 Monmouth Street, Newport, Kentucky, consummated on April 7, 1980.

Monthly Returns for License Fees. From November 1979 through March 1980.

Order of July 17, 1981.

Purchase Agreement by Combined Entertainment Ventures, Ltd., Inc., Susianne Hollis Burchette, sole director, as "party of the first part," and Happy Day, Inc., "party of the second part," of Cinema X theater contents, April 7, 1980.

Purchase Agreement, by Combined Entertainment Ventures, Ltd., Inc., Susianne Hollis Burchette, sole director, as "party of the first part," and Happy Day, Inc., "party of the second part," of Cinema X theater contents, dated April 7, 1980.

Report of Special Grand Jury, Case No. 81-CR-192.

Trial and Verdict against Happy Day, Brown Bear, and "Combined Entertainment Ventures, Inc., convicted on November 6, 1980, filed November 29, 1980.

CURRICULUM VITAE

NAME: Michael L. Williams

ADDRESS: 28-2 Woodland Hills
Southgate, Kentucky 41071

DOB: Covington, Kentucky – February 14, 1948

EDUCATION AND TRAINING:

B.S. in Business Administration
Xavier University of Cincinnati, Ohio
1966-1970

Juris Doctor, Northern Kentucky University, Salmon P. Chase
College of Law
1970-1974

B.A., History
Northern Kentucky University
2003-2004

PROFESSIONAL SOCIETIES:

Commonwealth of Kentucky Bar Association

Admitted To Practice before Kentucky Supreme Court

Admitted To Practice before Ohio Supreme Court

Admitted To Practice before United States District Court,
Eastern District of Kentucky

Admitted To Practice before United States Court of Appeals for
the Sixth Circuit

PUBLICATIONS

“Adams – Seward vs Palmerston-Russell: Diplomatic Crises
during 1861.” Perspectives In History 19 (2004-2004): 31-50.