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# Constitutional Law—First Amendment Overrides Municipal Attempt to Zone Adult Bookstores and Theaters—*Alexander v. City of Minneapolis*, 698 F.2d 936 (8th Cir. 1983)

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resolve the questions left unanswered in *Knotts* and will again have to confront the inconsistencies and confusion fostered by the reasonable expectation of privacy test. *Knotts* will not provide much guidance.

**Constitutional Law—FIRST AMENDMENT OVERRIDES MUNICIPAL ATTEMPT TO ZONE ADULT BOOKSTORES AND THEATERS—*Alexander v. City of Minneapolis*, 698 F.2d 936 (8th Cir. 1983).**

In recent years several municipalities have attempted to prevent community deterioration by enacting zoning ordinances designed to restrict the location of adult bookstores and theaters.<sup>1</sup> Government interest in controlling crime and preventing property devaluation<sup>2</sup> often has clashed with the right to distribute non-obscene sexually oriented material.<sup>3</sup> To survive constitutional scrutiny, a zoning ordinance which curtails public access to adult entertainment must be narrowly drawn and further a substantial and compelling governmental interest. If the ordinance imposes any content limitations on the purveyors of adult entertainment, or if it restricts the public's right to patronize such entertainment in any significant way, it will be found unconstitutional.<sup>4</sup>

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1. See *Genusa v. City of Peoria*, 619 F.2d 1203 (7th Cir. 1980); *Hart Book Stores v. Edmisten*, 612 F.2d 821 (4th Cir. 1979), *cert. denied*, 447 U.S. 929 (1980); *Kacar, Inc. v. Zoning Hearing Bd. of Allentown*, 60 Pa. Commw. 582, 432 A.2d 310 (1981); *Northend Cinema, Inc. v. City of Seattle*, 90 Wash. 2d 709, 585 P.2d 1153 (1978) (en banc).

2. In *Basiardanes v. City of Galveston*, 682 F.2d 1203 (5th Cir. 1982), the Fifth Circuit Court of Appeals invalidated an ordinance which in effect allowed adult theaters to operate only in areas of zones for light and heavy industry. These areas included swamps, warehouses, and railroad tracks. *Id.* at 1209. In *Keego Harbor Co. v. City of Keego Harbor*, 657 F.2d 94 (6th Cir. 1981), the city enacted an ordinance which prohibited the placement of an adult theater within 500 feet of an establishment licensed to sell liquor, a church or a school, or within 250 feet of a residential zone. The owner of the only adult bookstore in the city was prohibited from doing business because no location existed which was not within 500 feet of the theater. *Id.* at 96. The Sixth Circuit Court of Appeals struck down the ordinance. *Id.* at 98. "Keego Harbor does not merely disperse adult theatres within its jurisdiction but effectively bans them." *Id.*

3. A leading constitutional law scholar has written, "Any government action aimed at communicative impact is presumptively at odds with the first amendment. For if the constitutional guarantee means anything, it means that, ordinarily at least, 'government has no power to restrict expression because of its message, its ideas, its subject matter, or its content . . .'" L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 12-2, at 581 (1978) (quoting *Police Dep't of Chicago v. Mosely*, 408 U.S. 92, 95 (1972)). The government must have a valid justification for enacting an ordinance which would have an impact on protected communication such as nonobscene adult entertainment.

4. See *Schad v. Mt. Ephraim*, 452 U.S. 61 (1981). The court in *Schad* quoted *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), for the following proposition:

[A] zoning ordinance can withstand constitutional scrutiny only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial government interest. . . . [T]he onus of demonstrating that no less intrusive means will adequately protect the compelling state interest and that the

In *Alexander v. City of Minneapolis*,<sup>5</sup> the Eighth Circuit Court of Appeals determined that a Minneapolis zoning ordinance<sup>6</sup> which regulated the

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challenged statute is sufficiently narrowly drawn, is upon the party seeking to justify the burden.

*Id.* at 18.

Minneapolis' Mayor Donald Fraser recently vetoed the city's proposed anti-pornography ordinance because he doubted its constitutionality. The proposed ordinance would have amended the city's civil rights ordinance by providing women violated by pornography a cause of action against purveyors of pornography. The Mayor stated, "I would rather err on the side of defending the First Amendment." *Minneapolis Star and Tribune*, Jan. 6, 1984, at 1A, cols. 1-2.

5. 698 F.2d 936 (8th Cir. 1983).

6. The challenged ordinance, Minneapolis, Minn., Code of Ordinances § 540.410 (1977), stated:

Regulated uses. (a) [*Purpose.*] In the development and execution of this section, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area. Uses subject to these controls are as follows: adult-only bookstores, adults-only motion picture theaters, massage parlors, rap parlors and saunas. . . .

(c) [*Distance-restriction from certain districts and facilities.*] No adults-only motion picture theater, adults-only bookstore, massage parlor, rap parlor or sauna shall be operated or maintained within five hundred (500) feet of a residentially zoned district, an office-residence zoned district, a church, a state-licensed day care facility and public educational facilities which serve persons age seventeen (17) or younger, an elementary school or a high school.

(d) [*Distance restriction between uses.*] No adults-only motion picture theater, adults-only bookstore, massage parlor, rap parlor or sauna shall be operated or maintained within five hundred (500) feet of any other adults-only theater, adults-only bookstore, massage parlor, rap parlor or sauna.

(e) [*Measurement.*] The distance limitations in subsections (c) and (d) shall be measured in a straight line from the main public entrances of said premises, or from the lot lines of properties in residentially or office-residential zoned districts.

(f) [*Amortization of nonconforming uses.*] Establishments in violation of subsections (c) and (d) shall be permitted by section 532.20 as a nonconforming use. As to those establishments which have a nonconforming use status, the provisions of sections 532.30 through 532.100 shall apply and, in addition, such use shall become unlawful on and after July 1, 1981.

(g) [*Investigation of existing uses.*] Prior to January 1, 1979, the zoning administrator shall cause to be investigated the status of every adults-only motion picture theater, adults-only bookstore, massage parlor, rap parlor and sauna in the city, as to length of continuous operation and determine which uses would become unlawful on July 1, 1981, with the use of longest continuous operation having precedence over uses subsequent in time or duration. Appeals from the determination of the zoning administrator shall be pursuant to sections 534.40 through 534.60 and 534.200. The city council may, upon receiving the recommendation of the zoning administrator, extend said date where the appellant establishes that discontinuance of the use on July 1, 1981, results in a taking of a valuable property interest held by the appellant on the effective date of this section without the payment of just compensation. (77-Or-110, § 1, 5-13-77).

*Id.*

location of non-obscene<sup>7</sup> adult entertainment<sup>8</sup> could not be upheld as a legitimate constraint on protected communication.<sup>9</sup> The court sustained the finding of the trial judge that the ordinance would substantially restrict access to adult theaters and bookstores.<sup>10</sup> Thus, the ordinance could not survive under the limited exception to the general prohibition against content based regulations.<sup>11</sup>

A city may zone the location of adult theaters and bookstores in order to control blight on surrounding neighborhoods, if the zoning law does not significantly reduce the number or availability of adult theaters and bookstores, or the public's right of access. This exception was successfully asserted by the City of Detroit in the United States Supreme Court case of *Young v. American Mini Theaters*.<sup>12</sup> Unlike the Detroit ordinance, which left the market for adult entertainment essentially unrestrained, the Minneapolis ordinance had a constitutionally impermissible impact on freedom of speech and press. The Minneapolis ordinance would have allowed only a limited number of existing adult theaters and bookstores to continue operating and would have disallowed the establishment of

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7. Defendants conceded that the adult books and films distributed by the plaintiffs were non-obscene material. *Alexander*, 698 F.2d at 938. The Supreme Court formulated a tripartite test for obscenity in *Miller v. California*, 413 U.S. 15 (1973), wherein it states:

The basic guidelines for the trier of facts must be: (a) whether the average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work taken as a whole, lacks serious literary, artistic, political, or scientific value.

*Id.* at 24.

8. Plaintiff Alexander had an ownership interest in six adult bookstores in Minneapolis located at 401 East Hennepin Avenue, 624 Hennepin Avenue, 429 Hennepin Avenue, 327 East Lake Street, 735 East Lake Street, and 2968 Lyndale Avenue South. He also had an interest in four movie theaters: the Rialto located at 735 East Lake Street; the Franklin, at 1021 Franklin Avenue East; and the American and Empress Theaters at 614-616 Hennepin Avenue. Plaintiff Jochim managed Alexander's theaters. Plaintiff Vegas Cinema Corp., owner of the Avalon Theater at 1500 East Lake Street, intervened in the action. *Alexander v. City of Minneapolis*, 531 F. Supp. 1162 (D. Minn. 1982).

9. *Alexander*, 698 F.2d at 936.

10. The trial court found that the ordinance regulated both new and existing facilities. Under the ordinance, all five adult theaters and seven to nine bookstores would be required to relocate. They would compete with eighteen existing saunas, massage parlors, and rap parlors for twelve possible legal sites for relocation. *Id.* at 938.

11. See *infra* note 12 and accompanying text.

12. 427 U.S. 50 (1976). The court in *Young* sustained a constitutional attack on a 1972 amendment to a Detroit Anti-Skid Row Ordinance regulating the establishment of new adult theaters. The ordinance had the effect of dispersing clusters of adults-only facilities so that one adult theater could not be located within 1000 feet of any other "regulated uses" or within 500 feet of a residential area. The ordinance did not apply to existing movie theaters and bookstores. An adult establishment was defined as one used to present "materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas." *Id.* at 53.

new adults-only facilities.<sup>13</sup>

In May 1977, the Minneapolis City Council and the City Planning Commission enacted Minneapolis Ordinance Section 540.410 for the stated purposes of regulating the establishment and operation of various adults-only enterprises<sup>14</sup> and preventing the deterioration of adjacent neighborhoods resulting from a heavy concentration of adult facilities in a narrowly circumscribed area.<sup>15</sup> The ordinance contained two major restrictions. The first prohibited an adults-only facility from operating within five hundred feet of a residence or office-residence zoned district, a church, a state-licensed day-care facility, or a public educational facility serving persons aged seventeen or younger.<sup>16</sup> The second barred an adults-only facility from operating within five hundred feet of any other adults-only facility.<sup>17</sup> Although the ordinance provided three alternatives to closing existing establishments,<sup>18</sup> evidence presented at trial indicated that the provisions did not significantly reduce the negative impact of the ordinance on access to protected sexually oriented material.<sup>19</sup>

The plaintiffs in *Alexander* had interests in six adult bookstores and four motion picture theaters in Minneapolis. They instituted an action against the city and individually named city officials,<sup>20</sup> alleging that section 540.410 was unconstitutional because it represented an unlawful prior restraint on free speech and press.<sup>21</sup> Defendants, relying on *Young v. American Mini Theatres*,<sup>22</sup> contended that the ordinance merely restricted

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13. *Alexander*, 531 F. Supp. 1162 (D. Minn. 1982).

14. Such adult enterprises included bookstores, theaters, saunas, massage parlors, and "rap parlors." The complaint, however, concerned only theaters and bookstores. The court did not rule on the validity of the ordinance with respect to other adult establishments. *Alexander*, 698 F.2d at 936.

15. *See supra* note 6.

16. *Id.*

17. *Id.*

18. 698 F.2d at 939. The alternatives provided for an administrative extension in which the owner could recoup his business investment, change the nature of his business to fall outside the definition of adult bookstore or theater, or move the business to an area permitting adult uses under section 540.410 of the ordinance. *Id.*

19. *Id.*

20. Plaintiffs brought an action for declaratory and injunctive relief against defendants City of Minneapolis, William A. Nordrum, Jr., the Zoning Administrator for the City of Minneapolis, and Anthony Bouza, the Police Chief for the City of Minneapolis.

21. *See* 531 F. Supp. at 1163. Plaintiffs alleged section 540.410 violated their first and fourteenth amendment rights because it was an unlawful prior restraint of free speech and press, denied them equal protection, was vague and overbroad, and was an establishment of religion. *Id.* The court held that the ordinance was unconstitutional as applied to bookstores and movie theaters because it substantially restricted access to first amendment protected activities. The holding made it unnecessary for the court to address the other constitutional issues. *Id.* at 1173.

22. 427 U.S. 50 (1976). In *Young*, the Supreme Court upheld a Detroit ordinance similar to the Minneapolis ordinance which prohibited adult bookstores, theaters, and other "regulated uses" from locating within 1000 feet of any other such use or within 500 feet of a residential area. *Id.* at 52. The court stated:

the locations of sexually oriented entertainment and caused only an incidental impact on free speech and press; justifiable, they argued, as an exercise of the city's police power.<sup>23</sup>

Both the district court and circuit court found the city's reliance on *Young* inappropriate. While both agreed that in limited circumstances a content-based regulation could be found constitutional,<sup>24</sup> they distinguished *Young* from *Alexander*. The Detroit ordinance upheld in *Young* contained a grandfather clause exempting existing businesses from the new regulation; the Minneapolis ordinance did not.<sup>25</sup> Furthermore, the Detroit ordinance did not significantly decrease the number of adult theaters and bookstores in operation.<sup>26</sup> As Justice Stevens noted in *Young*, the decision would have been "quite different if the [Detroit] ordinance had the effect of suppressing, or greatly restricting access to, lawful speech."<sup>27</sup>

In *Young*, the Court allowed Detroit's interest in structuring and regulating the use of property for commercial purposes to prevail over the right of public access to adult entertainment.<sup>28</sup> The Court found the

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Since what is ultimately at stake is nothing more than a limitation on the place where adult films may be exhibited, even though the determination of whether a particular film fits that characterization turns on the nature of its content, we conclude that the city's interest in the present and future character of its neighborhoods adequately supports its classification of motion pictures.

*Id.* at 71-72.

23. 531 F. Supp. at 1163.

24. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981); see also *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (a state may impose reasonable restrictions on the time, place, and manner of speech).

25. *Alexander*, 698 F.2d at 938. Most adult zoning ordinances passed since *Young* have contained grandfather clauses allowing pre-existing, nonconforming businesses to continue to operate. See, e.g., *Genusa v. City of Peoria*, 619 F.2d 1203, 1212 n.18 (7th Cir. 1980); *Bayside Enters. v. Carson*, 450 F. Supp. 696, 702 n.9 (M.D. Fla. 1978). But see *Ellwest Stereo Theaters v. Byrd*, 472 F. Supp. 702, 706 (N.D. Tex. 1979).

26. 427 U.S. at 50. The Court stated,

The ordinances are not challenged on the ground that they impose a limit on the total number of adult theaters which may operate in the city of Detroit. There is no claim that distributors or exhibitors of adult films are denied access to the market or, conversely, that the viewing public is unable to satisfy its appetite for sexually explicit fare. Viewed as an entity, the market for this commodity is essentially unrestrained.

*Id.* at 62.

27. *Id.* at 71 n.35.

28. *Id.* at 62-63. When the original Anti-Skid Row Ordinance was proposed in 1962, the Detroit Common Council determined that the concentration of certain property uses in a limited area may adversely affect a neighborhood. When the 1972 ordinance was introduced, adult bookstores and movie theaters were included among the regulated uses because the number of adult entertainment businesses had substantially increased. Advocates of the restrictions included real estate experts and urban planners who believed that the location of several adult entertainment establishments in the same neighborhood tended to attract too many undesirable transients, had an adverse effect on property values, increased crime, and prompted other businesses and residents to relocate. *Id.* at 54-55.

city's plan to control property use adequate to support an innovative regulation implicating first amendment concerns only incidentally.<sup>29</sup> In contrast, the district court in *Alexander* noted that the impact of the Minneapolis ordinance went beyond merely restricting the location of adult bookstores and theaters.<sup>30</sup> The court observed that enforcement of the ordinance would significantly curtail the public's access to adult books and films.<sup>31</sup> The court concluded that for an ordinance to be constitutional, it must incorporate reasonable time, place and manner restrictions, a significant state interest, and the availability of adequate alternative channels of communication.<sup>32</sup>

The appellate court found that Minneapolis' failure to permit sufficient access to constitutionally protected materials made its zoning ordinance unenforceable.<sup>33</sup> The court gave little weight to the city's contention that adult businesses could remain at their present locations if their inventory of sexually oriented material was reduced below forty percent,<sup>34</sup> noting that adults-only facilities attempting to comply with

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29. The *Young* Court stated,

Putting to one side for the moment the fact that adult motion picture theaters must satisfy a locational restriction not applicable to other theaters, we are also persuaded that the 1,000-foot restriction does not, in itself, create an impermissible restraint on protected communication. The city's interest in planning and regulating the use of property for commercial purposes is clearly adequate to support that kind of restriction applicable to all theaters within the city limits. In short, apart from the fact that the ordinances treat adult theaters differently from other theaters and the fact that the classification is predicated on the content of material shown in the respective theaters, the regulation of the place where such films may be exhibited does not offend the First Amendment.

*Id.* at 62-63.

30. 531 F. Supp. at 1173.

31. *Id.* at 1170.

32. *Id.* at 1173. Reasonable regulations of the time, place, and manner of protected speech, where those regulations are necessary to further significant governmental interests, are permitted under the first amendment. *See, e.g.*, *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (ban on willful making of any noise adjacent to school grounds which disturbs the good order of school session); *Cox v. Louisiana*, 379 U.S. 559 (1965) (ban on demonstrations in or near a courthouse with the intent to obstruct justice); *Kovacs v. Cooper*, 336 U.S. 77 (1949) (limitation on use of sound trucks).

33. The district court found that enforcement of the ordinance would "have the effect of substantially reducing the number of adult bookstores and theaters in Minneapolis" and also found that "there are only a handful of relocation sites" for the businesses in violation of the ordinance. 531 F. Supp. at 1172. In addition, the court found that under the ordinance no locations would be available for new bookstores or theaters. *Id.* "This ordinance is in stark contrast to the ordinance upheld in *Young* in which a 'myriad' of locations were available to new theaters and bookstores, and existing ones were completely unaffected." *Id.* at 1171.

34. Section 540.410(b)(1) of the Minneapolis ordinance defined an adult bookstore as a business "having forty (40) percent or more of its dollar volume in trade, [in] books, magazines, and other periodicals" relating to adult themes. 531 F. Supp. at 1173-74. Adult theaters were defined in a similar manner in section 540.410(b)(2). *Id.* at 1174. Thus, a bookstore or theater with less than forty percent of adult material would not fall under the ordinance. Testimony at the district court level, however, indicated that a

the forty percent provisions in the ordinance would face great practical difficulties in doing business.<sup>35</sup> The court was equally unpersuaded by a provision in the ordinance allowing proprietors to apply for an extension beyond the July 1, 1981 relocation deadline.<sup>36</sup> The court found neither provision significantly reduced the negative impact of the ordinance on the public's right of access to constitutionally protected material.<sup>37</sup>

Arguably, the attention accorded the *Young* decision by the court in *Alexander* emphasizes the consternation felt by many over the amount of constitutional protection to be afforded materials which, albeit non-obscene,<sup>38</sup> are considered tasteless and offensive. Justice Stevens aptly expressed this viewpoint in his *Young* opinion, stating:

[E]ven though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammelled political debate . . . . [F]ew of us would march our sons and daughters off to war to preserve the citizen's right to see 'Specified Sexual Activities' exhibited in the theaters of our choice.<sup>39</sup>

The broad power of a city to zone for the welfare of its citizenry must be exercised within constitutional limits.<sup>40</sup> Accordingly, a municipality is subject to a standard of judicial review determined by the nature of the right assertedly threatened or violated rather than by the power being exercised or the specific limitation imposed.<sup>41</sup> A zoning law which ad-

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bookstore owner would have difficulty predicting the proportion of "adult trade" on any given day, thus subjecting the owner to an "unavoidable risk" of violating the ordinance. *Id.* at 1167. Similarly, evidence showed that it would not be commercially feasible for an adult theater operator to exhibit both "general release" and adult films. *Id.*

35. 698 F.2d at 939.

36. District court testimony revealed that an extension would be granted only to allow owners the opportunity to recoup their initial investments and only if the property could not be put to any other use. *Id.*

37. 698 F.2d at 939.

38. Professor Tribe has written,

The Supreme Court in *American Mini Theaters* has signaled important limits on its willingness to entertain content-based restrictions on protected expression. . . . [A] content-based discrimination is more likely to be upheld if the government's real interest is not in protecting citizens from exposure to the speech as such but rather in such 'secondary effects' as the physical deterioration and crime which accompany the concentration of 'adult' theaters in a 'red light' district.

L. TRIBE, *supra* note 3, at 679.

39. *Young*, 427 U.S. at 70.

40. Zoning ordinances are clearly permissible as long as they do not infringe on constitutionally protected rights. The Court in *Schad* stated,

The power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities. But the zoning power is not infinite and unchallengeable; it 'must be exercised within constitutional limits.'

452 U.S. at 68; accord *Moore v. City of East Cleveland*, 431 U.S. 494, 514 (1977) (Stevens, J., concurring).

41. *Thomas v. Collins*, 323 U.S. 516, 529-30 (1945).

versely affects property interests will be sustained if it is rationally related to legitimate state concerns and does not deprive the property owner of use of his property.<sup>42</sup> When a zoning law infringes upon a protected liberty, however, it must be narrowly drawn and further a substantial governmental interest.<sup>43</sup> A zoning scheme enacted to restrict adult entertainment is unconstitutional, and cannot be sustained under the limited exception carved out in *Young*, if it has the effect of restricting public access to constitutionally protected material.<sup>44</sup> By contrast, an ordinance will be upheld where the evidence establishes that the zoning regulation affects only location and does not reduce the public's access to protected speech.<sup>45</sup>

At issue is how to fashion rules for protected speech in public places which accommodate the demands of individuals and communities and yet shelter each from intrusion by the other. Although sexually explicit expression may have a "lesser" value than other lawful speech,<sup>46</sup> particularly political debate,<sup>47</sup> a strong constitutional aversion to content-based regulation of expression will override any municipal statute prohibiting or greatly restricting public access to non-obscene adult material.<sup>48</sup> A contrary result would mean setting a dangerous precedent for government control of other forms of expression.<sup>49</sup> The stated purpose of section 540.410(a) illustrates the pressing need to find a way for a locality to protect the quality and character of community life without concurrently "making the closed mind a principal feature of the open society."<sup>50</sup> A zoning ordinance which allows enough sites for adult theaters and bookstores to accommodate all patrons does not inhibit access to sexually explicit material.<sup>51</sup> Such an ordinance may classify adult mate-

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42. *Schad v. Mt. Ephraim*, 452 U.S. 61, 68 (1982). *Schad* involved a New Jersey ordinance which prohibited live entertainment in the Mt. Ephraim borough. Appellants, who operated an adult bookstore in the borough's commercial zone, installed a coin operated mechanism which enabled customers to observe a live nude dancer. They were convicted for violating the ordinance. The Supreme Court overturned the convictions and struck down the ordinance because the borough failed to justify the exclusion of live entertainment from the commercial uses allowed in the borough. *Id.*; accord *Agin v. City of Tiburon*, 447 U.S. 255 (1980); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

43. *Schad*, 452 U.S. at 68.

44. See *Young*, 427 U.S. at 71 n.35.

45. See 531 F. Supp. at 1172 n.13.

46. See *supra* note 38.

47. See, e.g., *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) (defamation of political candidate) ("It can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.").

48. *Young*, 427 U.S. at 70.

49. L. TRIBE, *supra* note 3, at 674 n.13.

50. H. KALVEN, *THE AMERICAN NEGRO AND THE FIRST AMENDMENT* 159 (1965).

51. *Young*, 427 U.S. at 62. The decision in *Young* leaves open exactly how much restraint is compatible with an essentially free market in adult fare. A zoning ordinance

rial in terms of content only if it does so to define the locations at which material of this kind is available.<sup>52</sup>

The restricting of public access to constitutionally protected materials becomes a significant concern when addressing the first amendment implications of municipal ordinances regulating the locations of businesses distributing sexually oriented entertainment.<sup>53</sup> When municipalities exercise their police powers to protect city neighborhoods against deterioration, they must not infringe upon freedom of expression.<sup>54</sup> Instead, they must draw regulations narrowly enough to minimize the impact that state action has on first amendment guarantees.<sup>55</sup> If such action serves to severely curtail the public's access to protected sexually oriented material, it will be struck down as unconstitutional.<sup>56</sup> As *Alexander* indicates, the courts will continue to give priority to first amendment rights unless the government can demonstrate a legitimate and substantial interest for making a limited exception to the prohibition against content-based zoning ordinances. The impact of an ordinance on free expression must be incidental and minimal to withstand constitutional attack if it has the effect of restricting access to communication protected by the first amendment.<sup>57</sup>

**Criminal Law—BATTERED CHILD SYNDROME—*State v. Durfee*, 322 N.W.2d 778 (Minn. 1982).**

In 1982, 1.1 million cases of child abuse and neglect were reported in the United States.<sup>1</sup> In response to the recognized problem, every state now requires the reporting of child abuse and neglect cases when discov-

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adopted by the St. Paul City Council subsequent to the *Alexander* decision prohibits adult entertainment establishments from being located within 200 feet of residential property or 1320 feet from each other in residential neighborhoods; the limit is reduced to 300 feet in the downtown area. *Minneapolis Star and Tribune*, Oct. 16, 1983, at 2B, cols. 5-6.

52. *Young*, 427 U.S. at 62.

53. *Schad*, 452 U.S. at 70.

54. *See supra* note 3.

55. *Schad*, 452 U.S. at 70.

56. *Alexander*, 698 F.2d at 936.

57. *Id.* at 937.

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1. *Child Abuse—Laws Being Overhauled to Safeguard Youngsters*, 69 A.B.A.J. 1009 (1983) [hereinafter cited as *Child Abuse*]. Much has been written about child abuse in recent years. *See generally* M. COHN, AN APPROACH TO PREVENTING CHILD ABUSE (1981); J. COSTA & G. NELSON, CHILD ABUSE AND NEGLECT: LEGISLATION, REPORTING AND PREVENTION (1978); V. FONTANA, THE MALTREATED CHILD: THE MALTREATMENT SYNDROME IN CHILDREN—A MEDICAL, LEGAL, AND SOCIAL GUIDE (4th ed. 1979); J. GIOVANNONI & R. BECERRA, DEFINING CHILD ABUSE (1979); S. NAGI, CHILD MALTREATMENT IN THE UNITED STATES: A CHALLENGE TO SOCIAL INSTITUTIONS (1977); S. O'BRIEN, CHILD ABUSE—A CRYING SHAME (1980); D. WELLS, CHILD ABUSE: AN ANNOTATED BIBLIOGRAPHY (1980).