



LOS ANGELES COUNTY COMMISSION ON HIV

3530 Wilshire Boulevard, Suite 1140 • Los Angeles, CA 90010 • TEL (213) 738-2816 • FAX (213) 637-4748
www.hivcommission-la.info

While not required of meeting participants, signing-in constitutes public notice of attendance. Presence at meetings is recorded solely based on sign-in sheets, and not signing-in constitutes absence for Commission members. Only members of the Commission on HIV are accorded voting privileges, thus Commissioners who have not signed in cannot vote. Sign-in sheets are available upon request.

JOINT PUBLIC POLICY (JPP) COMMITTEE MEETING MINUTES October 1, 2008

Approved
12/3/08

MEMBERS PRESENT	PUBLIC	PUBLIC, CONT.	HIV EPI AND OAPP STAFF
Whitney Engeran, <i>Co-Chair</i>	Anthony Braswell	Jon Mechling	Elizabeth Escobedo
Lee Kochems, <i>Co-Chair</i>	D. Traci Bryant	Mindy Middleton	
Jeffrey Goodman	Lidia Carlton	Bozena Morawski	
Ruel Nolloedo	Julia Dudek	Manual Negrete	
Ron Snyder	Darren Edwards	Vanessa Nova	
Kathy Watt	Katris Eskandary	Philip Phan	
	Susan Forrest	Alani Price	
	Priti Gautam	Kavita Ramakrishnan	COMM STAFF/ CONSULTANTS
MEMBERS ABSENT	Robert Gilcheck	Peter Riley	
Kyle Baker	Joanne Granai	Terry Smith	Carolyn Echols-Watson
Carrie Broadus	Jenny Gross	Precious Stallworth	Dawn McClendon
Dean Page	Philip Hendricks	Jane Steinberg	Glenda Pinney
James Skinner	Lillian Jalali	Paula Tavrow	Doris Reed
Chris Villa	Peter Kerndt	Joey Terrill	James Stewart
	Carol Kim	Kimberlee Woods	Craig Vincent-Jones
	Mr. Marcus	Jolene Yoneoka	Nicole Werner
	Philip Massey		

CONTENTS OF COMMITTEE PACKET

- 1) **Agenda:** JPP Committee Agenda, 10/01/2008
- 2) **PowerPoint:** STD Risks to performers in the Adult Film Industry, Peter Kerndt, LAC Public Health, 2008
- 3) **PowerPoint:** Cal/OSHA: The Adult Film Industry, Peter Riley, 2008
- 4) **Flyer:** Condom Usage in the Adult Film Industry, 10/01/2008

1. **CALL TO ORDER:** Mr. Engeran called the meeting to order at 1:40 pm.
2. **APPROVAL OF AGENDA:**
MOTION #1: Approve the Agenda Order, as amended (*Passed by consensus*).
3. **APPROVAL OF MEETING MINUTES:**
MOTION #2: Approve JPP Committee meeting minutes, as presented (*Postponed*).
4. **PUBLIC COMMENT, NON-AGENDIZED:** There were no comments.
5. **COMMITTEE, NON-AGENDIZED:** There were no comments.

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6. HIV/STDS AND SAFE SEX PRACTICES IN THE ADULT FILM INDUSTRY (AFI): BACKGROUND:

Whitney Engeran (WE): Good afternoon everyone. I think we will get started. I want to start by welcoming everybody to our meeting today. This meeting is being convened as a regular meeting of the Joint Public Policy Committee of the Commission on HIV. We will start with the call to order. Are we calling role? That would be Craig.

Craig Vincent-Jones (CV): Baker, Broadus, Goodman (*here*), Nolloedo (*here*), Page, Skinner, Snyder (*here*), Watt (*here*), Woods (*here*), Villa, Engeran (*here*), Kochems (*here*).

WE: Alright so, as we get this started, we have the agenda in front of the committee for approval. Are there any changes, additions, subtractions from the agenda from any members of the Committee? Do I here any objection to approve?

Hearing none, we will move to the minutes. Do we have minutes in our packet? We don't, so we won't do that.

So, we will go to public comment, non-agendized items. This is public comment not associated with the soon-to-be conversation about the adult film industry. So is there any public comment on non-agendized items?

Hearing none, any Committee comments on non-agendized items? This is how our meeting usually go, see.

Alright, great then. We will begin with a conversation about safe sex practices in the adult film industry. I'd like to start by giving a brief summary about the Commission and about the intention of what today is. The Commission on HIV is the body charged by both Federal law and County ordinance to plan and allocate part A and part B dollars or Federal dollars for AIDS in Los Angeles County to needed services. We're also charged by County ordinance to advise the Board of Supervisors on all matters related to HIV. This Committee, the Public Policy Committee, serves as both the policy committee for both the Commission on HIV and the Prevention and Planning Committee for Los Angeles County.

The County of Los Angeles is on record supporting the introduction of safe sex regulations in the adult film industry. As a context for this hearing, the County of Los Angeles is considering sponsoring state legislation requiring the adult film industry located in California to have their actors wear condoms while performing.

Today's conversation is about hearing all points of view regarding this issue from which we will want to put a summary together of this proceeding, and then distribute (it) to other parts of the County government as this conversation unfolds about County sponsorship of legislation.

We are going to get a couple of presentations today from Cal/OSHA and also the Los Angeles County Department of Public Health. Then we are going to—if you would like to make public comment—we are going to ask you to fill out a public comment card, (and) we are going to call people up. During this time, as both the presentations are being made and as you come up to make public comment, we would like to ask you to come up and have a seat at the table and give your comment. At each point, we are going to ask if members of the Committee have any questions for any of the folks either giving presentations or giving public comment, and hopefully have a give-and-take, an interplay of conversation. Because really, what this is, is we really want to hear—this Committee really wants to hear—from folks about their feelings on this issue and really begin a dialogue.

So, that is the intention. That is sort of the direction we are going to head in today. We have plenty of time, so we can certainly have a good deal of conversation. So, with that, I will begin by asking Dr. Peter Kerndt, who is the Director of the STD programs for the Department of Public Health for the County of Los Angeles, to come up and give kind of a presentation. The presentation committee is going to be behind us, so we may want to step—well, I am certainly going to have to watch my head—but we want to step back and watch the presentation and then we will come back and talk to Dr. Kerndt.

7. PUBLIC TESTIMONY/QUESTION AND ANSWER:

Peter Kerndt (PK): Hello, test, okay. While she is pulling up the slide, I would like to first start by thanking the Commission and the PPC for holding today's hearing. I believe this is the last group of individuals that are at risk of HIV infection for which little or nothing has been done currently. It constitutes a group that is larger than HIV transmission that has occurred among perinatal populations, transfusion populations, other occupational professions and I commend the Commission for hearing, convening today's hearing and the discussion about what can be done to make this industry safer.

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So basically what I would like to do is provide you with a little bit of background. The Adult Film Industry has been legal in California since 1988 and not through legislation, but rather through a court action, *People versus Freeman*, which made it legal. We know it to be a very large industry that grosses as much as \$13 billion a year with over 11,000 films produced annually. And, the estimated retail value of this industry to LA County in 2002 was about \$3 billion. Los Angeles County really is the heart of this industry. There is approximately 200 production companies that are known to operate. Five to ten of them are the largest of the producers that make about 40% of the films. There also are five major film distributors here and more than 700 legal custodians of record. Any production company that actually makes film must be registered under federal law and have an individual that maintains all the records, primarily to be sure that no person under age 18 is involved in the production of an adult film. We estimate there is about 6,000 employed workers, about 1,200 of these are performers. Most, 75% of the performers, are female, a smaller number of regular male performers. And, we know that many people don't last more than six months to three years, one to fifty films, and then generally move on. So it is a high turnover in the industry. Why do we care? We know that STDs are extremely common in the general population, but especially in this population, they are often without any symptoms and can only be identified through screening. Some are curable, others, however, are not, they are chronic, life-long with life-long risks of transmission to others. There have serious consequences and some are life-threatening. We also know that having an STD increases the risk of acquiring or transmitting HIV if you are infected two to fivefold. So it is definitely a facilitator of HIV risk in transmission. We also know that most STDs are preventable through barrier protection, through condoms.

Next slide, please. Here (is) a listing of some of the serious consequences, HIV/AIDS, Chlamydia, gonorrhea, trichomoniasis, bacterial vaginosis, syphilis, Herpes simplex virus (HSV), Hepatitis B and C and Human papillomavirus (HPV) and the sequelae is shown on that slide.

Next slide, please. STDs can be spread through insertive and through oral sex. Chlamydia, gonorrhea, herpes, syphilis, HIV, Hepatitis B are all spread this way. And, of course, then when there is contact with a mucous membrane, particularly ejaculate into the face and mucosal membrane of the eye, transmission with Chlamydia, gonorrhea or herpes is quite possible.

Next slide. Illness and disease can also be transmitted through what is called fecal oral transmission, through oral and anal sexual contact, through contact with sex toys that have had oral and anal contact. And some of the enteric pathogens we need to be concerned about in this industry are Hepatitis A, Amebiasis, Giardia, Shigella, Salmonella, Cryptosporidium and Campylobacter are all common fecal oral organisms transmitted and would be at risk to persons in this industry.

Next slide. This is an estimate of one time vaginal sex acts with an infected partner. With gonorrhea, up to 90% of the time an infected partner will transmit to their uninfected partners. Nearly half the time for Chlamydia, 40% of the time for HPV. Less commonly with HSV, however, when they are having an outbreak, it is many times higher. For HIV as high as 20% when an individual is acutely infected. What we know about the occupational risks, we know that less than 20% of the heterosexual Adult Film Industry currently uses condoms for vaginal and anal sex. It is higher in the gay Adult Film Industry, approximately 80% is believed to use condoms for anal sex. We know that there is some HIV/STD testing, more common in the adult side of the industry, adult heterosexual side. We also know that high-risk sexual acts are extremely common, ejaculation into the face, mouth, internal, vaginal and anal ejaculation occurs, unprotected anal sex is very common. Some of the more extreme sexual practices, double vaginal, double anal sex is very frequent. As I have mentioned, the STD/HIV risk and enteric pathogen risk occurs with sharing of toys, oral, anal sexual contact and ejaculation into the face.

Next slide. This is sort of a timeline. Throughout the 1990s, there have been reports of HIV transmission occurring among heterosexual Adult Film performers in '95, '97, '98. The largest, one of the largest was in 1998, a performer infected at least five female performers and it was in response to that incident that Adult Industry Medical was started by a former performer, Sharon Mitchell. Then the LA County Health Department, our STD Program began working with persons in that industry to encourage also that not just HIV be considered, but the other STDs that I mentioned, we made available our Public Health Lab for Chlamydia, gonorrhea, syphilis screening as well. And then in 2004, there was another outbreak that occurred, where a male performer infected three performers and that is probably the most detailed intensive investigation that we have of the transmission in this industry and I will talk about that in a minute.

Next slide. But throughout the industry, this was in 2000, a male performer that was infected, *next slide.* Then in 2003, there was an article in the *LA Weekly*, *next slide*, that basically, "See No Evil," California's unregulated porn industry, an alarming number of performers are infected with HIV and other STDs. Nobody seems to care. This article actually drew a lot of attention, including attention from our second district supervisor to look at what currently are the health risks in this industry and what Cal/OSHA requires of the industry.

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Next slide. This is a diagram of the 2004 outbreak. You can see that within, this is an individual who had tested regularly, every month, for approximately seven years using the ultra sensitive HIV test. Three days after he tested negative, he infected the first of three female performers that he worked with, he exposed 14, it was an attack rate of about 23%. Within three days, there were over 52 first generation and second generation sex partners that were exposed.

Next slide. It is not just in the heterosexual industry, this is a clip from England. Last year, three young performers in the gay porn industry were infected in England. Next slide. So the risk, I mean the risks really are multiple partners over very short periods of time, we call it concurrency in the STD, a number of concurrent partners. It increases risk of STD and the potential for very rapid spread, it is really prolonged episodes of sexual contact, it is not really like normal sex, it is like repeated scenes or very high-risk, traumatic sex, and that increases the risk of transmission. And also, as I have said, riskier types of sex, anal and double anal sexual penetration, which really tears normal tissues and facilitates transmission of STDs. Then (there is) the widespread general lack of protective barriers, condoms, in the industry.

Next slide. This slide summarizes some of the information that we have available regarding STD transmission among performers. And these are numbers of STDs among males and females. You can see here the total among . . . there were about 1,800 females with STDs reported, 700 males.

Next slide actually may show this better. And here you can see in 2000, there was absolutely very little monitoring done and it is almost the more we look, the more we find. So I think one thing to keep in mind, all of these numbers are really minimum estimates of what the STD risk is in this population.

Next slide So in this period, there were 2,800 sexually transmitted infections diagnosed among about 1,800 performers. About 70% of those infections were among females, nearly a quarter were re-infected, some re-infected as many as four times, those that work more intensely in the industry. The average time to their next infection was less than six months. And females in the industry were more likely to be re-infected on average two months earlier than male performers.

Next slide. Okay, so one thing, screening does not prevent infections. Really what it does is it tells us when there has been a failure of prevention. It is obviously very important, because for those STDs that are treatable and curable, we can limit further spread to others. But as we have seen in the case of these outbreaks, it really does not guarantee prevention, any prevention.

Next slide. So I just wanted to end on this quote which is from the AIDS Project Director at Lambda Legal, "If sex is part of your job, then basic workplace safety standards should apply. You can draw parallel to the medical setting where people may be exposed to bodily fluids, so universal precautions have been adopted. Makes sense to me (that) in the adult film industry, there should also be universal precautions. And, that would mean condoms. Otherwise, it would probably be an unreasonably risky workplace."

Next slide. So, basically the recommendation that the department has put forth is to require condom use to attempt to reduce some of the riskier practices: to, where possible, use simulation to modify the filming techniques through lighting; through flesh-colored condoms; through simulation; through the angle of the shoot; through actually digitally removing the condoms afterwards—if that is the effect that the production company wants to have for its product. But we basically believe that this is an industry that can. (The industry) is legal. It can produce a product that people will buy that does not put those that work in this industry at risk for their health with STDs and at risk for their life with HIV infection. So, I will stop there.

WE: Thank you very much. Rather than have the Committee come back up: are there—we can kind of do an Oprah thing if we want to—are there any Committee members that have any questions for Dr. Kerndt? Are there? We will move onto the next presentation. I would like to ask Peter Riley from the High Hazard Unit at Cal/OSHA to speak with us now. Then, after that, we will come back.

Peter Riley (PR): Good afternoon. I am Peter Riley. I am District Manager of the High Hazard Unit at Cal/OSHA. Cal/OSHA is the regulatory agency that has a responsibility in making sure workplaces are safe and healthy. And, traditionally, we have considered this hazardous work. But starting in 2003, we began to consider this hazardous work also, the Adult Film Industry.

We got involved with the adult film industry in 2003 at the prodding of the, actually the LA County Board of Supervisors. The article that Dr. Kerndt spoke about that was in the *Los Angeles Times Magazine* about a female performer that became HIV-positive got the attention of the Board of Supervisors, and they asked Cal/OSHA—specifically the Chief of Cal/OSHA—to look into our regulations and see how they apply; see if there is a need for additional regulation; and, to come up with a plan for safer sex in the adult film industry. So that was initiated in 2003.

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In 2004, as Dr. Kerndt also mentioned, a male performer became HIV-positive, and then, in addition, three female performers that he worked with also became HIV-positive and we opened our first adult film inspection and looked into that.

Next slide. In 2004, that inspection was closed and four citations were issued to two producers, and the reason it was issued to two producers was because the companies, the production companies were so intertwined, we couldn't tell who was the actual employer and so we issued identical citations to two companies. Well, the citations that were issued were ones for the Bloodborne Pathogen, which is our standard that deals with HIV, Hepatitis B, Hepatitis C. In addition to that, an injury or illness prevention program citation was issued. (The) injury and illness prevention program is the State of California's requirement that you have a safety program. And, in that, it requires that you identify hazards that your employees are exposed to, so this is kind of a generic standard that we can apply to the other STDs. So, that citation was also issued. Then, a failure to report workplace injury, which was the individuals becoming HIV- positive, (the producers) were cited for that, and then not maintaining a log of workplace injuries and illnesses. So those are the results of the first investigation that we did in 2004.

In 2005, that case was resolved. Actually it was resolved: one production company took responsibility and said that "these performers were our employees." The one set of citations was dropped, they accepted three out of four of the citations, and that case became closed. But that is a little bit misleading, because subsequently, the inspectors went back and wanted to make sure that that production company was in compliance with the standards. And at that time, they were doing nothing. So the citations were re-issued, which is called "failure to abate" citations with additional penalties, much greater penalties.

That case is actually still pending from four years ago. It is supposed to come to hearing, actually, in November. So, it is a little misleading to say that case was completely resolved. It was initially resolved, but it still goes on.

Next slide, please. So, 2007 through 2008, there have been five additional inspections. These inspections are complaint-initiated. Typically an inspection, there is either an accident or a serious illness or a complaint-initiated inspection. A complaint can be made by anyone, but typically it is by an employee. So at that, and these five inspections have resulted in, again: injury and illness prevention program citations, because they addressed STDs; the failure to implement an exposure control, an exposure control plan, (that) is the written program that the Bloodborne Pathogen standard requires. So, that was in addressing HIV, Hepatitis B, Hepatitis C, (and) those were issued, and then failure to train or provide, train your own employees, failure to provide personal protective equipment—which condoms are considered personal protection equipment, and it is our policy or our belief that the Bloodborne Pathogen standard requires condom use for these acts. And, then some other citations that weren't really related to these issues.

Next slide. So Cal/OSHA—in response to that initial request by the County Board of Supervisors in 2003—determined that when there is an employee/employer relationship—and that is where Cal/OSHA has jurisdiction—when there is an employer/employee, there has to be that relationship for us to have jurisdiction, that our injury and illness prevention standard, our Bloodborne Pathogen standard, and there are other sanitation standards, and, then, our requirement to keep logs address this issue in the adult film industry.

It wasn't felt by Cal/OSHA that additional regulation at that time was needed. But we did believe that our standards, these standards that are listed here, could be used to address these hazards in this industry.

So, one of our requirements is an employer/employee relationship. There are lots of tests that go in to determine whether an employee is actually an employee. But there are two main criteria and these are weighted more heavily than the other ones. One is that someone, that the employer has direction and control over these people. And, in the adult film industry, you have a director, that person has direction and control over these people. So they meet that qualification.

In addition, the other point here, it says that the workers' duties are an integral part of the business. And, in the adult film business, these people, they come in, they perform in the videos, which are sold—which is their work product. They are not like the plumber who comes in to fix the sink, they come in to be a part of that business. So, it has been our belief, and the (belief of the) Department of Labor and Standards enforcement, that these people are employees.

Often when we deal with the attorneys in these companies, they say (the performers) are not employees, but I think in addition to these decisions that are published here, there have been more recent decisions that even make a stronger case that the performers in the adult film industry are employees of the producers.

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Then, in addition to having an employer/employee relationship, we have to have an exposure. This is the definition of exposure in the Bloodborne Pathogen standard, it says: "Occupational exposure means reasonably anticipated skin, eye, mucous membrane or basically the contact with blood or other potentially infectious materials," and in the adult film industry, you have this exposure. So, that is why our standards apply.

The exposure of control plan is the key to the Bloodborne Pathogen standard. This is what we look for when we go in and do an inspection in the adult film industry. Typically, they don't have them, typically they haven't implemented any of the requirements. What the exposure control plan requires is engineering controls—which could be as Dr. Kerndt mentioned in his recommendations: they can be simulation, they can be editing out the condom, but we believe that our standard through engineering controls and, then, in addition through personal protective equipment requires the use of condoms for oral, anal sex and for vaginal sex.

So, the current industry practice, despite the fact that we have done our seven inspections—which are still ongoing in court for the most part—the industry continues to operate its business as usual. For the most part, we see non-condom use, the lack of employer financing of testing, there are still risky sex practices going on, and, lack of training, lack of information provided to the performers. In addition, like I said, we hold that our standards do apply and they are enforceable.

As I mentioned the appeals process takes very long. The original 2004 case is actually, technically, still not going to hearing again until next month. The other thing is that typically we respond to complaints, and we don't have that many complaints. So, that limits our effectiveness also. And then finally, there is a lack of cooperativeness in the industry itself.

So, the adult film industry, what they really have, as far as Cal/OSHA is concerned, what their options are is: one, they can come into compliance with our standards, with the Bloodborne Pathogen Standards, with the injury and illness prevention standard. Their second option is to be in non-compliance, which many have chosen to do. That puts the workers at risk of disease and it puts the employers, the producers at risk of receiving citations. The other thing they can do is they can ask for a variance. A variance would be an employer-specific request to the Standards Board to show (that) what they do is they would have to say that we are in non-compliance, but (they) can show that (they) need to be in non-compliance and (they) have equivalent protection—(they) can provide equivalent protection.

In talking, in the cases that I have been dealing with, the attorneys for the producers often say, "Well, that is what we want to do. We can show you that we can provide equivalent protection." But no one has really ever come up with anything or come up with a plan to show us. They claim they are going to and they don't. But, that is an option that they do have, but the bottom line is that they have to provide equivalent protection if they are going to get a variance to a standard.

Lastly, they can go for some kind of rule-making. If they want to, they can actually try to get an exception to the standard or they can work on rule-making specific to their own industry. But the bottom line, because (of) the Bloodborne Pathogen Standard—the Federal Government has an equivalent standard—and then we have our own state programs and our own state standards. We still have to show that we are as effective. So, they have to meet the criteria that they are going to be as effective as the Bloodborne Pathogen Standard if they want to get some kind of exception to the Bloodborne Pathogen Standard.

So, the enforcement—actually this hotline, 237-9958—that is where a performer can make a complaint. It is also where producers can get information about our standards and our requirements. That hotline came into effect after the request in 2003 by the County Board of Supervisors.

We continue to do enforcement activities when we do get a complaint. They are, typically, we are only responding to complaints as of right now and they do come out of my office in Southern California and then there is the Oakland High Hazard Unit, who actually did respond to one of the most recent inspections in San Francisco. Then, we are supported by the Cal/OSHA and Department of Labor Standards Enforcement Legal Units.

In addition, the top web address is our Cal/OSHA website that has information about our regulations. The adult industry web page was provided, once again, in response to the request by the County Board of Supervisors. It came into being in 2003, but has been updated. Then, our Bloodborne Pathogen Standard—that is the direct link to where you can find the entire Bloodborne Pathogen standard. So, once again, that is where our enforcement activity has been.

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WE: Mr. Riley, Dr. Kerndt, maybe we could ask you if you wouldn't mind to come up and join us at the table. I think that—I know that at least Lee and I—have a few questions as a result of your presentations. And, I hope the Committee does as well. Are there some questions? Great. We will start with Lee and then Ruel, who else? Jeffrey.

Lee Kochems (LK): Thank you both for your presentations, we really appreciate it. I actually have a whole range of questions. Let me start with Mr. Riley. You talked about these regulations, actually in quotes, being enforced right now. So, OSHA can apply these standards, but only if there is a complaint at this point in time. How many complaints have you had here and then in the San Francisco office?

PR: I can't tell you off the top of my head, but there has not been a large number of complaints. Most of them have resulted in inspections. Some inspections have not resulted in citations, so they have not been included in my list of seven inspections that did result in Bloodborne Pathogen citations. I don't want to guess, but I can tell you there has not been a large number.

LK: One of the things that we are trying to look at is a broad view on this entire issue and where people in the industry—the actors, the communities that are affected and employed in these industries, both large and small—can kind of come together and address the issue of HIV transmission in the adult film industry. But we are looking at an economy with 200 firms, you know, 6,000 workers—1,200 to 2,000 in the State of California (who are) actual performers in the industry that produces about 7,000 films/videos a year, and the estimates range from \$4.3 to \$7 billion. So, out of that, the only ones you are able to look at and help address this issue are the ones where a performer or someone else actually files a complaint—even though we think that these regulations apply across the entire industry.

PR: At this point, yes, we have only been opening complaint-initiated inspections. I think part of the reason is that we have less than 200 inspectors for the entire state for every industry and we have not initiated any kind of program to specifically go out and target this industry. We continue to address them on a complaint-by-complaint basis and to do otherwise wouldn't be my decision.

LK: A little follow-up to that then: those that are investigated, they can be in compliance, you can find them in non-compliance or they can come up with some petition for a variance, if I understood you correctly—which means they have an alternative way of addressing this issue and preventing the workplace risk?

PR: Yes, the four alternatives I mentioned: I mean they can either be in compliance, they can be in non-compliance and that would determine whether or not we would cite them. But, in addition to that, they do have two alternative means, one would be additional rule-making that would be specific to that industry, or to go for a variance. But, so far, none have tried for that.

LK: And, at this point, none of these cases have actually been resolved, even those from 2004, that haven't totally been settled, the appeals aren't complete, so we don't know whether the implication, the enforcement of your regulations has actually occurred or what do we know at this point?

PR: There has been an additional case where the employer accepted the citations, but I don't believe they came into compliance. What they did was they shut down their production company and moved on. Then, there were the 2004 cases where they did accept the citations and that was settled, but we went back and found that they had failed to comply. So, that is ongoing. The additional cases, that leaves, I believe, three or four more cases and they are still under appeal.

LK: If my fellow Committee members can just let me ask two more questions. One of the things that Dr. Sharon Mitchell of AIM, and those members of the adult film industry who actually are in favor of some kind of enforcement or making sure that condoms are being used in the adult film industry, have either been up against or talked about and are working towards—and I am trying to characterize Dr. Mitchell's perspective there, if I mischaracterized that, that is fully my responsibility—is that testing regularly occurs on a regular basis and there is education that occurs in this area and people are informed. If people test positive for HIV, they are not allowed to go into these sets. Why or why isn't this: is this enough, is it not enough, what are your perspectives, and I ask this to both of you, actually?

PR: Two things: the 2004 case that we did in our first inspection—that person had tested negative and then infected people. So, there is a lapse time and it is not as effective or as safe as barriers, and that is our position. And, then in addition to that, if we enforce our standard not just in the adult film industry—the Bloodborne Pathogen Standard, I mean—it affects the medical, it affects everyone—I mean everyone that meets those exposure definitions. If we use that standard to require that agenda—for example) use a glove before

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they put their fingers into your mouth—there is no way we are going to be able to say that someone can put their penis into a vagina or a mouth or an anus and not use some kind of protection. It is not just, it is a broader picture.

PK: I would just add, and I mentioned it in my presentation, that the 2004 case, essentially four days after this individual had tested negative using the most sensitive test, infected the first of three people that he worked with. So, we know that the test is only as good as the testing method and even on the day that test result is negative, it may indeed not be negative. In fact, we all know with acute infection that the period immediately after infection is when viral loads are the highest, when they are most highly likely to be infectious. So, even if screening occurred all the time regularly, eventually we would expect to see another incident just like this unless there is barrier protection. Had that individual used condoms, very likely those three women that were exposed in the following week or so would all be uninfected today.

So, screening only tells you when prevention has failed. We know that a lot of persons that work in this industry work off the set as well—many are involved with escort services or have other casual partners—so there is a lot of transmission in and out, I think the STDs that we monitor basically show rates that are manifold higher than what you would expect in the general population. These are persons that are testing monthly, every other month. So, I think when you look at the numbers, you have to look at annualized rates and these are individuals that are getting infected with gonorrhea/chlamydia, you know, every month, every other month, three or four times a year.

LK: Okay, this is my last question, and then I will let the rest of the Committee chime in. I do have others, but I am sure we will get to them as the afternoon goes along. This is from a totally different take. If there were legislation, which would then make all these firms, companies, subject to this kind of prevention and we wouldn't then be dependent on cases to be reported before it gets investigated and go through this process—the Commission is very concerned about discrimination in terms of HIV and you addressed the issue of who is an employee, who isn't an employee. If there are actors who are performers who are HIV-positive, would this kind of legislation contribute more to protecting them consistent with California state law that doesn't allow employers to discriminate on HIV status, or would it make it more difficult for those employers to do that? Would there be a conflict in any way? Or, would it actually be beneficial in that respect? And maybe both of you can address that?

PK: I would just say that currently people that work in this industry and are injured on the job are discriminated against in the fact that that employer has not paid into workman's compensation. None of these individuals that have acquired HIV in the course of employment or in the 2004 outbreak are receiving workman's compensation. If they had worked at a hospital and another setting where they were exposed to blood or semen and contracted their infection, they would be protected. You know, generally, they don't have, there is no health insurance, there are no residuals for the films they work, there is no workman's comp, there is an inability to really effectively organize when there is such high turnover. So, I think that, and we often hear that if you try to regulate this industry—you are going to drive it underground. Well, I think what we are seeing right now is an industry that is underground, that it does not—has not stepped up and does not have good, business ethical work practices that would protect those that work in the industry.

This is a legal industry, it is not illegal. We know that there is widespread non-compliance in the industry. In LA, the Film Board requires that a production company obtain a permit for any porn shoot, and we know that relatively few of those permits are issued. And, so we know that basically there is widespread non-compliance. And, even the extent to which the testing information is shared, we hear anecdotally (through) a great deal of reports that sometimes that requirement is overlooked.

LK: So this might indeed contribute more to making sure there wasn't employment discrimination based on HIV status?

PK: Yes.

LK: In your opinion (to Peter Riley)?

PR: I don't know if I am really qualified to answer this, but I just, you know—right now if someone is HIV-positive and they get tested, they are not, they don't perform. So, they are currently discriminated against. I don't know if additional regulations would add additional discrimination.

LK: Might it actually have the opposite impact?

PR: Yeah, I would think so.

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WE: Thank you. I do want to note a couple of things for the record: one, we did invite Dr. Mitchell and the folks from AIM to be here today and present, and I also wanted to point out that we have our Health Deputy here for Supervisor Yaroslosky: Carol Kim is here in the audience. There is Carol, thank you for coming and being here with us today. Okay, Ruel?

Ruel Nolleddo (RN): Hello. Thank you very much for your presentations, they were very helpful. My question goes to Mr. Riley. I guess I am trying to get a better sense of the standards and practices that you were talking about, and what they actually do cover. So, does this apply as well to online content and if so, to what degree? I mean there are a number of ventures out there that have exclusive webstream content and then there is, on the other hand, things are just like, you know, two guys with a webcam. So, do these standards apply to them as well?

PR: To the two guys with a webcam?

RN: At the extreme end versus like . . . and then there are also production companies who also do adult films on the Internet, exclusively. So, do these standards apply to them as well? Do they have to have . . .?

PR: Yes, it would still apply to the Internet as long as they are producing a movie, these people come in and perform for them—so, it would apply.

WE: Jeff?

Jeffrey Goodman (JGoodman): Thank you both. Just a few kind of quick questions to sort of fill in some gaps in my knowledge. Dr. Kerndt, if we just looked at the Blood Pathogen Standard as it is, forgetting about—which is hard to forget about—enforcement and all the other ancillary issues, would that standard, do you feel that that is sufficient to protect an employee, as far as just looking at very narrow focus with that standard as it is—would (it) protect employees from HIV?

PK: I think if that standard was universally adopted and implemented by the industry, that it would go a very long way in making HIV or any STD transmission an extremely rare event.

JGoodman: And, then Mr. Riley, if I could ask you a few questions. First of all, you were talking about employer/employee relationships. And, in your presentation, you had a couple of legal sites. For example, I know many of the production companies call their employees independent contractors. Many of them have already gone to the IRS and have succeeded in getting independent contractor status for these performers. So, my question is, if they have received an IRS sanction, let's say it has gone to that level, so they can show you that, therefore, do you have jurisdiction?

PR: That wouldn't preclude our jurisdiction.

JGoodman: That would preclude your jurisdiction?

PR: It would not, it would not, no. We would have to go forward and prove to a judge why we think these people are employees, and it would be for labor standards. It would, and the labor standards enforcement attorneys are pretty adamant that these people are employees.

JGoodman: It is a hot issue legally and one that has a lot of debate on all sides. But that answers my question. Also, if someone is found in non-compliance, what is the enforcement mechanism or penalty?

PR: They receive a citation and all citations have penalties. The penalties can vary depending on the size of the company.

JGoodman: Could you give an example?

PR: Typically we cite Bloodborne Pathogen as a serious violation, which means the base penalty starts at \$18,000. But there are seven different penalty adjustment factors that go into coming up with the final penalty, and typically they are less than that.

JGoodman: That is kind of interesting, I mean that is, given the size of some of these companies are rather small in my mind. Ultimately you have no jurisdiction to shut them down?

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PR: We do have the authority, we issue citations. We do have the authority to shut things down when there is an imminent hazard, which means that a person is going to become injured or seriously harmed before the regular method of citing and going through the appeals process. And, that is not used that often.

JGoodman: Real quickly, thank you. Workers Compensation, one of you just said that these performers are not covered. Now, I am a small business owner and I mean, gosh, I mean anybody that works in my shop, I have got to cover. I mean it breaks my back every other week. Why are these people, especially if you are telling me the Labor Standards would have everybody as an employee, regardless of tax status—why are they not being covered and penalized? If I didn't provide workers comp, you know, I would have my back to the wall, and I am wondering why this is not, from another avenue, why is this not being provided? Can either of you address that?

PR: Cal/OSHA does not enforce workers, coverage of workers compensation. That is the Department of Labor Standards Enforcement. The Department of Labor Standards Enforcement would enforce workers comp coverage.

JGoodman: Right, but if I am saying, for example, I gave you earlier the question about independent contractor status versus employee status. So, if someone is an independent contractor, there are certain provisions not to be covered by workers comp, but it can't go both ways. If you are saying that under Labor Standards these people are employees and they are subject to OSHA, Cal/OSHA, then aren't they also subject to Cal Workers Comp requirements?

PR: And, the answer is yes.

JGoodman: Has there ever been any enforcement? I am sorry, did you say that . . . ?

PR: I think there is no enforcement. The industry has a belief that they are not employees, but contractors, it does not apply to them—they are not obligated. It is a series of logical or illogical thinking that results in that kind of business practice. And, that is really what we are kind of . . . there was one case brought by a performer on the worker's compensation issue, and I don't have the final reading on that, but I think it would be informative to review.

JGoodman: Thank you both very much.

WE: We have two more Committee members who want to ask questions and then we will start taking public comment. Kathy?

Kathy Watt (KWatt): It really seems to me that as long as they can string it out, they are going to string it out. It is no different than a slum landlord or anybody else that has different people that have to come sign off on you doing the right thing. You can always appeal. We live in the land of you can always appeal and there is another appeal. We have a group of people doing work who are not going to go in large part stand up and say that we want rights and here is who we are and band together. So, do you ever think about solutions, like in a perfect world, that you would offer up?

PR: The solutions I would like to see are what I would like to see as abatement of the citations: (they) would be the recommendations that Dr. Kerndt made, and that would be ideal. I mean everyone is entitled to their day in court, and the fact that it comes slowly is not ideal. But eventually they do have their day in court and they are reckoned with and they are going to have to defend their policies or they are going to—the citations are going to—be sustained and they are going to have to come into compliance.

KWatt: Yeah, eventually. But eventually in four years, in 365 days in a year and how many times can I have sex in all that time? I mean, we are talking about something where time is a little bit more important in resolution than if my landlord got written up because the roof has a leak. I mean it just seems . . .

PR: Yeah, and I don't disagree with you.

WE: I have a couple of quick questions. Because, at least from my point of view, this is an industry which produces a product which does in some ways contribute to the economy of Los Angeles County, and I think there is a lot of conversation—at least as we were sort of coming up to this hearing about would—if there is legislation—would it drive the industry underground? Would (the industry) just go kind of rogue off to the side? At least from my point of view, it occurs to me there are some real benefits to legitimacy, you

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know: bank accounts, corporate, the things that allow them to make and bring money in and spend money and do the things that they do. I guess my question really is from both of your points of view.

Mr. Riley, you have a system in Cal/OSHA which is dependent upon complaints: you respond, and then you don't ultimately have the power, for instance, to say ". . . okay, Company A, you have flouted us so many times, you are out of business . . ." because couldn't they just close down Corporation A and open up Corporation B the next day, and wouldn't the whole thing start over again? I guess that is quick question number one. If they just said, "We are just going to not listen to you, you all crazy State folks, and we are going to shut down this company, it no longer exists that you gave a citation to." And, in the same building or the building next door, the next day, new Company B arises and they, even if it is the same principles, are they subject to that citation?

PR: If the company goes out of business and is no longer in the same business in the State of California, and has no intention of doing the same business in the State of California, the Appeals Board will waive those penalties. If they are just opening up in a different name, then the penalties stay.

WE: Would transfer, because of who is the principal of the corporation or . . . ?

PR: Well, they wouldn't transfer to the new corporation, but that corporation would still owe those penalties. But, then you run into the problem where how would you collect from a corporation that no longer exists.

WE: So which brings me to—as we talk about a legislative instrument, as we talk about a piece of legislation that would require condoms in film production—what would be that mechanism? What would be an enforcement provision? So, what I wanted to ask each of you is both from a responder to workplace issues and from the perspective of public health, how would we have a conversation in a legislative mechanism? How could we possibly, one, enforce, and two, what would be the tools (that) each of you (would) need in your respective jobs from a piece of legislation that would make your jobs easier in this particular discussion? Dr. Kerndt?

PK: One fix that I suggest could be explored that is already in the industry is the Custodian of Records, which is required under the federal law and it has stringent penalties for anyone, any production company that allows anyone under 18 to work in (the industry). So, at each of these companies, on any site, you will see a Custodian of Records—it will have the name of an individual and an address. So, these companies already have a mechanism to keep and maintain records. That could be potentially expanded that they would require that with each production—they would maintain the records documenting that condoms had been used, that performers had been medically monitored.

WE: Dr. Kerndt, could I make my nephew, my 12-year-old nephew, the Custodian of Records?

PK: Probably not. But if he was 18, probably yes.

WE: And that person would then be held responsible . . . ?

PK: That would be a principal of that company. I think one other issue that is of concern is the personal information of the performer. Most often, when medical monitoring is required by Cal/OSHA—and Peter can respond better—it is the obligation of the employer to provide that. But they don't have access to all of that personal health information. They have access to the physician that would clear that individual to work or to return to work, but they should not have that information on that individual. So that is another . . . so, clearly you could ensure through the Custodian of Record that medical monitoring did occur—that the individual was medically cleared to work or return to work, and that condoms were used in a production.

WE: Let me ask you, you know that this Commission and this Committee (took) up the issue of the regulation of bathhouses a few years ago, and made recommendations to the Board of Supervisors regarding regulations of bathhouses, which ended in a license/health permit that needed to be procured by bathhouse owners in order to do business in the County of Los Angeles. So, from the perspective of the Public Health Department, would it be reasonable or would it be closer in enforcement action if there were a license mechanism that were required beyond the business license or beyond, if it were, for instance, a health permit sort of system? Because the way I think about it, the bathhouses are folks where general citizenry come to engage in sexual activities in the context of a business, and now have to provide condoms, live up to health standards, all those other things required in a licensing statute. That creates the framework for that. If we were to talk about a similar context for a business that had sex as its primary—as their primary activity for sale—would that be something that could be useful as an enforcement mechanism?

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PK: It could be, but I think it probably . . . this is an industry that is on a much larger scale, although LA County is the heart of it. But you know, probably minimum on a State level, or it needs to be done. But, certainly anything that would make it safe for anyone who worked anywhere. I mean: it may drive the production out of the county, but it probably needs a solution that is larger. That would certainly be possible and would make it safer for those that remained or chose to remain. In fact, you know, just the five or ten big companies, if they were to comply, would have a huge effect on the industry.

WE: Just as a point, I know people say it will drive folks out of LA County . . .but I mean there aren't a whole lot of porn actors in Pocatello, Idaho. So, I don't know exactly where one would go to. I mean: you can go to St. Louis, I suppose. I mean, I don't know where to go. There are millions of people here that are potentially actors, so I would think that part of the supply of actors is here and that is one of the functions. So, it would occur to me there would be some incentive to staying here. Did you have a response to that real quick, because we want to certainly hear from the public?

PR: I don't think I have actually a very good answer, but I do have a suggestion. Dr. Kerndt is talking about the Custodian of Records, and what he is talking about—I think it is a federal law that requires that the person be 18 or over. And, when you go to these companies, they are, the first thing they do is they pull out their forms, and they have really, really good records and they comply very well with that requirement. So, I would suggest you might want to look at that as a model and see what the requirements and what the penalties are, and why we have such good compliance with that standard.

WE: Thank you. Now we want to hear . . . thank you gentlemen very much for answering questions. Thank you for your presentations and bringing so much information.

Kimberlee Woods (KWoods): I have a quick question and they are walking away. Peter, Peter Number 2, I had a quick question about the fines. I thought \$18,600 for a fine seemed very low. Did that seem unusual? How do they determine that? I mean, if I have a choice of following or complying or paying a minimum fee, why not pay the minimum fee? Did I miss something?

PR: No. The serious violations start out at \$18,000 and they end up typically not that high at all. They are much . . . I would say the average serious violation ends up around \$2,000 to \$4,000. And, so why would they just absorb the cost and use that as business as usual? If we do go back, for example, the failure to abate citations ends up being that penalty per day. We don't have to, but typically we cap it at 45 days as a policy. So, (if) they do fail to abate violations, the penalties jump up substantially. In addition to that, if we have cited—we do have other classifications, like a citation can be classified as willful: where we have evidence to show that the employer knew what they were supposed to do and they purposely flouted the standard—those go up to \$70,000 each, so there are means to bring the penalties higher.

KWoods: Would that have to be, if we wanted that to change, so that there was a significant impact on a billion dollar industry, then it would have to be something legislative or this is something across the board that is for everyone and it would impact everyone?

PR: No, there are specific standards that have their own specific penalties. For example, in sanitation for the farm workers, there are some specific standards that have penalties that say they cannot go below this. So, there are exceptions and specific things that are tacked onto the regulation.

KWoods: And, I don't know if you know this, but in terms of if this is all triggered by a complaint, do you know of any unionizing that happens to be going on? Because it seems if there were unions for employees, then there would be more complaints that would be filed. Do you know of anything like that?

PR: I personally do not, but I don't know if I am the best person to ask that question.

LK: We are going to ask three people to come to the table at a time and when you do, if you will introduce yourself and tell us your affiliation, if any—and we have asked you to limit your comments to two minutes. So I hope I get these names correct: Bozena Morawski, if you could come forward; Precious Stallworth and Joseph Terrill. If you are going to talk, if you will talk and press the little button . . . perfect . . . so just introduce yourself and tell us . . .

Bozena Morawski (BM): I am a student at the UCLA School of Public Health. And, I don't think this is something that has come up thus far today, but I would like to comment on the assertion that consumers don't want to see condoms in film, and the profits will be impacted if they are included in the film. There are plenty of ways to respond to consumer demands while protecting the performers.

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The technology exists to digitally remove condoms in post-production, similar to what is already done for breast implant-related scars, for example. There are also condoms that are so clear that they are undetectable on film. While the cost associated with implementation could be high, the technology exists, and will evolve to become more affordable if it is mandated that the AFI uses condoms, enforces condom use in their performances. They will find a way to do so in a cost-effective manner, while responding to consumer demand and protecting industry professionals. Thank you.

WE: Great, thank you. Joseph?

Joseph Terrill (JT): I am Joseph Terrill. I am the acting Director of Public Affairs for AIDS Healthcare Foundation. I will be very brief. First of all, I just want to state that AIDS Healthcare Foundation is in support of the County recommendations for condom use in the adult film industry. We support this Commission hearing.

One thing I want to point out is that from a public health perspective, it is obvious that the adult film industry has missed the opportunity to implement a prevention strategy—a proven prevention strategy for protecting its actors from contracting not just HIV, but other STDs. But what I am hearing today, and from what I have read online regarding AIM is that their testing strategy, or whatever, only finds prevention failures and not only that, but then discriminates against workers for (being) HIV-positive. That is something I want to make sure we address, so that the Commission looks at it.

The other thing is something that I don't hear talked about very much. But, you know, back in the 1990s, the gay adult filmmakers had voluntarily implemented condom use, obviously due to the large number of deaths in the gay male actors. But what has happened is that the "barebacking" genre has become a much greater percentage in the adult film industry, in the gay genre, and the potential for infecting has actually become fetishized: barebacking becomes the actual theme of a particular product or movie. And, what also doesn't get mentioned is that between heterosexual and homosexual genres of filmmaking, you also have the bisexual. So you have actors overlapping films of both genders and again providing for—particularly women, female actresses—placed in a very high risk. Anyway, I just want to thank you for the comments and, once again, we are in support for some kind of legislative solution to this.

WE: Thanks. Precious?

Precious Stallworth (PS): Precious Stallworth: PPC member. I strongly oppose any legislation that would govern behaviors of adults—particularly something so intimate and something that people have to empower themselves to choose to participate in. I am glad that someone brought up the mention of bathhouses. I, as well as others in the audience and on this committee know that not everyone in bathhouses uses condoms—though there is legislation that governs it. Certainly, people, even with condoms, can still contact syphilis, herpes and HPV. I think that when Big Brother starts to force people to use condoms, it is the impetus to govern other behaviors, particularly those amongst the community which I belong to: gay, lesbian, transgender and bisexual. I think it is dangerous when we start to support these pieces of, these types of, legislation and not think of the long-term implications. When you force adults to do things, it makes them want to do something opposite. It is the way behavior works. So I want to go on record in saying that I strongly oppose this and any other (similar) types of legislation, and let's look at the bathhouses as an example.

What I also am concerned about is: with the day and age of Internet usage, what type of money will need to be generated to govern these types of activities? What would those regulation enforcements look like? Will we then be going into people's homes and how many and how much money is anticipated to be affected in governing these types of activities? Thank you.

WE: Do any members of the Committee have any questions for this panel? Thank you all very much. Oh, sorry . . .

LK: Joseph, maybe you can address this. You mentioned the genre barebacking and this sort of fetishization, and it has become a major marketing tool. I also get the sense to some degree it affects different communities—communities of men of color, for example—who are more impacted by smaller firms, companies, homegrown producers making these films, and that it is a technique in the marketplace to compete with the larger firms that are out there producing films. Would imposing regulation through legislation drive those people further underground? Would this have some broader impact? do you have some sense of how it affects communities of color and marketing to different sexual orientations that happen . . . ? I am not asking a very clear question, but I am trying to get to the economic impact across populations that some of which we know are highly impacted by HIV and if this—the marketplace as it stands now—actually poses some additional or more predominant risks to populations of color or for women, as you mentioned?

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JT: I think that is a question that probably has a very long and involved potential answer. What I would say, though, is that probably the smaller production companies that are geared towards communities of color that don't have as much capital or financing, whatever, probably are inclined to look at marketing strategies like the fetishization of barebacking as something that will help propel their product.

I would also just like to say though that what Precious just mentioned here about the bathhouses is, I think, something very different. We are talking about looking at prevention and education for which this county and state has provided millions and millions of dollars—always based on the theoretical or future sexual acts where a person makes a choice. Okay, here we are talking about an industry where the act itself is the product, and we have verification of that act taking place without the use of condoms. I think it is a very clear distinction between the two. As far as driving the industry underground, I really couldn't say or speak to that. I really don't know.

WE: I actually have a question for Ms. Stallworth, if I might. Would it change your opinion if we were talking about a condom as an occupational safety piece of equipment, much as a helmet for a construction worker on a construction site, to protect a worker from a head injury? Do you feel it is a reasonable analogy to place a condom in the context of an occupational safety in terms of protecting an actor acting and being paid for acting a sexual act?

PS: Only if the absence or presence of helmet created pleasure in the wearer and the watcher. I think it is comparing apples and sandwiches, two different things. This is about behavior: the fact that the pornography industry is huge and almost insurmountable in trying to attack it. It speaks to a need that people have. Sometimes with all of the stresses in life, the last thing that a person can do is get off. That is why, with Internet, so many people have tapped into it. And, how do you contain that?

I am wondering in the hierarchy of need, the money that could potentially go into regulating sexual behavior could be used somewhere else? Also, to address what he was saying (*indicating Joseph Terrill*), it is not so much the differences in the industry. We are talking about people who have a choice. If I, for a second thought that, one, I don't think it is right intuitively—not as someone who wakes up not just Monday through Friday, on behalf of Public Health ensuring that disease is contained and controlled in the population—but if it was about something outside of behavior, then maybe we could have a real conversation. But you are talking about people who have a choice. What are they going to do? I believe that it is going to drive the industry underground, further underground. Barebacking films meet a need, so let's talk about behavior. It is really about behavior. And, to force people or to criminalize a sex act—the absence or presence of a condom—I just think it is Pandora's Box. It feels that way.

WE: Thank you very much.

LK: A quick follow-up to that, Precious: thank you for bringing up the issue of driving it underground, because I think that sort of underlies a discussion overall around how we approach this. I certainly have seen since the very beginning of the HIV epidemic, as soon as we started closing sex clubs and things in New York, what happened to the increase in HIV rates automatically. So, we should always be concerned about that. And, we have heard from the adult industry—certainly, that as you say—in this particular industry that reinforces in many respects positive sexuality, sexual identity, sexual performance and those things that this Commission thinks about and talks about in terms of discrimination, and if we eliminate discrimination, that actually encourages and promotes prevention. But this industry is filled with rebels and renegades: those are the two terms that I have often heard. If we impose this, then they are going to be the first ones to move underground.

On the other hand, this industry also is a place where people turn and quite clearly I am beginning to get a sense that they don't have the protection that other employees have in where they work. And, although there is an image that their sexuality and sexual expression is being supported and they have some free choices—if they are not being protected as workers in an industry, it poses another problem. So, there is kind of a balancing act that occurs. How do we protect, enforce and support that, at the same time that we don't limit that expression? And, if the issue really becomes driving it underground, we don't have the opportunity to do either of those things. So, what do we do to not drive it underground, but still address those other issues and even protect employees that may not be classified as employees?

PS: Very good. I think that is the conversation that deserves more attention. And, the conversation that is broader, that includes more people, more discipline to come to the table and figure out what will really work—not the powers that be coming up with an idea of what will provide greater protection for a population. And, they are all populations in my opinion. We work, we get up, we work for a population—this is a population. So, once we regulate this population, we are going to regulate that population and regulate the next population. So what is the conversation? Perhaps it is providing more support to employers; more instruction to employers; provide

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support for their employees, or the independent contractors that come and work for their production company. So, maybe that is the conversation that needs to be had on a broader scale.

KWoods: Two questions, Precious. One was related to if the employees would like to choose to use condoms, and that is not acceptable to the employer: do you see that as one of those issues that is related to behavior—and that you are getting back to, “I am a person, I am a population, it is my behavior”—that should be discussed, that should be talked about in some way?

PS: Definitely. I think that perhaps if you mandate that, and an employer provides the proper protection tools, in-services (and) things like that—that may be more doable as opposed to forcing people, criminalizing whether or not they use a condom. If C criminalize it here, what is to say it is going to stop (it) from radiating to the general population?

KWoods: But you would be for choice?

PS: Choice, absolutely.

KWoods: Then my second question is do you have any problem with the inconsistency in terms of this really being a business—even though it is about sex and people and populations—that raises a great deal of money, that is regulated? Other businesses are regulated and there are regulations for this business, and the inconsistency then between this industry and other businesses: do you have any struggle there?

PS: I actually think it is a more appropriate place to start. If you can begin to bring structure to the industry, and then start to focus on behaviors—they are two vastly different issues. So we—dealing with Public Health—we want to focus on what makes people, what provides a greater level of protection and safety for people. So, that is a question for us to take up. But, I think we are jumping the gun by starting here. We don’t start with, excuse me, protecting penises and vaginas, then get the people who employ those penises and vaginas together—excuse me, anuses as well, mouths or whatever.

WE: Thank you very much. Thank you all.

LK: Our next panel, Alani Price, Philip Massey and D. Traci Bryant, would you come forward please?

WE: If you will introduce yourselves and make your statements, thank you.

Alani Price (AP): Hi, my name is Alani Price and I am a resident of LA County. I just wanted to make a quick point that if you are talking about consumers and what consumers are looking for, you could make the point that they want to see movies of sex without condoms. But, if you think about all the films in the world, including sex films, people want to see all sorts of things—some that are dangerous, fires, people jumping off of buildings—and no one would . . . it would be an outrage if a stuntman or stuntwoman was expected to do any of those acts without any safety precaution whatsoever. And, not just without safety precaution, but (with) their employer not allowing them to have those safety precautions (in order) to save money or for any reason. So, that was just the point I wanted to make.

WE: Thank you very much. Next.

Traci Bryant (TB): Hi, I am Traci Bryant and I have been a performer now for 14 years in the adult film industry in many countries, states . . . all over the place. I have worked for most of these companies, and I was around for the once-a-month HIV-positive outbreak in ’98. Yes, I was, and I got to see those performers that nobody knows about—that nobody claims that got HIV, that are not a part of the statistics—walk out the door as non-performers, not to be counted.

Yeah, there are a lot of cover-ups going on. There is a lot of tragedy. There are a lot of horrible things. But, I think I really want to tell you guys about a solution. As an undercover cop, I went into Nevada and worked for the brothels. That system is 100% successful, both in Nevada and in Australia. I suspect that the legalization of sex as consideration in a valid contract, enforceable as law in a court . . . binding . . . is going to be the same in New Zealand as well, who has recently allowed sex to be a legal consideration in a contract. Legalize prostitution; it is the same vagina, whether it is here or whether it is in Nevada.

But, I will tell you what: Nevada state officials have told me that they have closed their borders to California. Let me give you guys a perspective of what it looks like outside of this state. It is shamed. It is not looked at as pretty. We are thumbing our noses

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at the healthcare costs, given now to Quebec, because of our lackadaisical attitude about laws that are on the books right now that are unenforced. Quebec now has an HIV-positive person as a director: one of those clients they were talking about from Peter. That woman got not a penny for anything here in California, and now she is a byproduct and a liability of the healthcare system in Quebec. California has done nothing and Quebec is not happy. Nevada, like I said, closed its borders. I am not allowed to go across state lines and work, because of the healthcare here, because we got the HIV virus in 2004. So Nevada said, "You guys can't work here, get out." So you know, California is not looking good. We need to change, and the success of these brothels is 100%. I talked to the State officials over there. I have been filming a documentary for two years, and I have been involved in this and awakened only for two years.

Before that, I believed it was a lie, just like everybody else—the media, the people, the university students, the university teachers—that testing is prevention. It is not. Testing is not prevention. Testing is not prevention. Testing is not prevention! Condoms are! But everybody thinks that because we are tested, we are safe. That is across the board media-wide. Geraldo won't put me on his show, because I have got this complaint. I get put in the LA Weekly saying that I can't get a boyfriend, when I spent a whole day talking about the healthcare crisis.

Okay, so like the media, I am fighting an uphill battle here. I am willing to go to any length—for free, on my own time—to have a legal clinic, if somebody would help me, and practice law to help these people and take these stupid little STD cases to court. I would do that. But Gloria Allred, not interested. The LA County Department of Attorneys, not interested. I talked to two agencies that were worried about workers and stuff like that, (but) they can't do anything. I have talked to several other attorneys and they won't go to bat with me, because they say that an STD infection on a worksite isn't worth the money and the time that it would take to take these people to court. I think it is worth it. Because, from what I see, not many people are doing anything. And my girls are still calling me from the hospital saying, "I can't have kids anymore, I am 20."

As far as the brothel workers go, the discrimination there is pretty much moot. You get complete and utter protection of your privacy rights. You go into town. You get tested. You go to the brothel, and you get a red light or a green light when the test comes back. That is it. Now, if the performers wanted a red light, green light and yellow light for HIV-positive people—or a different light, or maybe a light or a something light—that is fine. Because performers, in general, will have sex with you if you are infected. They don't care, for the most part. And, they don't care if there are condoms, for the most part, if they are on set, because they want that money.

But out of the documentary—out of the documentary footage that I have—not less than 50 performers, and every single director, writer and producer, has said that if they had a choice, they would use condoms on the worksite. There is no choice. To talk about consent and choice, let me tell you this: our consent to this contract is unconscionable. It is void, because we are giving consent based on fraudulent information from AIM. If you saw the Zocalo thing that was on TV on Channel 36, she says that there are virtually no STDs in this business. How could that be possible, when you saw Peter Kerndt's information up there? How could that be possible when 10% of every agency that is working right now does not have a performer working, because they are out on leave, because they have an STD? Sometimes the STDs are not, they're antibiotic, you know, the drug-resistant type. And, people are having sex with dogs in downtown LA: who knows, we got syphilis from sheep? Who knows what is going to happen.

WE: Can you summarize for us?

TB: Yeah, I really think that you guys need to look at www.nevadabrothels.com — all of their statutes down there. There is a perfect system. They have (had) zero HIV since 1974, (since) they have enforced their condom policy, testing is only a measure of checks and balances—like was said here. And, they have had, in Southern Nevada, one lady got an STD that the officials reported. That STD (she) got from home; she had the same STD three times and was never, ever allowed to put the public at risk. In contrast, 400 HIV-positive results from illegal prostitution in Las Vegas. I have a lot more if you want.

WE: Sounds like it. Thank you very much. Thank you.

Philip Massey (PM): My name is Philip and I live in West LA. I just wanted to speak briefly from the consumer point of view. You know, I see these performers and actors as professionals—just like actors in other film industries, cyclists, sports figures are professionals. So, they understand the risks of what they are doing and they are role models. Especially, because I am a young male and I speak to the young male population, you know. We see these guys participating in sexual acts without condoms. And, I don't know if the media has anything to do (with it), whether you are already predisposed or if media affects, you know—that is a whole

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other conversation. But seeing a guy with a condom performing a sexual act—especially with the Internet explosion: that is going to speak a lot to young guys at an impressionable age. And also, I believe in empowering women on the set, but I also believe in empowering the guys. Because right now, condoms are—you know, if you are seen wearing condoms—that is seen as being weak. And, there is a great stigma in wearing that, as we have seen in the heterosexual sex. And if you see a professional using it, you know, you are going to talk to your buddies and say, “Hey, this guy used it,” and maybe it is not seen as weak. Thank you.

WE: Thank you very much. Are there any questions from the Committee for members of this panel? Thank you very much for being here. We really very much appreciate it.

LK: Our next panel (is) Lillian Jalali, Paula Tavrow and Joanne Granai.

WE: Thank you very much for being here. If you will introduce yourself and give us your statement, thank you.

Lillian Jalali (LJ): My name is Lillian Jalali, and I used to be a sexual health educator for Planned Parenthood. I am currently a graduate student at UCLA, in the School of Public Health. I just wanted to comment on the health education that is provided to performers. The main health education that is provided is provided by the AIM Healthcare Foundation. It is insufficient, to say the least, and misleading as well. They have two videos, Porn 101 and 102, which are one-hour videos. They do not go into very much detail about the risks associated with STDs.

As a health educator, I used to go into more detail with middle school students and high school students than they do in these videos for these actors who are about to have unprotected sex. There is also no discussion about the repercussions of insisting on using condoms in this industry—such as being blacklisted. And, I also want to say that even if these performers are receiving this education—which at least they are receiving something—it is not sufficient and it doesn’t give them the power to be able to go on to the set the next day and negotiate pretty much any of their rights in being able to use condoms. And, I am in support of legislation. Thank you.

WE: Great, thank you.

Paula Tavrow (PT): Hello, my name is Paula Tavrow. I am the Director of the Bixby Program in Population and Reproductive Health at UCLA, and I am also an assistant professor in the Community Health Sciences Department at UCLA. I would like to speak today to the issue of screening. If screening is adequate, currently—and I would offer that it simply is not adequate— (then) it is actually providing a false sense of security to not only performers, but, I think, even some of the production companies. First off, we have to recognize that no screening test is 100% accurate. So, we know that there are always going to be false negatives in any screening test, no matter how high-tech it is. So, that is the first issue.

Secondly, we also know that all of these STDs have an incubation period, or sometimes called a “window period.” I think everyone is familiar with HIV: it has probably the longest window period. We now estimate (it) as high as 10 years, maybe even higher. But, even more run-of-the-mill STDs also have a certain incubation period that I think people aren’t familiar with. So, for instance, just to read for you, for instance: syphilis has an incubation period of 10-90 days; gonorrhea has an incubation period of two to seven days, and so on. So, what this essentially means is that you could have a test, be in this incubation period, (and) the test wouldn’t show up yet that you have this disease. But, a few days later, you would be able to transmit it. Also, I think that we have to recognize—that as all medical professionals will tell you—all infections, gonorrhea, chlamydia, etc., are transmissible to partners almost immediately after someone has caught them and before symptoms start. So, because of these issues, I think that there is no health professional out there—certainly no one who I am familiar with—or medical professional who would advocate screening alone . . . (who) would say that if you screen, that this is really an adequate way to prevent transmission. Thank you.

WE: Thank you very much.

Joanne Granai (JGranai): Hi, I am Joanne Granai. I want to first state that I agree with Precious on pretty much everything that she stated. You know, the thing that bothers me, or doesn’t sit well with me right now: it appears—I don’t want to make assumptions—but it would appear that legislation is being created by people who are not in the porn industry. The first thing that we learn as we are going out and we are doing counseling and testing—or doing any amount of outreach, for any amount of health education and risk reduction—is to meet the clients where they are at. You can’t tell somebody to use a condom if they are not willing. But what are you willing to do? That is one of the first things we learned in counseling and testing. You say, “What can we do to reduce your risks?”

Because it is unrealistic to say, “Use a condom every time,” if that person is not willing to use a condom every time. So you meet them where they are at and say, “Well, what are you willing to do?”

When we are making decisions on the Commission, we are making decisions at the PPC-level, or making decisions on any level that they are going to affect people who are living with HIV and AIDS, we ensure that that person is sitting at the table—that there is a good representation of people living with HIV and AIDS at the table making those decisions, because this is their life that we are talking about. I find it highly . . . there are a few people here (who) have stated that they are in the industry. For me, it is very, very bothersome that there is not more representation that needs to be meeting—you know, with all due respect—the forum here, that meeting them where they are at. Let’s take this to San Fernando Valley at night. There is not somebody shooting during the daytime, I mean they are working right now. Let’s meet them where they are at, let’s see what they are willing to do.

I wanted to speak on the gay porn. I disagree that there is a standard that says, you know, that barebacking is okay, because I go to a lot of events and I go to a lot of things when we have titleholders up there pushing and these are the leaders of some of the gay communities pushing no barebacking. They are creating a standard. But, at some point, there was a burnout, and some of the industry realized there was a burnout, and so they started creating this underground taboo. We start making this a taboo—to have no condoms has become taboo, you know. People want taboo. They want that dirty stuff. So, if they are not supposed to have it, it makes it all the more cool. So, I really am all for fair listing. Real quick, I am for fair listing, and when you go for your casting calls, fair listing is this a condom or this is not a condom shoot. The person has a choice to show up or not . . . and also workers’ comp for those who do get testing.

WE: Great, thank you. I have a quick question. I am going to be a little bit more direct with Joanne: she is a member of the Commission, and on this Committee all the time. So, I am going to ask you a question, Joanne, from your point of view. Legislating or recommending policy positions is often a situation of education, and then reflection, and then sort of what you think is the best to do when you are in a position to do something. I don’t think that you would suggest that if a law, for instance . . . is that every law has to have a representative. If members of the legislature . . . we can’t bring a law forward to the legislature, because nobody in the legislature has ever made a porn film, then they are not equipped to make a decision like that. I think that is an interesting supposition.

So, what I would like to ask you is, you know, there was a law that just went into effect recently for the public safety—which was not one which I very much liked—when we were required to start using Bluetooth devices. And cell phones, you couldn’t be on your cell phone anymore. That was an issue of public safety that felt that if you are not, if you are on a cell phone, you are distracted from driving and you are going to kill somebody. They had hearings, discussed the matter and imposed that upon everyone. So, my question to you is what is the role—because these actors, I would assert . . . I may be nuts . . . that they are not there to enjoy what is happening, they are there to get paid, just as when you show up to any job or when I walk into my office, I love what I do, but if I wasn’t getting paid, I wouldn’t be there. So, what is it that, how do you distinguish—just because it is a sexual act, which is in fact the product—how do you distinguish between those two and how is it any different than a cell phone, then making people use Bluetooth for public safety purposes?

JGranai: I can kind of speak on the Bluetooth issue. I also am a motorcycle rider and many of my friends are dead, because people have killed them. So, motorcycle riders went to these hearings and they stood up and they spoke to how it impacted their life. So, they were directly impacted by this and so there was a voice of people that had their lives completely altered by this—good or bad. So, as for public safety, as far as imposing this, I am not saying not to, I am not saying that it shouldn’t be done—I am saying the voice of those involved should be around the table, they need to be here. If you can get the likes (of), as I have said before, Jenna Jamison, to come in—and she is a female, she has made it very far in this industry and—I am sorry knowing the performers that I do, a lot of them thoroughly love their job. They like having sex and getting paid is a bonus. So they go to work with a smile and they leave with a smile. So I don’t think any of us have a right to dictate whether or not they are there just to make money or do they truly enjoy their job, but ask them.

WE: I think my point—if I could real quick—was not that this is a recreational activity, but rather an employment situation where someone is being paid to act a part. And, that that part involves a sexual act. And, as a result of involving a sexual act, there comes into play the issue of workers’ safety . . . if in fact this is not an arrangement where you just say, “Hey, you know, I don’t think we have, we can’t necessarily regulate what happens in people’s houses—we don’t.” But, if there is an exchange of money that takes place—whether it be in a bathhouse or whether it be in other places—if there is an exchange of money and that is regulated and they are a business and they have . . . if they are a corporation and they have a business license and all those other things that go along with that . . . then that is what I am saying: that there is an exchange there, and there is an obligation that goes there. So I . . .

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JGnanai: I think the workers' comp situation—if someone fell off the ladder at their job and they got hurt, you know, and it kept happening—that employer is going to be paying a whole lot of money for workers' compensation. So, this is one particular industry or one particular production company that is continually having people with STDs off of work and getting workers' comp, you know, they are going to start paying a whole lot of money and eventually that is going to start hurting them and they are going to start saying, "Hold up, maybe we should think about this."

WE: Thanks. Do you have a comment (*to Traci Bryant*)? And, then we will get to Jeff. I apologize.

LJ: Yes. I just wanted to quickly comment about why there aren't more performers here to be in support of legislation, and I think that is partly due, I am pretty sure, that because of the repercussions in the industry that they are working in. So, I just wanted to put that out there—for fear of being blacklisted.

WE: Thank you. Jeff?

JGnanai: Yes, and I am tailing right off of that, because that is an important consideration. We've skirted around a couple of things here, and I really want to emphasize that and my personal experience is fairly close to the, I will say, the older porn industry. Not as a performer, but as a life partner of someone who was a name brand star—who could make \$20,000 for one film. That whole generation is dead. While most of them had HIV and AIDS, most of them did not die from HIV and AIDS. So what I want to point out is that by today's standards, in sheer numbers, an actor, a performer, is going to make a couple hundred, \$300, \$400 to perform in a film. The pool of people, the companies, will tell you and will tell that applicant for that film, "Look, you are a dime a dozen." People coming into that industry—I am generalizing here, I am going on sheer numbers, and I am certainly not talking to any one person about their stability, but generally, if you were to generalize—some of these people are very much in need, many are supporting drug habits, many just don't have it, well, perhaps (what) many of us can call "all together." And they are easy prey, because once you add coercion in there, when you are given, "Okay, do you want this \$400? Just sign this release of liability," and that is it. That is how it works. And they do sign a release of liability. That probably could never be held up in court.

As Dr. Kerndt said, we are dealing with an industry that is a little bit dark, a little bit mysterious. I know this to be true, many of you know it to be true. And, we have to realize that what we are talking about here, you know. Let's not have any pretense: we are not going to shut down porn in the San Fernando Valley; we are not going to revolutionize it by simply adding a few more teeth to an OSHA requirement. But, what we are doing is we are making a statement in my belief that is a very important statement to make. And, there is always going to be ways around it. We can't stop it—no more that in bathhouses. There are certain bathhouses today that certainly have tons of stuff going on. But, we have made an impact. We have made a statement. We have begun to normalize the thought. So, anyway . . . thanks very much.

WE: Did you have a question? Does anybody else have a question?

LK: Just quickly, if this panel can kind of address the issue. One of the things that I hear coming up in general, and the review of it is that when we talk about legislation—and I am not committed to that being the root—but I am also hearing that the legislation we are talking about is on the employer. It isn't to impose that on the person and (what) the person chooses, if that is what is happening, to work in those places. And, just like me, I would want those people to have a safe work environment and, in particular, one that encourages a positive sense of sexuality, a positive sense of sexual expression in sexual behavior, in the films that they are actually making. And, to have an employer structure that work environment in a way that is safe and clear seems like a way of doing that. So, I am wondering if you can address having this conversation in a broader way in which we may bridge the gap between the no legislation versus legislation to finding a way that protects the employer, the employee, benefits the employer in the industry, and also sends the right message out there.

PT: Well, maybe I can speak to this issue, because I do think that we have given this industry quite a long time to make, to do voluntarily, so many of the things that were recommended—even back in 2004. I am sure that some of you are familiar with the Koretz Hearings, and some of the recommendations that came out of that. And, it was decided that if the industry followed those recommendations, then that would be fine—that the industry would be safe. If they did not, then they would be subject to regulation. I think that we can clearly see that they are not following it. And, Cal/OSHA is over-strapped, and it looks like that most of their complaints do lead to citations.

But I do want to go back to the point that I was talking about earlier about screening—because remember right now (that) the onus is completely on the performer to pay for all of these tests. Sometimes the cost of these tests can approach \$400, sometimes

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even higher. Then they go onto a set, and now they have got to recoup at least what they put in. So, the temptation then is to perform more and more dangerous sex acts, because they are paid more for performing acts like double anal penetration, and things of this nature that puts them at very serious risk. And again, I just want to remind us that you could be tested today, and tonight you could go and have sex at a party or a club or with your partner and pickup an STD that you could then bring to the set a few days later . . . and, so, that puts so many people at risk.

I think we aren't really appreciating or reminding ourselves again of some of the costs of all of this. The cost to people who get sick over and over—the cost to our society. I mean because these people are also transmitting to others, both the psychological cost of getting ill, but also the productivity costs and also just the cost of treatment and so on—as opposed to the cost of a condom. What is it now: five cents? So, I just want to put that out there.

PT: So, it is industries that is worth \$4.3 to \$7 billion—based on what estimate you look at in LA County, the burden of that. The prevention side, if we even call that prevention, the screening side is still being born by the workers themselves. So, in bridging the gap about how we look at regulation, legislation, whether we regulate through legislation, how we educate, how we move this forward, and the burden I am sure is different from the five major firms that run most of the industry versus all those who are competing with and doing other kinds of things—that this may be a way of thinking about how to spread out resources that are scarce without, and if the burden is put on the employer, perhaps it won't be coming out of state funds, county funds, for example. I mean it is another aspect to look at and that is part of what I am hearing you say.

WE: Great. Are there any additional questions?

JGranai: Can I make a comment just real fast, really fast? I just want to say that there is a certain type of straight porn that you would be very hard-pressed to find, and that is any porn that includes BDSM and sex.

WE: BDSM?

JGranai: Sadomasochism activities.

WE: Thank you—just for those who may not know, like the Chair.

JGranai: You cannot tie up a woman and beat her and have sex in a show. They have it all over the Internet, but there is not a distributor out here that will touch it. They don't want anything to do with it, just because of what it infers, what the implications that are non-consensual. So, there is a standard there. Again, it is creating a standard. It is a community standard. It is putting it out there, you know, that this is something that people want, if they want to see more condoms.

WE: Joanne, let me ask you, I am going to have to, I have to do this. What it sounds to me like you are saying is that the market should really drive, is that the market should drive the industry. And particularly given the events of the last week and a half, I think we are probably all a little bit aware of what happens when the market drives, when solely the market drives something and when capitalism is unhinged completely from reasonable regulation what happens. So I am not trying to equate Wall Street with the pornography industry, but I am making the point that reasoned people can come to an idea of the way businesses act. We have regulation with regards to business transactions all the time. And with regard to the transactions between an employer and an employee. I guess what I keep coming back to is the fact that the product is set, in my estimation at least or from what I can see so far, should have no bearing whatsoever on the conversation about that very regulation between employer and employee and in those business operations. So I am not, which is odd, but I am not as caught up in the sex part as I am about the fact that these are folks that are occupationally at risk as a result of the nature of what they do and the reason they get their paycheck. That is, I guess that is what has got me kind of driven on this. But are there any other questions for the...

KWatt: I don't have a question. I have a comment kind of based on what you just said. They are also phenomenally disposable and if you can't do it, I can find the next person. So, to compare it to other businesses—I mean it is sex and that does make it not like, I don't know, somebody selling pens or whatever—they are also very oppressed and they don't have a voice for a reason. You know, like was said earlier, you know, the guy doesn't jump off that however many floors, so my seven-year-old goes, "Ewww." You know, for as long as he can think it is a guy, what am I going to do, say, "That is really a stuffed man?" I mean so they are protected, but the audience doesn't know it or blocks it out if they are older and have learned it. We haven't gotten to that place in this industry. So, it seems to me if we could get to a place in this industry where we looked at it kind of through that lens, we might have a better starting point. I mean if the stunt people were all being abused and they all went home and found out they had this staph infection that was

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going around, we would hear about it everywhere, because they are protected. The people that we are talking about and people we want to protect and see protected don't have that same space.

WE: Thank you very much. I think at this point, we want to bring it back for any comments that the Committee would like to make in general. But first I would like to ask of staff or perhaps of Dr. Kerndt, does AIM currently receive any county money to screen or in any way work with the population of actors? Do we know this? Do they have a contract with the County of Los Angeles?

PK: We have made (funds) available to AIM and to the Public Health Lab for persons who would not otherwise have funds to test. And so, I know that—I don't know the exact number or the uptake of that—but you know, we really wanted to, because in 2000 when the five persons in the industry were infected, we started working with AIM, and we said, "What about syphilis, what about gonorrhea, what about Chlamydia?" But we haven't done any screening for herpes or HPV, or for any of the enteric pathogens.

WE: I guess my question is: AIM is doing this as a result of infections that occurred, that sort of this organization popped up and it is a community-based organization. But, it is extensively certifying the fitness of actors to go on set and perform by doing testing, is that correct?

PK: I can't really answer that. It would probably be best to let AIM answer that. But AIM has claimed in the past that they had a mechanism in place, such that when a sexually transmitted disease was identified, that they would quickly be able to determine what production company and with whom and how many that person may have worked with and been exposed to or from whom they may have acquired that STD that they would be able to quickly have that individual "quarantined," so that they would not, until they were screened again. Now recent evidence suggests that that system has completely fallen apart. We have not been able to track cases of gonorrhea and chlamydia effectively to the workplace—either because that information no longer is collected or is not being provided.

WE: So in other words, people who are going to act in films for the folks that work with AIM have their actors go to AIM, get tested, get a piece of paper that says I am okay, go to their job and then the next time they want to act in a film, go back, get that certification again. But this organization, I am just trying to understand, this organization is not a governmental organization, this is not, they may use the services of the Public Health Lab, but this is not even a quasi-governmental organization that the industry, which is perfect—I have no judgment one way or another whether that is bad, good or indifferent—but it is not the Department of Public Health, we are not the, the public funds are not funding health education programs at AIM, is that correct?

PK: That is correct.

TB: They have.

WE: But they have?

TB: Yes.

WE: I am interested in knowing that, if there have been any, if AIM has received any county funds or not, because that is certainly something that would be interesting to know.

RN: Actually just a question, did we actually invite a representative from AIM to be at this event?

WE: We did, we invited Dr. Mitchell by letter and called her multiple times to ask her if she would be here today.

PK: Just to answer your question: one thing I do know is that AIM had a mechanism whereby a production company could call in and receive the results of a performer prior to a shoot or to have those results faxed out. However, we have been extremely frustrated with the investigation of some of the 2,400 STDs. We have, none of that information has been provided to us, that would lead to a production company where exposure and infection may have occurred. So, it has not been possible to follow back to the likely occupational setting in which the exposure or infection has occurred.

WE: I just want to remind our colleagues that a few years ago when we were having our hearing about regulating the bathhouses, we also had Dr. Fielding sitting right next to me as we were discussing, that was right at the time when the infections were happening in the adult film industry, as well. We had a hearing on both those topics in this city at Plummer Park and it was an extremely contentious day and hearing. It was on in which there were a lot of charges and accusations thrown both at the Department of Public

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Health and at AIM and it was a very, very contentious day. So, we certainly, this Committee in particular, certainly has a history in wading through some of these issues. Any other comments? Dr. Kerndt.

PK: Just one other: speaking of contracts we have had, in early 2000, the STD Program had a contract with AIM for testing inside the bathhouses, however . . . where AIM basically recruited a porn star to go in there and encourage individuals to be tested and that sort of thing . . . however, AIM cancelled that contract...

WE: They fired you?

PK: Yeah, they fired us, because of the delays in reimbursement primarily. But, you know, yeah . . . hat was one thing, just for the record.

WE: Any other comments. Kim?

KWoods: I think after listening to everyone today, from my perspective, I tend to agree that there aren't enough voices here from the adult film industry. And, to me, what keeps coming up is that the adult film industry operates in a certain way where there is very little accountability and performers don't have a voice. They get blacklisted. They lose their jobs. If they become infected, they no longer have a job. And, to me, if we are talking about trying to legislate anything, it has to come from the need. If the need is for protection, then it is protection around worker's comp issues. It is protection around choice. It is protection around testing and screening and proper education, and not being tossed aside or just forgotten or blacklisted. So, to me, it seems like there needs to be a more comprehensive response. It feels a little bit like a band-aid, but I am not saying I disagree with the need or use of condoms. But, I struggle when any of us tries to speak for a population. Can we speak for Native Americans? Can we speak for African Americans? Can we speak for performers? Can we speak for transgenders, if the voice isn't here to say, "Yes, I want the condoms; thank you for the legislation; that is great; it is a start and we want more." Then, I go "great." If it is I want choice and don't want to feel like I am going to be blacklisted if I so choose, then I feel like that legislation is supportive. That is my struggle as I hear it today. Again, it doesn't mean that I am saying this legislation isn't necessarily important . . . but, it seems like it needs to be much bigger.

WE: Kathy?

KWatt: I just wondered, Peter, you said there are 2,400 syphilis cases that you can't trace?

PK: Gonorrhea, chlamydia and syphilis.

KWatt: So STD cases?

PK: Yeah, STD cases, yeah.

KWatt: That you know are among performers?

PK: Well, we know that, yes, in the adult film . . . persons who have worked in the adult film industry. We know they have been, most have been treated.

WE: Thank you, Dr. Kerndt, very much. Was there more, who?

LK: Actually, if there is anyone in the audience who would like to testify in this issue, if you would just fill out a speaker form and we will invite you up.

WE: And, come on down. Darren James, can you come forward? Welcome.

Darren James (DJ): I am kind of nervous. I know I have been low-key for awhile. But, just sitting in the back, I am just trying to absorb everything. This is the first time I have been out talking, period. I just wish you guys (could) bear with me right now. I appreciate everybody showing up and passionate actors. I like the comments everybody put in. I never got a chance to talk. I really can't say too much, because of legal matters. So, I just wanted to say first, (for) the friends I do have left in the industry . . . I would really like to see the condoms. I have been through Hell. I don't think nobody here can understand what I went through, and am going through . . . even until today. It is like the retaliation is still following me. It is ridiculous. I worked in this industry seven years. You

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know, I did my job. But on your way out, you know, this is ridiculous. I hate to see another actor go through it, because maybe it would be a different story. He won't be here, and I wish somebody would do something. I'm really not good at speeches, please forgive me. I'm just a little passionate right now. I'm kind of excited, but it's just good to get out.

WE: So do you feel like, if I could ask you a question, so do you feel like putting condoms on a set or requiring companies to use condoms in the production of their films? Do you feel like that is enough? Or, what do you think the effect might be on the industry requiring condoms to be used in films?

DJ: From what I know from some actors they want to see condoms. Like if you work a lot obviously you're going to get something. There are some people in the industry say they don't get nothing. That is a bunch of crap. If your working a lot, body fluids exchanging your gonna get something. That means your working. I mean it ridiculous. It's gotten worse over the years. You know when I worked it was like sometimes you had to self medicate cause you knew you would look in on a shoot and you know something is wrong. You got tired, it's ridiculous the way it's coming through there, but who am I? I can't judge nobody as far as these actors. There are a lot of good actors, a lot of good people, but sometimes we had to work and it's got to be more than that. I think it's should be mandatory. A lot of actors are going to be pissed off at me, but everybody is mad at me right now. I just know that I did my job. I just hate to see it happen again. You know, if this is steps to try and do something better for a lot of these actors to save them as far as their health. Because do not want to go with what I've got coming out of that industry. And the way the media I've been in aviation right now. They are sending packages to my job trying to get me fired. I don't know where this stuff is coming from. I just wish somebody would listen and just do something. Because I am their nightmare right now

WE: Are there any other questions? Does anybody want to ask any questions? Kathy

KWatt: Thank you very much. I was sitting hoping you were going to come up, from walking through the parking lot. I was just hoping and I really commend you for coming up and sharing. Would you also like to see the right to refuse a part that you have been slated to do on a certain day because you feel your health would be in jeopardy or feel uneasy about the person you about to perform with? Because that's another area that I know there have been problems. It's like you can get black bald from refusing to work when you really just refusing to work, because you know your health is going to be in jeopardy. So, along with condoms (being) mandatory, not just on the set, but mandatory, would you like the protections in the workplace to turn down?

DJ: Yeah, yeah. I have seen stuff behind the cameras before you even get to the shoot. I would get mad. A lot of the guys that would try to stick by the guidelines. We would sit in the background and looking at the producer with the girl before the scene and we are like, "What the Hell is this? He is not tested." And, people don't want to talk about that. If I talk about it . . . hey, if they own me now . . . I really don't care. Because they have been after me for awhile and right now, this stuff, somebody has got to do something. Somebody, this place has got to be put in check. You talk about driving it underground—it has already been underground. We have got to sneak the shoots: run the shoots, hide. It is ridiculous. But, honestly, they don't know what I am going through, so they can't even answer for me. This is the nightmare—what you get when you go out. It was devastating from (how) the media just beat me up on top of it. The industry people turned around and have their, "village burnings". It was ridiculous. This can happen to anybody. I did the right thing. It is just that I hate to see it happen again. The way it is going—the way the STDs are just flying through this industry like crazy—it was never this bad when I first started. But nobody wants to talk about it. It was then. It was that—that is ridiculous.

WE: Great. Are there any other questions?

KWatt: So, part of what I hear you saying is I can come in, and, so I have a slip of paper that says I am safe, and I am. My shoot today is with Jeff, and Jeff has got his piece of paper, but we are not—I don't know another word to use you guys, and I know this isn't the right word—but we are not quarantined when we get to the shoot that day. So, that I know that he has only been playing Nintendo and I am reading some sappy novel and we get together and do our thing. He can be with whomever, however many times he wanted, between getting to work and us getting together, and the same with me. So, that is a whole other piece to it in the protection?

JGoodman: Thank you. And, what is a little frightening is some of my own experiences go back quite a few years. But, it is a little frightening to me to see that the practices and standards have not changed within the industry. It is very, very disheartening. But, thank you for coming up.

DJ: I appreciate it, thank you.

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WE: Any other questions, comments? Do you have anything else you want to say?

DJ: No. I have run my mouth too much.

WE: No, you haven't . . . not at all. Thank you very much for being here. Thank you for coming and talking with us. Did we have another public comment? We had another public comment from Ms. Stallworth. Did you want to make another comment?

PS: I actually had a question for the gentleman that just left.

WE: Perhaps you could just generally state a statement. We are not going to do an interplay per se.

PS: No problem. I am just wondering if his employers at the time were held to a standard where they provided workman's comp or a safer environment and made condoms available, and that there would be no difference in the price or the pay that he received—whether or not he chose to use the condoms, if he would have exercised his choice to use a condom? And, if his employer at the time had provided the proper education or the proper avenues for him to receive education in addition to providing a safe work environment where he can exercise choices to be safer, if he would have taken those options? Thank you.

WE: Thanks, Precious. Were there any general comments that the Committee would like to make as we bring this to a conclusion? Any comments, questions?

KWatt: I would just say that if people in the audience have further thoughts, let them know when our meetings are, and where they can send things. I think follow-up is going to be critical.

WE: You are absolutely right. And, I certainly want to encourage people that if there is— if you would like to send an e-mail, write a letter to the Commission, any sort of testimony that you would like to give in any other kind of format, we will certainly take that and make that part of the record. I think we can probably leave that open until our next regularly scheduled Public Policy meeting . . . Mr. Executive Director?

CV: I would say to be included—we are going to do a transcript of this— but to be included, we probably need to receive it in four or five days. We need a timeline.

WE: So can we say by the . . . so since today is Wednesday, can we say by—to give it five business days—can we say by Wednesday of next week?

CV: Thursday is the Commission meeting, so give them until Friday.

WE: Okay. So then we will keep it open until next Friday.

Mr. Marcus (MM): How are you doing?

WE: Great.

MM: So, yeah, I have been in the business about 14 years—going on 15 next January. So, I have seen a lot of changes happen in the industry. I have seen it actually when the first big change was when we were using just the ELISA test. It was like a 10-minute test we used to take over in Venice. It didn't really, you know, you learned afterwards, it didn't really do anything--because (of) what happened with Mark Wallace in like '96 or '97. And, he continued. He forged the test and continued to perform, and more people got infected that way. So, then we made the transition to the DNA PCR test. Even that wasn't good enough, obviously.

It wasn't until what happened with Darren that we decided to do the STD testing, and that was just recently. But what I found . . . what I understood, what I saw happening . . . was they caught a lot of STDs, because people that were . . . the influx of people coming into the industry has increased. There are more agents. There are more women. There are more male performers. They shoot outside California now. The industry has grown. So, you know, I think AIM has kind of . . . AIM has had to create satellite offices, just to accommodate that. And, I think that is where you see the influx of STDs—because people coming into the industry haven't

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gotten tested before that point. So, most of them had these STDs prior to performing; they just finally took a test and were made aware of it.

I think there is also a . . . there is a . . . I like the idea of condoms. I have used condoms, you know, without questions asked as a performer. But I think functionality: it is really hard to incorporate that into a business that is fast, that turns over fast, that people come and go fast. When they talk about underground, the industry is not so above (ground), you know. You only have like—I think you mentioned about five companies that are like above ground. And, they pretty much have moved to condom-optional, giving performers the choice to use condoms. It really comes down to sometimes the woman just standing her ground saying, “Yo, I am going to use condoms,” and staying to that from the beginning to the end. Because the careers in this industry are pretty short for women. And, if they hold their ground that way, they just tend to have more respect, I believe, at the end of it. They feel better about themselves too.

WE: So let me ask you, you are speaking more of straight porn in terms of . . .

MM: Yeah.

WE: So is it possible for a female actor . . . is it possible then for a female actor to walk on set and say, “Listen, I am not going to do this without a condom” and still work?

MM: You know, I push highly for people to speak up as a performer, because I believe that we don’t. You said something about stunt people: we don’t have a union. There is no group that protects us, so we have to protect ourselves. And yeah, I push that. But I believe there are producers that push back, and there are directors that push back, and performers that push back, and literally try to break someone against using condoms. And I think, yeah, that is tough.

WE: First of all, I want to thank you for being here. Do you feel like it would be . . . what do you think would happen if a law were passed that required condoms be a part of any film that shot in California?

MM: They would break it, the same way we break the Bluetooth law. Many people still run around . . .

WE: You break the Bluetooth law? *(laughter)*

MM: Yeah, you know, you want to empower people. You want to give them this. You want them to make the best possible decisions for themselves. Condoms would obviously be that. But, I also feel like our testing, you know . . . testing is always . . . if people came to me . . . I have fans who are always talking about HIV testing, and I just say, you know, “If you really want to know, just go get tested yourself. You would answer a lot of your own questions.” Because I feel like sometimes those questions are really meant for them. They want to know. I have been getting tested for 14 years and, you know, thank God nothing ever happened to me. But I saw what happened to Darren. And, I actually, you know, for a minute there, I went through that with him. But, I never went to the extent that he is going through it now. But I was made highly aware of what happens. And, it was public, you know—which I really thought was fucked up.

WE: Any other questions or comments? Any other questions? Did you have anything else you wanted to say?

MM: No.

WE: Thank you, (Mr.) Marcus. Appreciate it. Thank you so much for coming. Any other Committee comments? Any other things to say about Bluetooth or not? Any other thing?

8. COMMITTEE SUMMARY:

Well, I think what our next steps are: we are going to bring this back to the next meeting, we are going to get a transcript, we will present a summary to the full Commission and then push it out to the rest of sort of the County apparatus as the County is making a decision with regard to the sponsorship of legislation. So, I thank you for being here. I thank you for your participation. If there is no other business to come before the Committee, I am going to suggest that we adjourn. Hearing none, we will be adjourned. Thank you very much for coming.

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9. **ANNOUNCEMENTS:** There were no announcements

10. **ADJOURNMENT:** The meeting was adjourned at 5:15 pm.