

Wednesday, February 13, 2008

Something about Valentine's Day, courts, and sexual devices.

Molly Ivins on the stupidity of Texas's ban on the sale of sexual devices. She did not live to see the Fifth Circuit's ban on this ban. Happy Valentine's day. When we set aside the commercial hype around the holiday, it is a day and state of mind that focuses on the power of loving and caring, and thus -- when practiced daily -- a way to reverse the violence, nastiness and heartlessness that has run rampant in human society since the beginning. Certainly a theme of Valentine's day is sex. Thus the "Get a Heart On" party thrown each year by my college's sole co-ed fraternity. Sexual activity between consenting adults and by those practicing it in solitary fashion should be fully protected. I write more about the necessity for sexual freedom here. In relation to our adult entertainment defense, when branching out in that practice area, one day I visited the large warehouse of an adult video and accessory company. Among the inventory were all sorts of wall-to-wall sexual devices, which are also known as sex toys, among other descriptions. Having seen such products in this warehouse, at adult entertainment conventions, and at retail outlets, it all seemed harmless to me, and remains so. In this age of HIV/AIDS, such devices, when not shared, do not spread disease. Why, then, would they be banned anywhere? Nevertheless, the sale of sexual devices is banned in Virginia, Alabama, Mississippi, and Texas. Did I say Texas? No longer are such sales banned in Texas, at least for the time being. On February 12, 2008, the Fifth Circuit overturned Texas's ban on selling sexual devices. *Reliable Consultants, Inc. v. Earle*, ___ F.3d __ (5th Cir. Feb. 12, 2008). *Reliable Consultants' 2-1 panel decision* rested heavily on *Lawrence v. Texas*, 539 U.S. 558 (2003), which overturns the 1986 Supreme Court case that upheld a law criminalizing private sodomy by consenting adults. Of course, I will not be surprised if the case goes for en banc review, which may or may not spell the demise of this great panel decision. Is it a mere coincidence that this Fifth Circuit opinion comes just two days before Valentines' day? If so, how to explain that on Valentine's day 2007, the Eleventh Circuit upheld Alabama's sexual device sale ban as Constitutional? Mischievous judicial law clerks, perhaps? Meanwhile, this Fifth Circuit opinion is cause for celebration. Jon Katz. ADDENDUM: Thanks to the listserv members who brought this Fifth Circuit opinion to my attention.

Posted by Jon Katz in Criminal Defense at 19:00