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Josephson,

ADMINISTRATIVE OFFICES
325 WEST POTTER DRIVE, ANCHORAGE, ALASKA 99502

Senator Joe Josephson
Alaska State Senate
Pouch V
Juneau, Alaska 99811

April 23, 1983

Similar packets of information have been sent to the following legislators and their committees.

SENATE JUDICIARY
Ray, Eliason, Siegler, Pettyjohn

SENATE HEALTH EDUCATION AND SOCIAL SERVICES
V. Fischer, Halford, P.Fischer, Moss

SENATE STATE AFFAIRS
Sturgulewski, Rody, Kelly


HOUSE HEALTH EDUCATION AND SOCIAL SERVICES
Fritz, Tischer, M.Miller, Cato, Goll, Koponen, Davis

HOUSE JUDICIARY
Bussell, Liska, Hayes, Barnes, Malone, Clocksin, Wendte

Since some legislators, such as you, serve on several committees, only one packet has been sent to them.

If we can supply further information, or if others want the information we have included in this mailing, we will be glad to send it.

Sincerely,


Doris & Russ Riemann

~~_____~~
for ~~_____~~
~~_____~~

Nancy
-file-

*packets without
supreme court briefs
have been sent to
All senators*

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ADMINISTRATIVE OFFICES
325 WEST POTTER DRIVE, ANCHORAGE, ALASKA 99502

Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

April 23, 1983

Reference Senate Bill No. 221 "An Act Relating To Child Pornography".

As concerned parents, grandparents and as booksellers we are aware of the United States Supreme Court's ruling in New York v. Ferber, and the Court's determination not to interfere unduly with legislative judgements as to how best to proscribe the production of hard-core child pornography. However as stated by the Association of American Publishers, "The Court's opinions in Ferber did recognize the potential that a statutory scheme seeking to achieve such a result could improperly impinge upon the dissemination of materials of a non-pornographic nature which have serious literary, artistic, scientific or educational value. In responding to the Ferber decision with any new legislative initiatives you must, we submit, not merely address the problem of child abuse arising out of pornographic depictions, but also must make provision for the unfettered dissemination of non-pornographic, socially-useful materials which may involve depictions of minors engaged in otherwise forbidden sexual conduct."

In a recent attempt to amend the Federal Protection of Children Against Sexual Exploitation Act of 1977, United States Senator Arlen Specter of Pennsylvania, Chairman of the Senate Judiciary Committee's Subcommittee on Juvenile Justice, has proposed that the requirement that materials depicting minors engaged in sexually explicit conduct be legally obscene be deleted in accordance with the Ferber decision. However, Senator Specter has also proposed that the statute be amended to provide an affirmative defense if the materials, when taken as a whole, possess serious literary, scientific, social, artistic or educational value. We strongly endorse such an approach.

Similarly, state legislatures in Alabama, Pennsylvania, South Dakota, Michigan and Massachusetts, all of which have enacted bills to conform with the Ferber decision, have provided in such bills exceptions or affirmative defenses for legitimate works.

Because House Bill No. 270, or Senate Bill No. 221 in their present forms would prohibit the publication and dissemination of materials which are serious literary, artistic, scientific, social or educational works, we urge your committee to recommend the inclusion of affirmative defenses or exceptions for legitimate works.

A copy of the Brief filed in the Supreme Court of the United States on behalf of American Booksellers Association and others, regarding the Ferber case has been sent to your committee together with a copy of the statement made by the Association of American Publishers on December 8, 1982, to Senator Specter's committee. We would call particular attention to the last paragraph of page 4 and to page 5 regarding the book Show Me, and reference to a forthcoming book by G.P. Putnam's Sons. The entire statement should be helpful to the legislature in its deliberations.

We wholeheartedly endorse your goal of attempting to protect children from sexual exploitation, but ask that legislation properly accomodate First Amendment principles and protection.

If we can supply any additional information or be of assistance in any way please contact us.

Sincerely



Doris Riemann



Russ Riemann

Alexander J. Burke, Jr. Chairman
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STATEMENT OF
THE ASSOCIATION OF AMERICAN PUBLISHERS, INC.
CONCERNING PROPOSED AMENDMENTS TO THE
PROTECTION OF CHILDREN AGAINST SEXUAL
EXPLOITATION ACT OF 1977

To the Subcommittee on Juvenile Justice
Senate Judiciary Committee
December 8, 1982

The Association of American Publishers, Inc.

("AAP"), the major trade association of book publishers in the United States, submits this statement for inclusion in the record of this Subcommittee's hearings on proposals to amend the Protection of Children Against Sexual Exploitation Act of 1977 ("Act"). The impact of those proposals -- S.2856 and S.2788 -- upon book publishers is specifically addressed in the comments below.

AAP's more than 300 members represent a substantial segment of the book publishing community and are responsible for the publication of numerous prominent works concerning health, sexuality, psychology, child rearing and human development. It is AAP's belief that the book publishing industry must -- and does -- play a vital role in the production, dissemination and preservation of ideas and knowledge. AAP and

its members are committed to the belief that the free exchange of ideas through publishing is the greatest service the publishing industry can render society, and further that the public's access to such ideas in book form should not be restricted.

Towards these goals, AAP and its members have diligently followed legal developments regarding publishing generally and judicial and legislative events which may implicate First Amendment rights in particular. The efforts of Congress and state legislatures to protect children from sexual abuse by outlawing child pornography have been viewed by AAP with both interest and concern. AAP's members of course deplore the exploitation of children to support a "kiddie porn" industry and fully support legislative efforts to curb such abuses. At the same time, they are deeply troubled by statutory provisions which, in an effort to control child pornography, threaten to sweep within their grasp a variety of serious works deserving of wide availability and unrestricted dissemination.

This concern over the potential overbreadth of child pornography statutes led AAP to closely monitor the enactment of, and the subsequent litigation concerning, New York's child pornography statute. As this Subcommittee is aware, it was a prosecution under one section of that statute that was reviewed by the Supreme Court in New York v. Ferber.

AAP participated as an amicus curiae in the Ferber litigation, urging both the Supreme Court and the New York Court of Appeals constitutionally to limit the legislative arsenal against child pornography to the prosecution of (1) persons who employ minors in the creation of kiddie porn, and (2) persons who publish or otherwise disseminate depictions of sexually explicit conduct by minors, provided the works containing such depictions are shown to be legally obscene. It was, and remains, the book publishing community's concern that more wide-ranging efforts to control child pornography -- through penalties upon the dissemination of non-obscene works containing portrayals of adolescent sexual behavior -- would eviscerate the significant societal benefits to be derived from the availability of a variety of materials concerning human sexuality and adolescent sexual development without significantly enhancing the enforcement effort against truly hard core pornography. We note that Congress, in enacting the present child pornography legislation, apparently agreed with this sentiment. As the Senate Committee on the Judiciary noted in 1977, "virtually all of the materials that are normally considered child pornography are obscene under the current standards . . . In comparison with this blatant pornography, non-obscene materials that depict children are very few and very inconsequential."

AAP is of course aware that the Supreme Court in Ferber upheld the constitutionality of New York's statutory scheme prohibiting the dissemination of materials depicting specified sexual conduct by a minor even where the materials are not legally obscene. In reaching its result, the Court determined not to interfere unduly with legislative judgments as to how best to proscribe the production of hard-core child pornography and thereby avoid the perceived detrimental impact upon children used as subjects of such pornographic materials. As we discuss below, the Court's opinions in Ferber did recognize the potential that a statutory scheme seeking to achieve such a result could improperly impinge upon the dissemination of materials of a non-pornographic nature which have serious literary, artistic, scientific or educational value. In responding to the Ferber decision with any new legislative initiatives, Congress must, we submit, not merely address the problem of child abuse arising out of pornographic depictions, but also must make provision for the unfettered dissemination of non-pornographic, socially-useful materials which may involve depictions of minors engaged in otherwise forbidden sexual conduct.

AAP's concern over the potential impact of amended federal child pornography legislation on the creation and distribution of important and responsible works is far from hypothetical. At least two works of which AAP is aware

illustrate the problem. The first is a book entitled Show Me!, published in translation by the distinguished St. Martin's Press in 1975. Show Me!, authored by a Swiss child psychologist, was designed as a tool for parents to use in discussing sex with their children. This it attempts to do through explicit and realistic photographs and text. The book, while highly controversial, has been praised by educators and others as a valuable resource tool and has been purchased and read by tens of thousands of families wishing to approach the subject of sexuality in an open, frank and uninhibited manner.

The second book, to be published by G. P. Putnam's Sons in the coming months, similarly deals with a mother's efforts to educate her daughter about female sexuality, and comprises both photographs and text.

Works such as the foregoing may be controversial, but they are neither pornographic nor exploitive. That one may agree or disagree with the ideas in, or manner of communication adopted by, such works is not the point; history teaches us that it is perilous to predict which ideas will one day achieve wide acceptance. Unless we are prepared to adopt the authoritarian view that controversial teaching tools such as Show Me! have no place in our society, provision must be made in the federal legislative scheme for such works to exist and be freely available.

If Congress is to consider, in light of the Ferber decision, eliminating the requirement from § 2252 of the Act that prohibited works must be "obscene" -- a key feature both in S.2788 and S.285 -- at a minimum, provision must be made to exempt from the statute's coverage depictions of sexual conduct engaged in by minors that are contained in works that have serious literary, artistic, scientific or educational value. This approach finds support in the Ferber decision itself.

Each of the four opinions in Ferber recognized that the statute at issue in that case invited unconstitutional applications because, broadly applied, it covers depictions which do not threaten the harms sought to be prevented. Justices Brennan and Marshall expressly stated that application of such statutes "to depictions of children that in themselves do have serious literary, artistic, scientific or medical value, would violate the First Amendment." They further opined that in the case of such depictions, the argument of harm to the child resulting from the creation of a "permanent record" of his participation "lacks much of its force." Similarly, Justice Stevens recognized that "a serious work of art, a documentary on behavioral problems, or a medical or psychiatric teaching device, might include a scene from one of these films [proscribed by the statute]

and, when viewed as a whole in a proper setting, be entitled to constitutional protection."

Further support for appropriately limited statutory language is found in the opinion of the New York Court of Appeals issued on remand of the Ferber case from the Supreme Court. In a concurring opinion joined by Judge Fuchsberg, Judge Meyer stated that he would, "as a matter of state constitutional law, recognize an affirmative defense for literary, scientific, educational, governmental or other similar justification." He further stated that in his view, "without such a defense, the chilling effect. . . upon serious depictions which do not actually threaten the harms addressed by that statute will cause greater harm to this state's interest in free expression than is constitutionally permissible."

Additional precedent for legislation containing similar saving language may be found in several state statutes, some of which were enacted in specific response to the Ferber decision. While some of these provisions are, in AAP's judgment, constitutionally deficient, they nonetheless reflect commendable attempts by various states to ameliorate the problem addressed herein.

For example, a bill was recently passed in Alabama to strengthen that state's child pornography law "by making certain changes permitted by a recent United States Supreme

Court decision." The statute prohibits knowing dissemination or possession with intent to disseminate "obscene matter" containing a visual reproduction of a person under the age of 17 engaged in various enumerated acts. The statute defines "obscene" as follows:

(a) When used to describe any matter that contains a visual reproduction of breast nudity, such term means matter that

1. Applying contemporary local community standards, on the whole, appeals to the prurient interest; and
2. Is patently offensive; and
3. On the whole, lacks serious literary, artistic, political or scientific value.

(b) When used to describe matter that contains a visual reproduction of an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct, such term means matter containing such a visual reproduction which reproduction itself lacks serious

literary, artistic, political or
scientific value.

Similar, although more narrow, exceptions may be found in statutes in other states.¹

AAP urges this Subcommittee, in its consideration of possible amendments to the present law, not merely to strike the obscenity requirement from § 2252, without more. For if publishers are to be deprived of the protection afforded by the present obscenity requirement -- which change in law we do not concede to be either appropriate or necessary -- a meaningful substitute that will preserve the opportunity to disseminate serious works otherwise falling within the statute's prohibitions must be devised. S.2856 makes a commendable effort to address the problem, in

1. Pennsylvania and South Dakota have statutes which except from their reach "materials involving only nudity, if such materials are made for and have a serious literary, artistic, educational or scientific value." South Dakota Statutes § 22-22-25; Pennsylvania C.S.A. § 6312(e). Likewise, the anti-child abuse law in Michigan contains, in its definition of "erotic nudity," a requirement that the nudity be displayed "in a manner which lacks primary literary, artistic, educational, political or scientific value and which the average person applying contemporary community standards would find appeals to prurient interests." Michigan C.L.A., § 750.145c (1)(d). Still another state, Massachusetts, allows an affirmative defense in any prosecution under its child pornography law "that such dissemination of any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity was produced, processed, published, printed or manufactured for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library. . . ." Mass. Gen. Laws, Ch. 272 § 29B.

providing that exhibition of the genitals or pubic area of a minor falls outside of the statute if such exhibition has literary, artistic, scientific or educational value. But we submit that that language is inadequate.

For one thing, a showing of literary, artistic, scientific or educational value should protect depictions of "sexually explicit conduct" without regard to whether they involve merely nudity (as S.2856 contemplates) or some other conduct. From AAP's perspective, if depictions of nudity may be said to be justifiable and deserving of protection in certain instances, then it is difficult to condemn depictions of other types of sexual behavior that may equally be a part of legitimate educational or other desirable works. The book Show Me!, for example, contains several photographs which arguably depict not merely nudity but sexual exploration in the form of masturbation. Is it logical to conclude that the social value of Show Me! -- indeed, its very ability to be marketed -- should turn on precisely the form of sexual conduct depicted? We think not.

We further find inadequate the apparent intention, in S.2856, to apply the test of literary, artistic, scientific or educational value to individual depictions themselves, as apart from the works as a whole. We are frankly at a loss to understand how one would meaningfully determine whether a particular depiction of nudity, or other sexual conduct, standing alone, and outside of the context of the work of

which it is a part, has educational, scientific or other value such that it would fall outside of the reach of the statute. In a book with scores of pictures and accompanying text, such as Show Me!, is the intention to view each photograph for its own intrinsic worth? AAP submits that the provision as drafted is both vague and lacking in meaningful protection for serious works containing non-pornographic depictions. We recommend instead a test that would focus upon whether the work in which the depictions appear, taken as a whole, has serious literary, artistic, scientific or educational value.

We finally find problems with the scienter test in § 2252(a)(1) and (2), on the assumption that the term "obscene" were stricken from the present language of (a)(1) and (a)(2). The present scienter requirement is meaningful in requiring the knowing transport, shipment, or receipt of any obscene visual or print medium, as defined. In the absence of the term obscene, all that would be required would be the knowing transport, shipment, or receipt of any visual or print medium -- a meaningless scienter standard. We believe the statute, if amended to delete the obscenity requirement, should make clear that it is the transport, shipment, or receipt of materials with knowledge that such materials contain depictions prohibited under the statute that constitutes illegal activity.

Were the Subcommittee to adopt the foregoing suggestions, § 2252(a) might be amended to read as follows:

(a) Any person who -

(1) transports or ships in interstate or foreign commerce, or mails any visual or print medium, with knowledge that -

(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual or print medium depicts such conduct; and

(C) such visual or print medium, taken as a whole, lacks literary, artistic, scientific or educational value; or

(2) receives any visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, with knowledge that -

(A) the producing of such visual or print medium involves the use

of a minor engaging in sexually explicit conduct; and

(B) such visual or print medium depicts such conduct; and

(C) such visual or print medium, taken as a whole, lacks literary, artistic, scientific or educational value;

shall be punished as provided in subsection (b) of this section.

We thank the Subcommittee for its consideration of AAP's views on this important legislative subject

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Supreme Court of the United States

OCTOBER TERM, 1961

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner

—against—

PAUL IRA FERBER,

Respondent

APPEAL ON WRIT OF HABEAS CORPUS TO THE NEW YORK STATE
COURT OF APPEALS

BRIEF ON BEHALF OF AMERICAN BOOKSELLERS ASSO-
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No. 81-55

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioner,
—against—

PAUL IRA FERBER,
Respondent.

ON WRIT OF CERTIORARI TO THE NEW YORK STATE
COURT OF APPEALS

**BRIEF ON BEHALF OF AMERICAN BOOKSELLERS ASSO-
CIATION, INC., ASSOCIATION OF AMERICAN PUBLISHERS,
INC., COUNCIL FOR PERIODICAL DISTRIBUTORS ASSO-
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NATIONAL ASSOCIATION OF COLLEGE STORES, INC.,
AMERICAN CIVIL LIBERTIES UNION, THE ASSOCIATION
OF AMERICAN UNIVERSITY PRESSES, INC., NEW YORK
CIVIL LIBERTIES UNION and ST. MARTIN'S PRESS,
INCORPORATED AS *AMICI CURIAE***

The American Booksellers Association, Inc., Association of American Publishers, Inc., Council for Periodical Distributors Associations, Freedom to Read Foundation, International Periodical Distributors Association, Inc., National Association of College Stores, Inc., American Civil Liberties Union, The Association of American University Presses, Inc., New York Civil Liberties Union, and St. Martin's Press, Incorporated, (collectively referred to as "*Amici*") submit this brief *amici curiae* in support of respondent Paul Ira Ferber, pursuant to Rule 36.2 of the Rules of

this Court, urging affirmance of the decision below.¹ This joint brief is submitted upon the written consents of both petitioner and respondent.²

The Amici

American Booksellers Association, Inc. ("ABA") is a trade association composed of booksellers located throughout the United States. The Association has approximately 5,200 members consisting of private bookstores, university bookstores, and chain bookstores.

The Association of American Publishers, Inc. ("AAP") is the major national association for publishers of general and educational books in the United States. Its more than 300 members include large commercial book publishers and small or non-profit publishers, university presses and scholarly associations.

Council for Periodical Distributors Associations ("CPDA") is a national trade association for over 500 independent local wholesale distributors of magazines, comic books, paperback books, and newspapers.

The Freedom to Read Foundation, a non-profit organization supported by voluntary donations, was established in 1969 by the American Library Association to promote and defend First Amendment rights; to foster libraries as institutions wherein every citizen's First Amendment freedoms are fulfilled; to support the right of libraries to include in their collections and make available any work which they may legally acquire; and to set legal precedent for the freedom to read on behalf of all citizens.

¹The opinion of the New York Court of Appeals is reported at 52 N.Y.2d 674, 422 N.E.2d 523, 439 N.Y.S.2d 638 (1981).

²The written consents of petitioner and respondent to the filing of this brief are submitted herewith.

International Periodical Distributors Association, Inc. ("IPDA") is the trade association for the principal national periodical distributors engaged in the business of distributing or arranging for the distribution of paperback books and periodicals to wholesalers throughout the United States for ultimate distribution to retailers and the public.

National Association of College Stores, Inc. ("NACS") is a trade association composed of 2500 college and university bookstores located throughout the United States.

The American Civil Liberties Union ("ACLU") is a nationwide nonpartisan organization of over 200,000 members dedicated solely to preservation of the liberties safeguarded by the Bill of Rights. During its sixty-one year existence the ACLU has particularly been concerned with protecting the First Amendment guarantees of freedom of speech and press.

The Association of American University Presses, Inc. ("AAUP") is an educational not-for-profit association serving university presses. Its 78 members include the presses of virtually all of the most distinguished American universities, as well as several Canadian and international scholarly publishers.

The New York Civil Liberties Union ("NYCLU") is a not-for-profit corporation organized under the laws of New York State for the purpose of defending and promoting individual rights and liberties. It is the New York State branch of the American Civil Liberties Union and has over 20,000 members throughout the State. Freedom of speech and of the press have been principal concerns of the NYCLU since its inception.

St. Martin's Press; Incorporated, a member of the AAP, is a New York City publishing house. It is a subsidiary of Macmillan Publishers Limited, the 130 year old British

publisher. One of the many books it has published is *Show Me!*, a non-obscene, photographic sex education book containing explicit, sex-oriented photographs and designed primarily for use by parents in educating their children about some of the emotional and physical aspects of sex.

Interest of Amici

As representatives of writers, publishers and sellers of non-obscene books and periodicals distributed throughout the United States, as well as members of the public at large who purchase, borrow and read such materials, and the librarians who serve them, *Amici* have a vital interest in assuring that the freedoms guaranteed by the First Amendment to the United States Constitution are neither narrowed nor abridged. In the context of this case, *Amici* AAP, AAUP, ABA, CPDA, IPDA and NACS also seek to protect the rights of their members, many of whom could arguably be subjected to criminal liability pursuant to the statute under attack should the Court of Appeals decision be reversed. *Amicus* St. Martin's Press, Incorporated, is the publisher of a book, *Show Me!*, which could arguably subject it to criminal liability. Indeed, if the decision of the Court of Appeals is reversed, St. Martin's Press would again fear prosecution for the distribution and sale of *Show Me!* even though it has been found not to be obscene by three courts in three different states. See *St. Martin's Press, Inc. v. Carey*, 440 F. Supp. 1196, 1 01-1202 (S.D. N.Y. 1977), *rev'd on other grounds*, 605 F.2d 41 (2d Cir. 1979).³

³ While librarians, with whom *amicus* Freedom to Read Foundation is closely associated, are granted an affirmative defense against prosecution under Section 263.20(2) of the New York statute, a number of other state statutes covering mere dissemination of non-obscene matter, cited in Petitioner's brief (page 13, n.4), do not

(Footnote continued on next page)

This case represents an effort by a state to carve out a novel, broad and unprecedented exception to the First Amendment. The question presented here is whether, in the interest of protecting youngsters from being exploited "as subjects in sexual performances", New York can proscribe the dissemination of a broad range of non-obscene, constitutionally protected materials.

The Statute

While the Court has often been confronted with attempts by state and local governments to impinge upon First Amendment freedoms, it has never, except in the most extraordinary circumstances, upheld a statute that makes it a crime to disseminate First Amendment protected materials based solely on the nature of their content. By enacting Section 263.15 (set forth in the Appendix) (the "Statute"), the State of New York has—purely and simply—attempted to engraft into First Amendment doctrine an unprecedented and wholly unjustified exception to well-recognized classes of protected speech. The State has conceded this, boldly asserting that, ". . . regardless of whether materials which are devoted to depicting the sexual abuse of children fit into any previously recognized category of unprotected speech, prohibiting dissemination of those materials does not violate the First Amendment if the 'compelling state interest-less restrictive alternative' standard is satisfied" (Brief for Petitioner, p. 16) (emphasis supplied).⁴ The Court should reject the State's well-intentioned, but constitutionally-misguided, effort to undo

provide such an exemption and would therefore appear to criminalize the normal professional activities of librarians. *See, e.g.*, Ariz. Rev. Stat. Ann. §13-3553; Hawaii Rev. Stat. §707-751; Ky. Rev. Stat. §§11-9-1.1; Tex. Penal Code Ann., Tit. 9, §43.25(e); Wis. Stat. Ann. §940.203(4).

⁴*See* discussion *infra* at Point B concerning the State's flawed "compelling state interest-less restrictive alternative" argument.

the unbroken line of precedent granting full constitutional protection to the speech here at issue—non-obscene depictions of naked children or of adolescent sexual behavior.

For the laudable purpose of protecting children from sexual exploitation, New York has not only made it illegal in §263.05 to use a child in a sexual performance⁵ and in §263.10 to “manufacture, sell, disseminate or display” obscene materials which depict sexual conduct by youngsters under the age of 16,⁶ but also, by its enactment of the Statute, has criminalized the dissemination, sale or display of constitutionally protected non-obscene materials which portray juveniles in sexually related roles.⁷ While the proscriptions as they pertain to obscene works do not raise constitutional problems (*see Miller v. California*, 413 U.S. 15 (1974)), the prohibitions in the Statute banning the dissemination of First Amendment protected materials cannot be supported by any decision of the Court.

Under the Statute, it is a crime to participate in the public dissemination of any material which contains any depiction of actual or simulated sexual conduct by a child or “lewdly” exhibits the child’s genitals.⁸ No countervailing consideration is permitted for the artistic, literary, political or scientific merit of the work in which the photograph or other visual representation appears. According to the New York legislature, the dissemination of any material containing a depiction, actual or simulated, of juvenile sexual conduct is per se injurious to the well-being of the child, regardless of the context in which that con-

⁵ New York Penal Law, §263.05 (McKinney).

⁶ New York Penal Law, §263.10 (McKinney).

⁷ New York Penal Law, §263.15 (McKinney).

⁸ New York Penal Law, §263.00 (McKinney).

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The Misconception and Its Support

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duct is portrayed. Thus, adults in New York are deprived of their right to view or obtain, and publishers and booksellers are deprived of their right to disseminate, a broad variety of constitutionally protected materials.⁹ Cf. *Butler v. Michigan*, 352 U.S. 380 (1957).

The Misconceptions Urged by Petitioner and Its Supporting Amici

Despite the broad claims of petitioner and its supporting *Amici* ("Petitioner's *Amici*") in briefs filed here in opposition to the Court of Appeals decision, the Statute is not a "child pornography" law. The task of proscribing child pornography is amply taken care of by other sections of the New York Penal Law, specifically §263.05 controlling the creation of such materials and §263.10 prohibiting the dissemination of related obscene works. To the contrary, the Statute reaches beyond the unprotected obscene materials prohibited by §263.10. It permits law enforcement officials to enter legitimate bookstores and libraries in order to seek out non-obscene works which arguably fall within the Statute's broad proscriptions of content.

As the U.S. Senate Judiciary Committee noted in considering a proposed federal child pornography bill that prohibited the dissemination of both obscene and non-obscene depictions of sexual conduct by children:

⁹ E.g. serious compilations of artistic photographs, such as Sullivan, *Nude Photographs, 1850-1980* (1980), pp. 47, 78, 125 and 134; Ruby, *The Human Figure: A Photographic Reference for Artists* (1974), pp. 309-317; Mason, *The Family of Children* (1977), pp. 84-85; Mark, *Prostitutes of Bombay* (1981); Hamilton, *Sisters* (1973); and the works cited in footnotes 22 and 27, *infra*. The overbreadth is compounded by the fact that the Statute defines "sexual conduct" to include "lewd exhibition of genitals" (New York Penal Law, §263.00-3). "Lewd" has not been defined by the legislature and can readily be interpreted to encompass a wide variety of genital exhibition.

"The Committee also believes that the enactment of such a provision would be unnecessary. It was the opinion of the experts who testified before the Committee that virtually all of the materials that are normally considered child pornography are obscene under the current standards. Thus, they can be prohibited under the existing federal obscenity statutes. Indeed as was noted earlier, federal authorities have already begun an extensive crackdown on child pornography." S. Rep. No. 95-438, 95th Cong., 2d Sess. 13, [1978] U.S. Code Cong. & Ad. News at 50.

Consequently, regardless of the nature of the motion pictures involved in this particular case (which, from their descriptions in the brief might well have been found obscene by a jury), it would be improper to view this appeal as one involving merely the adult entertainment districts of New York's larger cities where "child pornography" may be peddled, an activity that will continue to be prohibited by §263.10 even if the Statute is not resurrected. The focus, rather, should be on the overbroad impact of such statutes on legitimate publishers, booksellers, medical schools, and libraries, many of which stock, purchase and disseminate materials of serious artistic, literary, political or scientific merit that appear to fall within the ambit of the Statute. These works are not only fully entitled to First Amendment protection, but could not, by the remotest stretch of the imagination, be said to constitute "child pornography".

Potential Consequences Beyond the Scope of This Case

A reversal of the Court of Appeals decision will signal to the states that the Court sanctions direct invasions of First Amendment protections whenever a state can articulate

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a reasonable sounding basis for doing so. Other new laws attempting to regulate a wide variety of speech are certain to follow, leading ultimately to a limiting redefinition of the scope of free expression through countless appeals to the Court. This burdensome process can easily be avoided. New York's interest in the well-being of its children is adequately protected by §263.05 prohibiting use of children in the creation of sexually related works and §263.10 which bans all child pornography.¹⁰ An affirmation of the Court of Appeals decision holding the Statute unconstitutional will signal to the states that they may properly ban both the production and sale of child pornography, as well as sexual use and abuse of children, without regard to First Amendment considerations, but that they may not criminalize the dissemination of legitimate non-obscene works.

¹⁰ See also New York Penal Law, §260.7 (McKinney) (child abuse as a crime) and New York Soc. Serv. Law, Art. 6, Tit. 7 (care and protection of children, including abused children; see §371-4-b).

A R G U M E N T

The Statute Violates the First Amendment to the United States Constitution.

The First Amendment, as interpreted by this Court, is intended to foster a wide open exchange of ideas and expression, free from state interference.

"It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests." *Cohen v. California*, 403 U.S. 15, 24 (1971).¹¹

Amici of course recognize that certain sexually explicit speech, if found obscene, is not protected First Amendment

¹¹ Justice Holmes likened First Amendment protections to a free market for ideas, only allowing individual choice to determine what information is communicated.

"[W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas.—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution." *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., joined by Brandeis, J., *dissenting*).

In accord, *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940) ("The safeguarding of these rights to speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to a free government.")

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expression. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973). New York State, however, does not attempt to justify the Statute's proscriptions based upon an obscenity standard. Its justification, rather, is that in order to protect minors from commercial sexual exploitation, the dissemination of *all* materials containing certain sexually related depictions of children, even those with serious merit, must be banned.¹² Such a drastic measure is unprecedented, finds no support in the previous decisions of the Court, and goes much further than is required to alleviate the perceived harm. Accordingly the Statute, by imposing such overbroad restrictions, should be held unconstitutional as an infringement of First Amendment rights.¹³

¹² As stated by the New York State legislature upon passage of New York Penal Law, §263.00 *et seq.*:

"The legislature finds that there has been a proliferation of exploitation of children as subjects in sexual performances. The care of children is a sacred trust and should not be abused by those who seek to profit through a commercial network based upon the exploitation of children. The public policy of the state demands the protection of children from exploitation through sexual performances.

"The legislature further finds that the sale of these movies, magazines and photographs depicting the sexual conduct of children to be so abhorrent to the fabric of our society that it urges law enforcement officers to aggressively seek out and prosecute both the peddlers of children and the promoters of this filth by vigorously applying the sanctions contained in this act." Legislative Findings and Declaration, New York Penal Law, §263.00 (McKinney).

¹³ In fact, the only decisions known to *Amici* construing the constitutionality of statutes such as the one in issue in this case have found them unconstitutional. *St. Martin's Press v. Carey*, 410 F. Supp. 1196 (S.D.N.Y. 1977) *rev'd on other grounds* 605 F.2d 41 (2d Cir. 1979); *State v. Shingaki*, Hawaii Cir. Ct., 1st Cir., Cr. No. 54385, Apr. 27, 1981. *See also*, Pope, *Child Pornography: A New Role for the Obscenity Doctrine*, 1978 U. Ill. L. Forum 711, 743-44 ("New York's rejection of the obscenity doctrine [§263.15] appears patently unconstitutional.")

A. Section 263.15 Does Not Fall Within Any of the Established Exceptions to the First Amendment

In *Roth v. United States*, 354 U.S. 476 (1957), the Court noted the obvious: “. . . sex and obscenity are not synonymous” (at 487). For this reason, the Court recognized,

“It is therefore vital that the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest.” *Id.* at 488.

The principle enunciated in *Roth*—that treatment of the subject of sex will be accorded constitutional protection unless the material in issue is found to be legally obscene—remains bedrock constitutional doctrine. Thus, in *Miller v. California*, *supra*, 413 U.S. at 29, the Court unequivocally announced: “[T]oday . . . a majority of this Court has agreed on concrete guidelines to isolate ‘hard core’ pornography from expression protected by the First Amendment.” *Accora: Paris Adult Theatre I v. Slaton*, *supra*, 413 U.S. at 69 (“We have directed our holdings, not at thought or speech, but at depiction and description of specifically defined sexual conduct that States may regulate within limits designed to prevent infringement of First Amendment rights”); *Kaplan v. California*, 413 U.S. 115, 119-20 (1973) (pictures, films, printed words “have First Amendment protection until they collide with the long-settled position of this court that obscenity is not protected by the Constitution”).

It is precisely because non-obscene sexual expression “taken as a whole” contains “serious literary, artistic, political or scientific value,” *Miller v. California*, *supra*, 413 U.S. at 24, that such expression is entitled to First Amendment protection “regardless of whether the government or a

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majority of the people approve of the ideas these works represent." *Id. See also Cohen v. California, supra*, 403 U.S. at 24-25 (unpleasant or offensive consequences of free expression constitute the "necessary side effects" of achieving "the broader enduring values" promoted by such expression).

In light of the foregoing, the New York Court of Appeals was entirely correct in finding overbroad the State's total prohibition of the dissemination of "non-obscene sexual performance involving children," 52 N.Y.2d at 678, and in recognizing that, "no matter what the government's objective, First Amendment standards remain applicable whenever the effect of a government regulation is to curtail protected modes of expression." 52 N.Y.2d at 679. This does not mean that a state may not curtail the use of children in the creation of child pornography. It is constitutionally free to do so, as New York has, by punishing those who employ or induce children to engage in proscribed forms of sexual conduct. To the extent a state wishes to curtail the publication or dissemination of materials depicting adolescent sexual activity by those having no relationship to the actual child abuse, it may also constitutionally do so, but only as § 263.10 provides, by punishing those who publish or disseminate legally obscene materials depicting such conduct.

Notwithstanding that the speech sought to be curbed by the Statute is non-obscene and hence entitled to constitutional protection, New York urges rejection of such "overly simplistic First Amendment analysis" (Brief for Petitioner, p. 7) in favor of the crafting of a massive constitutional loophole. This loophole, however, would enable the government to prohibit otherwise protected expression whenever it arguably promotes illegal activity. Thus, the State as-

serts, without benefit of any supporting authority: "Section 263.15 . . . is premised on the sound idea that the state can properly forbid distribution of materials produced in a certain manner if the state has properly prohibited that manner of production." Brief for Petitioner, p. 10. It is the State's contention that the ban on dissemination of non-obscene protected expression is constitutional solely because it furthers the State's interest in protecting children from child abuse. *Id.*

Amici have been unable to find a principled basis on which to justify the State's position; in fact, there is none. In considering the State's position, the Court must of course be guided by the recognition that exceptions to classes of speech entitled to First Amendment protection are few, "well-defined and narrowly limited." *Cohen v. California*, *supra*, 403 U.S. at 19-20; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942). *See also Hess v. Indiana*, 414 U.S. 105 (1973). The expression proscribed by the Statute fails to fall within the obscenity exception. Neither does that speech fall within any of the other established exceptions, *e.g.*, fighting words (*Chaplinsky v. New Hampshire*, *supra*), defamation (*see New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)), or incitement to imminent lawless activity (*see Brandenburg v. Ohio*, 395 U.S. 444 (1969)). The State is thus asking the Court to adopt an entirely new exception to the First Amendment, unsupported by precedent. To accede to this request would require the Court to exclude from First Amendment protection all speech that has a tendency to make illegal activity more likely, since that is the only connection alleged by the State between the speech to be suppressed and a legitimate state purpose. Such an expansive new exception, however, is both unwise and unwarranted.

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The required nexus between the speech sought to be censored and the illegal conduct said to be provoked thereby has previously been addressed by the Court. In *Brandenburg v. Ohio*, *supra*, 395 U.S. at 447 and *Hess v. Indiana*, *supra*, 414 U.S. at 108, the Court delineated the limited situations in which speech may be suppressed on the basis that it is likely to cause illegal conduct taking the form of street violence. According to the Court in *Brandenburg*,

“the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” *Brandenburg v. Ohio*, *supra*, 395 U.S. at 447, quoted in *Hess v. Indiana*, *supra*, 415 U.S. at 108.

There is simply no compelling reason to dilute the *Brandenburg* test to accommodate the Statute. *Cf. Carey v. Population Services International*, 431 U.S. 678, 701 (1977). As discussed above, the cost of such a contraction of First Amendment rights is substantial. As the Court stated in *Cohen v. California*, *supra*, 403 U.S. at 24, “most situations where the State has a justifiable interest in regulating speech will fall within one or more of the various established exceptions.” Surely, in an area of First Amendment doctrine as well-explored as the issue of the illegal conduct “caused” by speech, the fact that the Statute fails the established test as completely as it does demonstrates clearly its unconstitutionality.

B. *The Statute's Restriction on Speech Is Not Content Neutral; Nor Is It the Least Restrictive Alternative Available to Promote the State's Purpose*

The Statute, imposing restrictions on the content of First Amendment protected speech, is unconstitutional, especially since there are less restrictive alternatives available. Although the State relies heavily upon this Court's decision in *United States v. O'Brien*, 391 U.S. 367 (1968),¹⁴ to support the Statute, such reliance is misplaced.

O'Brien involved the prosecution of a demonstrator for burning his draft card in public to protest against the Vietnam War. He was tried under the 1965 Amendment to §12(b)(3) of the Universal Military Training and Service Act (50 U.S.C. App. §462(b)(3)), which makes it a crime "knowingly" to destroy or mutilate a selective service registration certificate. *O'Brien* argued that the statute violated the First Amendment by effectively denying to him his right to express disapproval of the war by the act of burning his card.

Finding the statute constitutional, the Court set out the test to be applied when a law regulating conduct is challenged as violative of the First Amendment:

"[A] governmental regulation is justified . . . [1] if it furthers an important or substantial government interest; [2] if the governmental interest is unrelated to the suppression of free expression; and [3] if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.*, at 377.

Here the Statute regulates the conduct of *Amici* and others similarly situated by proscribing the dissemination

¹⁴ See Brief for Petitioner, p. 11.

of certain constitutionally protected works. Assuming, arguendo, that such a prohibition is rationally related to the furtherance of a legitimate concern of the State of New York (at least to the extent that the minors protected are residents of the State of New York) and thus complies with the first of the criteria,¹⁵ it nonetheless fails to meet the other two.

The harm allegedly protected against is not, as required by the second part of *O'Brien*, unrelated to the suppression of First Amendment rights.¹⁶ The Statute is directed only at materials which portray certain juvenile sexual activities. Consequently, it is the harm perceived to be caused by the message itself which has led to criminalization of the works covered by the Statute.

In similar contexts, the Court has not sanctioned indiscriminate direct invasions of First Amendment freedoms. When students were suspended from school for wearing armbands in protest of the Vietnam War, their suspensions were overturned. The Court's decision emphasized that the suspensions were invalid because they were made pursuant to a regulation which banned only the specific form of expression chosen by the students.

¹⁵ *Amici* do not deny that §263.05, barring the actual "use" of children, furthers the legitimate and important state interest in protecting children from sexual child abuse. The relation, however, between the dissemination offenses and the desire to prevent child abuse is, of course, far more tenuous. Section 263.10, dealing with "obscene" matter, is presumptively constitutional under *Miller v. California*, *supra*, whether or not it otherwise furthers the State's interest in child protection. The Statute, on the other hand, is far removed both from the actual criminal abuse and from the dissemination of materials without constitutional protection. Therefore, in *Amici's* view, it raises far more difficult questions, even under the first branch of the *O'Brien* test. In this respect the burden is on the State. *Elrod v. Burns*, 427 U.S. 347, 362 (1976).

¹⁶ See, for example, note 12, *supra*, wherein the State interest, as expressed by the New York legislature, is set forth.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

In another case, when a protestor was convicted of disturbing the peace merely for wearing a jacket containing a disquieting epithet directed toward the military draft, the Court once again found that the state action was unconstitutional. California, by its prosecution of the protestor, unconstitutionally intended to shield the public from the form of the communication chosen. *Cohen v. California*, *supra*.

Only where the regulation of conduct is "content neutral" (see *United States v. O'Brien*, *supra* and *Prince v. Massachusetts*, 321 U.S. 158 (1944)¹⁷) or where the restriction on expression is "minimal" (*Young v. American Mini Theatres Inc.*, 427 U.S. 50 (1976); *Schad v. Borough of Mount Ephraim*, — U.S. —, 101 S.Ct. 2176 (1981)) has the Court tolerated the concomitant abridgement of First Amendment protections.

The Statute is not "content neutral". It is aimed only at certain sexually related speech and ignores other communications or expressions which may similarly cause injury to young juveniles. See *People v. Ferber*, 52 N.Y.2d at 680-81. By singling out only works depicting certain conduct, the Statute is patently unconstitutional. Cf. *Tinker*, *supra*, 393 U.S. at 510-11; and *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 (1975). Nor is the restriction minimal; it is, in fact, absolute.

Even if the Court were to find the Statute "content neutral," it still must fall under the third criterion of

¹⁷ See also, Ely, *Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis*, 88 Harv. L. Rev. 1482, 1496-1502 (1975).

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O'Brien in that it restricts First Amendment freedoms to a greater extent than is necessary.

As evidenced by the legislative policy statement issued upon passage of the Statute,¹⁸ New York is primarily concerned with eliminating the sexual exploitation of persons under age 16. This result is still achieved if the Statute is declared unconstitutional in that separate provisions in the New York Penal Law already proscribe the creation as well as dissemination of child pornography.¹⁹ Section 263.05 makes the use of children in the creation of child pornography illegal while §263.10 bans its dissemination. These are sufficient to not only effectuate the state policy of protecting youths from sexual exploitation, but, as a less restrictive alternative, also avoid any infringement of First Amendment freedoms by not also criminalizing non-obscene works. See *Schad v. Borough of Mount Ephraim*, *supra*, 101 S. Ct. at 2183.

C. New York's Interest in Protecting the Welfare of Children Living Within the State Does Not Justify the Denial of First Amendment Rights

Petitioner claims that New York's interest in the protection of its children is sufficiently compelling so that constitutional rights to publish, distribute and sell certain non-obscene materials can be restricted. The State urges that it is "physically, psychologically and emotionally harmful" for a child to be depicted engaging in various categories of sexually related conduct in any work, regardless of its legitimate value.²⁰

¹⁸ See note 12, *supra*.

¹⁹ New York Penal Law §§263.05 and 263.10 (McKinney).
See also the statutes regulating child abuse cited in fn. 10, *supra*.

²⁰ See Brief for Petitioner, pp. 14-15.

This very argument, that a state's interest in protecting the reputation and emotional well-being of its youths outweighs First Amendment freedoms, has previously been made to, and rejected by, the Court. In *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), a newspaper printed the name of a juvenile offender in violation of a West Virginia law which prohibited such a publication absent the prior written approval of the Juvenile Court. The State urged that the law was a constitutional attempt to protect the welfare of West Virginia youths who become enmeshed in the criminal process at a young age.²¹ Chief Justice Burger, writing for seven of the eight justices who heard the case, rejected the argument that such an interest could outweigh First Amendment rights.

"... [T]he reasoning of *Davis* [v. Alaska, 415 U.S. 308 (1974)] that the constitutional right must prevail over the state's interest in protecting juveniles applies with equal force here.

"The magnitude of the State's interest in this statute is not sufficient to justify application of a criminal penalty to respondents." *Id.*, at 104.

Similarly, in *Cor Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), the Court denied enforcement of a Georgia statute which, in effect, deprived the media of its right to publish or broadcast the name of a rape victim in order to protect her family's right of privacy.

²¹ The state interest is described in the Court's opinion as follows: "The sole interest advanced by the State to justify its criminal statute is to protect the anonymity of the juvenile offender. It is asserted that confidentiality will further his rehabilitation because publication of the name may encourage further anti-social conduct and also may cause the juvenile to lose future employment or suffer other consequences for this single offense." *Smith v. Daily Mail Publishing Co.*, *supra*, 443 U.S. at 104.

Here, like *Smith* and *Cor.*, the enunciated state interest cannot prevail over the First Amendment rights of *Amici* and others to disseminate legitimate works which contain non-obscene depictions of juvenile sexual conduct.

D. *The Amended Statute, by Failing to Provide an Exemption for Medical, Scientific or Educational Material, Is Overly Broad and Unconstitutional*

An absolute prohibition of the dissemination of all works which depict children engaged in certain categories of sexually related conduct, regardless of obscenity, clearly regulates protected speech. The State so concedes in its brief. (Brief for Petitioner, p. 26.) If the Statute is upheld, *Amici's* publisher, distributor, and bookseller members will be denied their right to disseminate a wide range of medical, scientific and educational works which, as an essential part of their content, contain sexually related pictures of naked youths.²²

This Court has repeatedly stressed that laws are overbroad and unconstitutional when they restrict First Amendment freedoms in the process of regulating unprotected expression.

"A . . . threat is inherent in a penal statute, like that in question here, which does not aim specifically at evils

²² See, e.g., Falkner, *Human Development* (1966), pp. 184-221 (This text is geared toward educating physicians, scientists and students studying anatomy, genetics, biochemistry, physiology, psychology and behavioral science and in furtherance thereof, contains explicit photographs of minors displaying various genital deformities); Waldo, *Textbook of Pediatrics* (1979), pp. 1567-1570, 1623-1630 (Basic pediatric text dealing with diagnosis and treatment); Rudolph, *Pediatrics* (16th Ed. 1977), pp. 1328, 1608, 1678, 1713-14, 2015 (Pediatrician's desk book for diagnosis and treatment); Forfar and Ariiel, *Textbook of Pediatrics* (1973), pp. 1052-55, 1115 (Pediatrician's desk book for diagnosis and treatment); and Lightwood, Brimblecombe and Barltrop, *Paterson's Sick Children* (9th Ed. 1971), pp. 203, 206, 208 (Text dealing with diagnosis of children's diseases).

within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." *Thornhill v. State of Alabama*, 310 U.S. 88, 97-98 (1940).²³

Furthermore, the Court is not constrained by the facts of this case in determining the constitutionality of the Statute.²⁴ When a law is attacked on overbreadth grounds, the Court must look beyond the record to other unrelated potentially improper applications of the regulation at issue:

"[T]he instant decree may be invalid if it prohibits privileged exercises of First Amendment rights whether or not the record discloses that the petitioner

²³ See also *Erznoznik v. City of Jacksonville*, *supra*, 422 U.S. at 216 ("This Court has long recognized that a demonstrably overbroad statute or ordinance may deter the legitimate exercise of First Amendment rights."); and *Dombrowski v. Pfister*, 360 U.S. 479, 486 (1965).

²⁴ While it is true that Ferber was convicted under the Statute and acquitted under §263.10, it is likely that the jury's unwillingness to impose a double penalty, and not the nature of the seized films' contents, was the reason for such action. Due to their similar wording, a defendant cannot be convicted under §263.10 without also being found guilty under the Statute because all "obscene" sexual performances violate both provisions. Had only §263.10 been on the books, it is likely that Ferber would have been convicted under that statute. (See Brief of Amici Keating and Citizens for Decency Through Law, pp. 30-31) Consequently, the nature of the films which formed the basis for Ferber's conviction should not be regarded as illustrative of the kinds of works proscribed by the Statute.

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has engaged in privileged conduct. For in appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute in other factual contexts besides that at bar." *N.A.A.C.P. v. Button*, 371 U.S. 415, 432 (1963)

As noted, the State readily admits that protected expression is proscribed by the Statute, but proposes that such overbreadth be ignored here and dealt with on a case-by-case basis in later criminal prosecutions.²⁵ The Court has previously considered and emphatically rejected similar proposals.

"When the statutes also have an overbroad sweep, as is here alleged, the hazard of loss or substantial impairment of those precious rights may be critical. For in such cases, the statutes lend themselves too readily to denial of those rights. The assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights is unfounded in such cases. See *Baggett v. Bullitt*, supra, 377 U.S. at 379. For '[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions . . . ?' *N.A.A.C.P. v. Button*, 371 U.S. 415, 433." *Dombrowski v. Pfister*, supra, 380 U.S. at 486.

Cf. Gooding v. Wilson, 405 U.S. 518, 520-21 (1972).

²⁵ See Brief for Petitioner, p. 26:

"To take an instance cited by the court below (App. A. at 5a) in the unlikely event that a person would ever be prosecuted for showing 'a filmed report of New Guinea fertility rites,' that person could interpose a defense based on the unconstitutionality of the statute as applied. Given the legitimate breadth of the statute, these limited situations can be dealt with on a case by case basis, without resort to the drastic remedy of declaring the statute unconstitutional on its face."

These are not hypothetical concerns. *Amici's* members, publishers and distributors of legitimate materials, face the real threat of criminal prosecution pursuant to the Statute's overbroad prohibitions. Apart from actual prosecution, the "chilling effect" of such an overbroad statute is equally real. The New York legislature's failure to include an exemption for medical, scientific and educational works, as well as the coexistence of §§263.10 and 263.15, is conclusive of its intent to regulate, by the Statute, both protected and unprotected expression. In light of this obvious overbroad legislative intent, recognized by the Court of Appeals below, the Statute cannot be construed narrowly. *Cf. Prince v. Massachusetts, supra*, 321 U.S. at 163. The Court should, therefore, find the Statute unconstitutional on its face and permanently enjoin the State from its enforcement.

E. By Allowing the Moral Values of Some to Dictate What May Be Read by All, the Statute Impermissibly Infringes Upon the Rights of Parents and Teachers to Educate Children About Sex With the Aid of Materials Designed to Deal With the Subject in a Frank and Non-Obscene Manner

Among our most sacred freedoms are those protected by the First Amendment to the United States Constitution. *N.A.A.C.P. v. Button, supra*. They ensure that no person or group will ever be able to set out the subjects about which we can read, think or teach. *Cf. Cohen v. California, supra*. The State and Petitioner's *Amici*, however, seek to impose their view of morality upon the State of New York by banning the protected works covered by the Statute. The Court in *Near v. Minnesota*, 283 U.S. 697 (1931) rejected a similar attempt to restrict the scope of First Amendment freedoms:

"If the town paper for n habitants n: its circulati- is no limit t violent reac nization of this consid with the in tional prote words." *Id.*

A focal point *Amici* is the em of young juven nography". In t non-obscene w misleading. "T tious writing children are d tific, literary by definitly "child por

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“If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited.’ The danger of violent reactions becomes greater with effective organization of defiant groups resisting exposure, and if this consideration warranted legislative interference with the initial freedom of publication, the Constitutional protection would be reduced to a mere form of words.” *Id.* at 722.

A focal point of the briefs of Petitioner and Petitioner’s *Amici* is the emphasis placed upon calling all photographs of young juveniles engaged in certain conduct “child pornography”. In the context of the Statute, which proscribes non-obscene works, use of such a term is erroneous and misleading. “Pornography” is defined as “obscene or licentious writing, painting, or the like”.²⁶ Where, however, children are depicted in materials which *have* serious scientific, literary, political or artistic merit, those works are not, by definition, obscene. They should not be categorized as “child pornography.”

Within this group of materials, the dissemination of which is criminalized by the Statute, are pictorial texts intended to aid parents and teachers in educating children about anatomy, sex and sexual relationships.²⁷ The authors

²⁶ *Webster’s New International Dictionary* (2d Ed. 1957), Unabridged, p. 1922; See also, Black, *Black’s Law Dictionary*, 5th Ed., West Publ. Co., 1979, p. 1075.

²⁷ See, Waxman, *Growing Up Feeling Good; A Child’s Introduction to Sexuality* (1979) (Touches human sexuality to children by discussing love, love making and genital development. Using pictures to supplement the written material); Waxman, *What is a Girl? What is a Boy?* (1976) (Very basic pictorial essay)
(Footnote continued on next page)

of these works uniformly believe that there is a psychological benefit to being exposed to such materials at a young age. It is thought that by seeing pictorial presentations of sex in an open and unembarrassed manner, youths will not need to learn about relationships, birth control and pregnancy on street corners, and, further, can more easily develop into mature, aware adults.

The *President's Commission on Obscenity & Pornography* ("President's Commission") came to a similar conclusion in its 1970 report where it stated:

"Biological studies indicate that boys and girls enter pubescence earlier than formerly was the case, and, as a result, are aware of their sexual feelings earlier. It is highly desirable at this stage in their development that they receive straightforward information from their parents, from the school, and from qualified community agencies. . . .

• • •

"A study by Offer (1969) defines the levels of sexual development that young people in high school and college experience, and suggests that as interest in the opposite sex begins to crystallize, attitudes are more important initially than overt sexual behavior. These developing attitudes must be based on accurate and complete information regarding sexuality if subsequent behavior is to be responsible and mature.

of anatomy geared toward children. Designed to teach the differences between males and females.); Goldstein, Haeberle and McBride, *The Sex Book, A Modern Pictorial Encyclopedia* (1971) (Pictorial encyclopedia of anatomy and sexuality with accompanying text.); McBride and Fleischhauer-Hardt, *Show Me!* (1975) (A picture book of anatomy and sexual relationships for parents and children.); and Nass, Libby & Fisher, *Sexual Choices* (1981) (Text book for college classes studying human sexuality which includes photographs of naked children as an aid to understanding the textual material).

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Included in such persons under these books can find ment from child all Americans in honest rendition the best way to would be contrary those parents who such materials t York, 390 U.S. deny parents th v. California, are offended by "simply by a

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"Sex education, then, must be expanded and more fully developed as an integral element of general health education to insure its adequacy to meet the needs of the whole community. *Both parents and young people require adequate sources of reliable information, and the community should provide these sources through its trained personnel and institutions.*" Report, Bantam Books Edition, pp. 312-13. (emphasis added)

Included in such works, of necessity, are depictions of persons under the age of 16 so that the youngsters reading these books can fully understand their own sexual development from childhood to puberty through adulthood. While all Americans may not agree that non-obscene pictorially honest renditions of anatomy and sexual relationships are the best way to educate children about human sexuality, it would be contrary to our Constitutional freedoms to deny those parents who choose to have their children taught with such materials their right to do so. *See Ginsberg v. New York*, 390 U.S. 629 (1968).²⁵ The statute, however, would deny parents this choice. As stated by the Court in *Cohen v. California*, *supra*, 403 U.S. at 21, those individuals who are offended by such texts can avoid exposure to them "simply by averting their eyes."

By permitting books to be banned in the manner contemplated by the Statute, the Court would be impliedly saying to children that sex is a subject which can be dis-

²⁵ In *Ginsberg*, the Court stated:

"First of all, constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society. 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' *Prince v. Massachusetts*, *supra* at 166." *Id.* at 639.

ussed openly only in back alleys and on street corners. It is this attitude that the President's Commission concluded must be eliminated if our society is to ever outgrow its preoccupation with pornography:

"Sex education, *straightforward and adequate begun in the home*, continued in school, and supplemented by community agencies such as religious, medical and other service institutions, can reduce interest in pornography as a source of information and can assist in developing a healthy attitude toward sexuality." Report, p. 312. (emphasis added)

The Court must not allow the moral values of some to be thrust upon all. Individual choice is the cornerstone of a free society. The Statute, as a proscriptive law aimed at eliminating only certain forms of protected speech, should be held unconstitutional as denying New Yorkers of their right to free expression.

F. The Statute Cannot Be Saved by Analogies to So-Called "Trafficking" and "Contraband" Laws Which Require the Existence of an Underlying Crime and That the Speaker Be Directly Involved in That Criminal Activity

Amicus curiae Covenant House, in its brief (pp. 19-22), attempts to support the constitutionality of the Statute by analogy to the so-called "trafficking" and "contraband" laws, i.e., federal criminal statutes which ban certain transmissions and communications involving, or made with the knowledge of, various underlying crimes. The "trafficking" statutes referred to by Covenant House relate to the transmission of wagering information (18 U.S.C. §1054) and the promotion of racketeering activities (18 U.S.C. §1952); the contraband statutes referred to prohibit the disclosure of information obtained through illegal wiretapping (18 U.S.C.

§2511(1)(c)) and oppressive child labor laws, however reasons.

First, the Statute below, bars the pictures taken in the country where *v. Ferber*, 52 House support graphs may have violated any law crime, as is required by "band" statutes

In addition, the Statute can be seen as a law for disseminating words reasonably believed to be true or outside the scope of the crime.

Petitioner's argument is no different from the products market

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§2511(1)(c)) and the sale of products manufactured with oppressive child labor (29 U.S.C. §212(a)).²⁹ These analogies, however, fall wide of the mark for two important reasons

First, the Statute, as recognized by the Court of Appeals below, bars the dissemination of works even if they contain pictures taken outside New York "in another State or country where such conduct may not be prohibited." *People v. Ferber*, 52 N.Y.2d at 680.³⁰ Petitioner and Covenant House support this interpretation.³¹ Thus, since the photographs may have been taken where their production did not violate any law, there is not necessarily an underlying crime, as is required in all the "trafficking" and "contraband" statutes cited by Covenant House.

In addition, due to its multi-jurisdictional application, the Statute can subject a seller to criminal liability for disseminating works which contain photographs that he reasonably believes were legally taken outside New York State or outside the country since knowledge is not an element of the crime.

Petitioner and Covenant House also assert that the Statute is no different in principle than the prohibition of the products manufactured with child labor in violation of 29

²⁹ Petitioner also makes a similar argument concerning the child labor laws at pages 17-18 of its brief.

³⁰ In *St. Martin's Press, Inc. v. Cory*, 605 F.2d 41, 44 (2d Cir. 1979) the majority opinion suggested that the New York courts would interpret the Statute not to include films or photographs produced outside the United States. This interpretation, however, was squarely rejected by the New York Court of Appeals in the decision below. In fact, at the trial of this case, the Respondent himself attempted to prove that the films in question were taken and produced in Europe, but his offer of proof was disallowed as irrelevant.

³¹ See, Brief for Petitioner, pp. 29-32; and Brief of Covenant House, pp. 23-25.

U.S.C. §212. The child labor laws, however, unlike the Statute, clearly do not infringe upon protected speech. *Protection of Children from Use in Pornography: Toward Constitutional and Enforceable Litigation*, 12 Mich. L.J. Reform 295, 316 n.127 (1979). It is one thing to say that children cannot be hired to produce a newspaper. It is quite another thing to argue that it cannot be sold because it contains photographs of child labor.

This distinction was recognized by the Court in *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946) where it stated:

"The broadside assertion that petitioners 'could not be covered by the [Fair Labor Standards] Act,' for the reason that 'application of this Act to its newspaper publishing business would violate its rights as guaranteed by the First Amendment,' is without merit. If Congress can remove obstructions to commerce by requiring publishers to bargain collectively with employees and refrain from interfering with their rights of self-organization, matters closely related to eliminating low wages and long hours, Congress likewise may strike directly at those evils when they adversely affect commerce. *The Amendment does not forbid this or other regulation which ends in no restraint upon expression or in any other evil outlawed by its terms and purposes.*" 327 U.S. at 192-193 (citations omitted; emphasis added)³²

Second, the federal laws cited by petitioner and Covenant House banning certain communications require not only the

³² The Court added in a footnote to the above statement in *Oklahoma Press Publishing Co.*, that "[n]o question is presented whether Congress could enforce its mandate by excluding from commerce the circulation of a publisher refusing to conform." 327 U.S. at 193 n.8.

existence of an unassertion of Communicating be in underlying crime. seller to liability. do with the origin nothing about it.

For this reason information regarding sheets" are prosecuted §1084(b); *U.S. v. Kelly v. Illinois* 1 Ill. 1962), *aff'd*, 3: been held that it "speaker" not it would be in violation *Illinois Bell Tele*

In contrast, the by the dissemination or any knowledge violation of law. violation of the S in violation of §2 was not a crime

It is apparent that Petitioner's actions are criminal

existence of an underlying crime, but also, contrary to the assertion of Covenant House,³³ the person doing the communicating be involved with, or have knowledge of, the underlying crime. The Statute, to the contrary, subjects a seller to liability even though he may have had nothing to do with the original production of the picture and knows nothing about it.

For this reason, neither newspapers which merely convey information regarding illegal activities nor gambling "tip sheets" are proscribed by either §1084 or §1952. 18 U.S.C. §1084(b); *U.S. v. Alpirn*, 307 F.Supp. 452 (S.D.N.Y. 1969); *Kelly v. Illinois Bell Telephone Co.*, 210 F.Supp. 456 (N.D. Ill. 1962), *aff'd*, 325 F.2d 148 (7th Cir. 1963). Indeed, it has been held that if statutes such as these did apply to a "speaker" not involved with the underlying crime, they would be in violation of the First Amendment. *Kelly v. Illinois Bell Telephone Co.*, *supra* at 465.

In contrast, the Statute does not require any involvement by the disseminator in the actual photographing of a child or any knowledge by him that the photograph was taken in violation of law. The dissemination of a work can be in violation of the Statute even though its production was not in violation of §263.05, and, indeed, even if such production was not a crime of any kind.

It is apparent, therefore, that the analogies drawn by Petitioner and Covenant House to interstate communications and distribution proscriptions where they relate to criminal activities are without merit.

³³ See Brief of Covenant House, p. 20.

CONCLUSION

For the reasons set forth above, the Statute is unconstitutional, and therefore the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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Distributors Associations, Freedom
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Of Counsel

APPENDIX

APPENDIX

Relevant Statutory Provisions

§263.00 *Definitions*

As used in this article the following definitions shall apply:

1. "Sexual performance" means any performance or part thereof which includes sexual conduct by a child less than sixteen years of age.

2. "Obscene sexual performance" means any performance which includes sexual conduct by a child less than sixteen years of age in any material which is obscene, as such term is defined in section 235.00 of this chapter.

3. "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

4. "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience.

5. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

6. "Simulated" means the explicit depiction of any of the conduct set forth in subdivision three of this section which creates the appearance of such conduct and

Appendix

which exhibits any uncovered portion of the breasts, genitals or buttocks.

7. "Deviate sexual intercourse" means the conduct defined by subdivision two of section 130.00 of this chapter.

8. "Sado-masochistic abuse" means the conduct defined in subdivision five of section 235.20 of this chapter.

§263.05 Use of a child in a sexual performance

A person is guilty of the use of a child in a sexual performance if knowing the character and content thereof he employs, authorizes or induces a child less than sixteen years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he consents to the participation by such child in a sexual performance.

Use of a child in a sexual performance is a class C felony.

§263.10 Promoting an obscene sexual performance by a child

A person is guilty of promoting an obscene sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any obscene performance which includes sexual conduct by a child less than sixteen years of age.

Promoting an obscene sexual performance by a child is a class D felony.

§263.15 Promoting a sexual performance by a child

A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof,

Appendix

he produces, directs or promotes any performance which includes sexual conduct by a child less than sixteen years of age.

Promoting a sexual performance by a child is a class D felony.



Alaska State Legislature

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

PUBLIC HEARING ANNOUNCEMENT***TELECONFERENCE***

THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES
COMMITTEE WILL BE CONDUCTING A TELECONFERENCE ON

CSSSHB 270 - An Act relating to child pornography.

This bill would make the inducement of a child under 18 to engage in sexual acts for the purposes of producing films or written material a class B felony. The bill also covers a parent or legal guardian permitting a child to engage in these activities, and the distribution of child pornography.

the teleconference will be held at 3:00 P.M. (PST) on WEDNESDAY, MAY 11, 1983 at Legislative Information Offices in Anchorage, Fairbanks, Mat-Su, Ketchikan and Kenai. Any other sites interested may participate.

Committee members are: Joe Josephson, D-Anchorage, Chair; Vic Fischer, D-Anchorage, Vice chair; Paul Fischer, R-Kenai; Rick Halford, R-Chigiak; and Pappy Moss, D-Delta Junction.

FOR MORE INFORMATION, call Nancy Deitrick - 465-4907.

SECTION 1 (a) A PERSON COMMITS THE CRIME OF UNLAWFUL EXPLOITATION OF A MINOR IF THAT PERSON KNOWINGLY INDUCES OR PAYS A CHILD UNDER 18 TO ENGAGE IN ACTUAL OR SIMULATED SEXUAL ACTS LISTED, WITH THE INTENT OF PRODUCING PHOTOGRAPHS, FILM OR PRINTED MATERIAL.

(b) A PARENT OR LEGAL GUARDIAN COMMITS THE CRIME OF UNLAWFUL EXPLOITATION OF A MINOR IF THE PERSON PERMITS A CHILD UNDER 18 TO ENGAGE IN THE CONDUCT LISTED IN (a) FOR THE PURPOSE OF PRODUCING FILMS, PHOTOGRAPHS OR PRINTED MATERIAL.

(c) UNLAWFUL EXPLOITATION OF A MINOR IS A CLASS B FELONY.

SECTION 2 A PERSON COMMITS THE CRIME OF DISTRIBUTION OF CHILD PORNOGRAPHY IF THAT PERSON BRINGS OR CAUSES TO BE BROUGHT INTO THE STATE FOR SALE OR DISTRIBUTION, OR POSSESSES, PREPARES, PUBLISHES OR PRINTS WITH THE INTENT TO DISTRIBUTE, SELL, OR EXHIBIT MATTER THAT DEPICTS CONDUCT DESCRIBED IN SECTION 1 (a), KNOWING THAT THE CHILD IS UNDER 18.

(b) THIS SECTION DOES NOT APPLY TO A MOTION PICTURE OPERATOR OR PROJECTIONIST EMPLOYED BY THE THEATER UNLESS THAT PERSON

(1) HAS A FINANCIAL INTEREST IN THE PLACE OF EMPLOYMENT.

(2) CAUSED THE PERFORMANCE OR PICTURE TO BE SHOWN WITHOUT THE AUTHORIZATION OF THE OWNER OR MANAGER.

(c) DISTRIBUTION OF CHILD PORNOGRAPHY IS A CLASS C FELONY.

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HEADING HOUSE HEALTH, EDUCATION & SOCIAL SERVICES
 STANDING COMMITTEE

April 5, 1983

1:07 p.m.

Members Present: Rep. Tischer, Co-Chair
 Rep. Fritz, Co-Chair
 Rep. M.W. Miller, Vice-Chair
 Rep. Davis

Members Absent: Rep. Cato
 Rep. Koponen

CALENDAR SSHB 88: "An Act making a special appropriation to the Department of Health & Social Services for the acquisition and improvement of the Buchner building in Whittier as a correction facility; and providing for an effective date."

SSHB 270: "An Act relating to child pornography."

WITNESS REGISTER

WITNESS:

Roger Endell
 Director
 Division of Corrections
 Department of Health & Social Services
 Juneau, Alaska 99811
 465-3376

Position Statement: Testified against SSHB 88.

WITNESS:

Rep. Ward
 State Capitol Building
 Pouch V
 Juneau, Alaska 99811
 465-4939

Position Statement: Supported SSHB 88; proposed a bottom-fishing industry in Whittier.

WITNESS:

Rep. Liska
 State Capitol Building
 Pouch V
 Juneau, Alaska 99811
 465-3732

Position Statement: Urged passage of SSHB 270; proposed 2 amendments.

WITNESS:

Gayle Horvatski
 Criminal Division
 Department of Law
 Pouch KC
 Juneau, Alaska 99811
 465-3426

Position Statement: Stated the department's support for SSHB 270 and opposition to raising the age limit; recommended 3 amendments.

WITNESS:

Michael Gay
 State Capitol Building

Position Statement: Read a memorandum in favor of raising the age limit, for the record.

PREVIOUS ACTION

SSHB 88: 1/20/83 - First Reading.
Committee referrals - HESS, Finance and Rules Committees.
See HESS minutes of March 29, 1983.

SSHB 270: 3/25/83 - First Reading.
Committee referrals - HESS, Finance and Rules Committees.
No previous action in HESS.

ACTION NARRATIVE

TAPE#25
Recording
Number 0001

Co-Chair Tischer called the meeting to order at 1:07 p.m. Representatives Davis, M.W. Miller and Fritz were present. Representative Goll arrived shortly thereafter. Co-Chair Tischer announced the committee calendar and the intent of the Chair to move both bills.

Number 0030

Co-Chair Tischer invited Rep. Bettisworth, sponsor of SSHB 88, to testify. Rep. Bettisworth deferred to the next witness. Roger Endell, Director of the Division of Corrections, presented a brief history and description of the Buchner Building. Mr. Endell asserted that the building would not be appropriate as a correction facility because of 2 main factors, those being cost and inaccessibility. In addition, Mr. Endell cited the opposition of citizens in Whittier and the difficulties involved in converting an existing building into a corrections facility.

Number 0053

Number 0120

Mr. Endell stated his opposition to the development of any prison in Alaska with a population over 400 people because of the dangers and managerial problems involved. In response to questions from Rep. Miller regarding other possible prison sites, Mr. Endell described Wildwood, Chineak, and Goose Bay facilities.

Number 0133

Number 0171

Mr. Endell stated that 200 to 300 prisoners need housing now and stressed the importance of getting the sites on line quickly.

Number 0200

Discussion about the fiscal note for HB 88 which reflects the need for 7 million dollars to purchase the Buchner Building and 62 million dollars to convert it into correctional space.

Number 0258

Rep. Fritz clarified Mr. Endell's concerns as: the immediate prison overcrowding crisis and the knowledge that renovating the Buchner building will take a long time, and his preference to go with the Wildwood site because it would take the least amount of time and money to renovate. Mr. Endell agreed to Rep. Fritz's analysis.

Number 0270

Rep. Tischer agreed that Wildwood would meet the immediate need, but questioned what would follow to accommodate future prisoners. Mr. Endell cited a 3.6 million dollar request to build a new maximum security facility.

Number 0290

Rep. Tischer argued against approaching the prison population problem in a patchwork method. Mr. Endell outlined his plan to acquire Wildwood

Goose Bay Site, and then build a maximum security facility. Mr. Endell stressed the dangers and disadvantages of large, fortress type prisons, and cited examples such as Alcatraz.

Number 0341

Rep. Tischer asked how prison industries worked into Mr. Endell's plan. He responded that he had instructed the prison industry commission to start planning for industries at those sites.

Number 0372

In response to Rep. Goll's request for clarification of reasons for opposition to the Buchner building, Mr. Endell pointed out the size and location of the building. According to Mr. Endell's estimates, the proposed prison would probably triple the population of Whittier and require approximately 400 staff members.

Number 0420

Mr. Endell repeated his opposition to converting a regular building into a correction facility, as well as housing over 400 people together.

Number 0472

Rep. Davis inquired about the support services necessary for prisoners. Mr. Endell cited fire and life safety devices, trooper and emergency services, power and water supplies, medical and dental care, provisions for counseling and visitation, access to family members, education and other programming, all of which are lacking in Whittier.

Number 0527

Rep. Tischer argued that there are remote sites throughout Alaska which seem to be able to recruit people to work there. In addition, she stated that the size of the Buchner building does not mandate housing over 400 prisoners there.

Number 0550

Mr. Endell stated that most of the people Rep. Tischer referred to in rural Alaska are there on their own accord; said problems occur in remote sites when people are put there against their own will.

Number 0573

Rep. Goll asked if prisoners currently housed out of state who might return to Alaska under the Cleary Decision would fill the Wildwood facility. Mr. Endell explained it would cost 45 million dollars to house 300 prisoners at Wildwood, 200 Alaskan criminals are currently housed out of state, and one-third of them do not want to return to the state, so the facility would not be filled by returning prisoners.

Number 0586

Rep. Ward testified in support of SSHB 88 and argued that the Director of Corrections should be stationed at the major correction facility in Anchorage not in Juneau. Rep. Ward testified against warehousing prisoners and said the resolution to prison problems is prisoner rehabilitation through work programs. Rep. Ward said that working on the Wildwood site would not benefit prisoners because the work would not carry over into the real world.

Number 0687

Rep. Ward proposed a bottom-fishing prison industry based at Whittier which would cost 12 million dollars and could feed all of the prisoners in the U.S.A.

Number 0707

Rep. Ward argued that the piecemeal approach to solving problems in corrections would lead to warehousing prisoners and thus promote crime. Rep. Ward also described the prison industry

with putting all long term prisoners in Alaska in one big facility.

Number 0750 Discussion of the bottom fishing industry in Prince William Sound.

Number 0805 Rep. Fritz moved to pass SSHB 88 out of committee. Rep. Davis objected. The motion passed with two members signing "do pass" and three members having "no recommendation".

~~Number 0815~~ Co-Chair Tischer called the sponsor of HB 270 to the witness stand.

Number 0826 Rep. Liska, District 15, pointed out the lack of any statutes covering the sale, distribution and issues of parental consent with regards to child pornography. Rep. Liska said HB 270 is long overdue and necessary in order to incarcerate offenders and dissuade potential offenders.

Number 0870 ~~Rep. Liska recommended changing the age limit on Page 1, Lines 1, 19 and 26 from 16 to 18, but~~ said he could also propose the amendment on the House floor.

Number 0891 Rep. Liska also recommended inserting "actual or simulated" on Page 1, Line 6 after the word "following".

Number 0913 Rep. Goll stated his support of the bill and opposition to changing the sale of child pornography to a Class B felony; argued that judges will not implement HB 270 if the sentences are set too high.

Number 0974 ~~Gayle Horetski, Criminal Division - Department of Law, said the Department supports HB 270 in general, but opposes raising the age limit to 18.~~

Number 1018 Discussion regarding the age of majority under law and conditions for emancipation.

Number 1043 Rep. Tischer spoke in favor of raising the age to 18 from a parental perspective.

Number 1053 Ms. Horetski suggested the following 3 amendments:

- (1) insertion of "actual or simulated" on Page 1, Line 6 after "following".
- (2) deletion of "sends or causes to be sent for" on Page 2, Line 7.
- (3) deletion of "a minor or a person who reasonably appears to a minor" on Page 2, Lines 12-13 and insertion of "child under 16 (18)" (18 if the committee decides to raise the age limit).

Number 1139 Rep. Miller moved the amendments suggested by Ms. Horetski with the addition of an amendment to raise the age limit from 16 to 18.

Number 1147 Discussion regarding raising the age to 18.

Number 1195 Gayle Horetski said raising the age to 18 would make it slightly more difficult to prove the age of a child on sight but would not have drastic consequences.

Number 1234 Michael Gay, Aide to Rep. Liska, read a memorandum from Police Chief Porter (Anchorage) in support of changing the age limit in SSHB 270 to 18.

Number 1257 Co-Chair Tischer called for a vote on the amendments. The motion to amend SSHB 270 passed with 4 members signing a "do pass" and one signed no recommendation.

Number 1264 Rep. Goll expressed his objections to voting on the four amendments as a group instead of individually.

Number 1271

Substitute for HB 270 out of committee with individual recommendations. There being no objection, the motion passed. The meeting adjourned at 2:58 p.m.

END OF DOCUMENT

SEARCH - QUERY

00002 CHILD AND PORNOGRAPHY AND HOUSE AND HESS

sness0429831 DOCUMENT= 2 OF 3

COMM = SNESS
DATE = 042983
TIME = 1500
YEAR = 83

DOC ID sness0429831500

HEADING SENATE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
April 29, 1983
300 p.m.

Members Present: Senator Joe Josephson, Chair
Senator Pappy Moss
Senator Vic Fischer
Senator Rick Halford (late)
Senator Paul Fischer (late)

CALENDAR HB 39 Amended Title: An Act relating to services for pregnant women; and providing for an effective date.

HB 270 Amended Title: An Act relating to child pornography.

SB 78 Amended Title: An Act making the public employment relations act applicable to employees of school districts; and providing for an effective date.

WITNESS REGISTER

WITNESS:
Representative Mike Miller of Juneau
Alaska House of Representatives
Pouch V, Juneau, AK 99811
465-4841
Position Statement: Testifies in support of HB 39.

WITNESS:
Jon Paden
Address and phone not provided
Position Statement: Testifies in support of HB 39 and encourages its passage.

WITNESS:
Representative Jerry Martin
Alaska House of Representatives
Pouch V, Juneau, AK 99811
465-3783
Position Statement: Supports HB 39.

WITNESS:
Thomas Robertson, Assistant Attorney General
Department of Law
Pouch K, Juneau, AK 99811
465-3503
Position Statement: Reviews the legal problems.

WITNESS:
Betty Lauritzen
Pregnancy Aid
3704 Amalga St., Juneau, AK
789-3715
Position Statement: Testifies in support of HB 39.

WITNESS:

Department of Health and Social Services

Address and phone not provided

Position Statement: Highlights the reasons the division supports HB 39.

WITNESS:

Rocky Plotnick-Weller

Address and phone not provided

Position Statement: Testifies in support of HB 39 and health education.

WITNESS:

Mike Gay

Representative Liska's office

Pouch V, Juneau, AK 99811

465-3732

Position Statement: Testifies in support of HB 270.

WITNESS:

Jim Lear

Legislative Affairs, Legal Services

Pouch Y, Juneau, AK 99811

Position Statement: States that HB 270 is patterned after suggested state legislation.

WITNESS:

Guy Stringham, Director

Labor Relations

Department of Administration

Pouch C, Juneau, AK 99811

465-4403

Position Statement: Testifies on Sb 78.

WITNESS:

Bob Manners

NEA-Alaska

147 S. Franklin

586-3090

Position Statement: Supports the NEA's position on Sb 78.

PREVIOUS ACTION

Hb 39

Please refer to House HESS Committee minutes prior to 03/16/83. Please refer to Senate Finance Committee minutes prior to 03/23/83. There is no previous action to report in the senate HESS Committee.

Hb 270

Please refer to House HESS Committee minutes dated prior to 04/06/83. Please refer to House Judiciary Committee minutes dated prior to 04/07/83. Please refer to House Finance Committee minutes dated prior to 04/13/83. There is no previous action to report in the Senate HESS Committee.

Sb 78

Please refer to Senate HESS Committee minutes dated 02/21/83, 03/07/83, and 04/27/83.

ACTION NARRATIVE

TAPE# 1 for 04/29/83, SIDE 1

Recording

Number 000

The 04/29/83 meeting of the Senate HESS Committee was called to order at 3:00 by Chair Josephson with member senators Moss and Vic Fischer present. Senators Halford and Paul Fischer were late.

Number 004

HB 39 is brought before the committee.

Number 022

Chair Josephson explains that they will take no action on this bill at this meeting, but he is taking testimony from witnesses.

Number 030

Representative Mike Miller of Juneau is the sponsor. He explains that the bill is an alternative to abortion. It is in no way compulsory; it is a choice.

Number 094 offering other medical services to women above the poverty level. Representative Mike Miller (Juneau) states that the solution is to remove the words "and medical services" in line 21 and write "other than medical services." Birthing centers and midwife services would also be deleted.

Number 154 Chair Josephson asks a question of Representative Mike Miller (Juneau).

Number 172 Chair Josephson states that the fiscal note underwent some revision.

Number 174 Representative Mike Miller (Juneau) explained that it was reduced 1.79 mm.

Number 193 Chair Josephson asks about contracts with the Booth Home.

Number 195 Representative Mike Miller (Juneau) explains that the Booth Home is very interested in this. Without the money they have had to turn away hundreds of women.

Number 204 Senator Moss: Do midwives have to be licensed.

Number 210 Representative Mike Miller (Juneau) states that he doesn't know, but that concern would not be addressed in this bill.

Number 238 Chair Josephson asks whether other states have something similar.

Number 239 Representative Mike Miller (Juneau): Yes. This bill cries out to be on the books. It is a sad situation when women are forced to choose abortion because of their economic situation. Jon Paden testifies in support of HB 39 and encourages its passage.

Number 287 Chair Josephson thanks Mr. Paden.

Number 293 Representative Terry Martin supports HB 39's unanimous passage.

Number 302 Chair Josephson asks whether the money is in the budget and does not get a definitive answer.

Number 308 Thomas Robertson, Assistant Attorney General from the Department of Law, reviews the legal problems. 1. The effective date can cause problems. 2. There are some problems with the eligibility criteria. 3. There are some problems with the language. 4. There are some problems with the medical services.

Number 366 Senator Moss questions the meaning of resident.

Number 375 Mr. Robertson discusses the meaning of resident. He continues with potential legal problems.

Number 413 Mr. Robertson cautions parity on both sides.

Number 530 Betty Lauritzen representing Pregnancy Aid, testifies in support of HB 39.

Number 559 John Pugh of the Department of Health and Social Services, highlights the reasons the division supports HB 39. Many low income persons, especially adolescents in rural areas, have problems getting pre-natal care. It is important for the state to give support. Mr. Pugh requests a third party payer clause in the bill. He would like Legal to address the specific authority for the department.

Number 615 Senator Moss likes the bill but has a problem with the residency requirements.

Number 621 Senator Harford enters the meeting.

Number 635 Rocky Plochnick-Weller testifies in support of HB 39 and health education.

Number 649 Chair Josephson thanks the witnesses and closes the matter due to time.

Number 665

Number 032

HB 270 is brought before the committee. Chair Josephson explains that they will not act on this bill today but will hear witnesses.

Number 091

Mike Gay from Representative Liska's offices explains that there are many newspaper articles on child pornography, but there are no laws on the books covering this issue.

Number 112

Jim Lear from Legal Services states that HB 270 is patterned after suggested state legislation.

Number 125

Chair Josephson closes the matter due to time constraints. SB 78 is brought before the committee.

Number 147

Chair Josephson: We would like to understand the differences so the committee can make policy changes.

Number 158

Guy Stringham, Director of Labor Relations for the Department of Administration, testifies.

Number 159

Chair Josephson: Please address what Governor Sheffield wants.

Number 167

Mr. Stringham discusses sectional analysis.

Number 209

Senator Paul Fischer enters the meeting.

Chair Josephson feels that the critical question is whether the school board may select finalizing options during the cooling off period.

Number 210

Mr. Stringham discusses the Governor's position that after a 10 day cooling off period the school board can look at all options. There is no advantage in anything but a full strike for the board.

Number 245

Chair Josephson discusses unlimited strike.

Number 248

Mr. Stringham feels the board might want it but doubts it.

Number 287

Chair Josephson feels that the conduct of the union might be different if it knew what the ground rules were when the dispute arose as to the success of the mediation effort.

Number 295

Mr. Stringham discusses third party arbitration and "last best offer."

Number 344

Chair Josephson asks the definition of mediated arbitration.

Number 345

Mr. Stringham explains that a mediator comes into the picture and works out things separately with two groups. These are the final unresolved issues.

Number 447

Senator Paul Fischer questions final arbitration, package by package.

Number 464

Mr. Stringham explains that Iowa has a four step program which is a good one to follow.

Number 486

Chair Josephson feels there are still many differences between the NEA's proposed bill and the Governor's proposed bill.

Number 498

Bob Manners, representing NEA-Alaska, supports the NEA's position on SB 78.

Number 536

Chair Josephson questions the sectional analysis material just handed out. He suggests that an opportunity be given to study the analysis and adjourns the meeting.

END OF DOCUMENT

SEARCH - QUERY

00002 CHILD AND PORNOGRAPHY AND HOUSE AND HESS

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DATE = 051183
TIME = 1505
YEAR = 83

DUC ID shess0511831505

HEADING SENATE HEALTH, EDUCATION & SOCIAL SERVICES
STANDING COMMITTEE
Teleconference
May 11, 1983
3:05 p.m.

Members Present: Senator Joe Josephson, Chair
Senator Paul Fischer
Senator Rick Halford
Senator Pappy Moss
Senator Vic Fischer (late)

CALENDAR Hb 270 Amended Title: An Act relating to child
pornography.
SB 74 Amended Title: An Act relating to sexual abuse
of a minor.

WITNESS REGISTER

WITNESS:
Linda Edgeworth, Professional Assistant
Representative Liska's office
Pouch V, Juneau, AK 99811
465-3732
Position Statement: Explained the major concern of Hb 270.

WITNESS:
Ketchikan LID witnesses
Names and addresses not provided
Position Statement: Testified in favor of Hb 270.

WITNESS:
Sitka LID witnesses
Names and addresses not provided
Position Statement: Testified in favor of Hb 270.

WITNESS:
Stephanie Ellis
Juneau, AK
Address and phone not provided
Position Statement: Supports Hb 270.

WITNESS:
Sharon Brown
Juneau, AK
Address and phone not provided
Position Statement: Supports Hb 270.

WITNESS:
Matsu LID witnesses
Names and addresses not provided
Position Statement: Have questions regarding porn magazines.

WITNESS:
Susan Winchell
Juneau, AK
Address and phone not provided
Position Statement: Supports Hb 270.

WITNESS:
Gayle Horetski, Assistant Attorney General
Department of Law, Legal Services
Pouch XC, Juneau, AK 99811
465-3460
Position Statement: Testified on Hb 270 and SB 74.

WITNESS:
Nancy Groszek, Professional Assistant
Senator Vic Fischer's office
Pouch V, Juneau, AK 99811
465-4954
Position Statement: Testified on SB 74.

PREVIOUS ACTION

from 04/06/83, House Judiciary of 04/07/83 and House Finance on 04/11/83 and 04/15/83. Please refer to Senate HESS committee minutes dated 04/29/83.

Please refer to Senate HESS committee minutes 02/25/83 and 05/04/83.

Sb 74

ACTION NARRATIVE

TAPE# 1 from 05/11/83, SIDE 1

Recording

Number 000

The 05/11/83 teleconference meeting of the Senate HESS committee was called to order by Chair Joe Josephson with all member Senators present (Senator Vic Fischer arrived late). Chair Josephson opens the meeting. The first bill before the committee is HB 270. Josephson reads a legal opinion from James H. Lear, Legal Services, Legislative Affairs Agency dated 05/11/83.

Number 079

Linda Edgeworth, Professional Assistant for Representative Liska explained that the bill's major concern is protection of children. Book Cache "questionable" book can be tested in court. The bill should not be reduced in form as they wouldn't want to weaken the bill.

Number 122

Teleconference witnesses from Ketchikan LIO testified in favor of the bill.

Number 164

Teleconference witnesses from the Sitka LIO testified in favor of the bill.

Number 244

Senator Moss questions the motion picture operator/projectionist's role and responsibility.

Number 256

Chair Josephson discusses the owner-operator matinees and their stock options, financial interest, etc. (Section 2).

Number 284

Senator Halford says that applies only to people/actors under age 18 and discusses the distinction.

Number 319

Stephanie Ellis, Juneau, supports the bill and thinks it ought to be passed. It is adequate as it is.

Number 320

Sharon Brown, Juneau, feels encouraged by the bill and supports it. She is the mother of 7.

Number 356

Chair Josephson asks the opinion of Ms. Brown regarding a child having access to the materials mentioned in the bill where children are depicted in sexual acts. Is it more impacting than if the child sees the same thing where adults are involved?

Number 370

Ms. Brown answers yes and cites an example of her son coming across material and having a battle of concentration. Children are greatly influenced by their peers.

Number 397

Senator Halford questions section 2 and agrees with what Ms. Brown has to say regarding character models.

Number 431

Linda Edgeworth states that much material comes from other states (Section 2).

Number 455

~~Joyce Holbrook, Assistant Attorney General from the Department of Law, states the bill is based on the fact that there are 2 versions on age: 18 and 16. The House bill says age 18; the Senate bill age 16.~~

Number 500

Senator Vic Fischer arrives.

Number 557

Senator Halford discusses inconsistency of "knowing" and "aware of fact."

Number 596 Senator Josephson says that Senator Halford and he have a disagreement on exploitation and purience.

Number 616 Ms. Horetski discusses the soft core meaning.

Number 625 Teleconference participants from the Matsu LIO have questions regarding porn magazines and their availability to youth.

Number 648 Chair Josephson: This bill doesn't deal with magazines or access there of.

Number 657 Susan Winchell of Juneau supports the bill as written.

Number 665 Senator Halford moves to pass the bill out of committee.

Number 666 Senator Moss objects.

Number 671 Senator Halford reminds Senator Moss that it goes to the Judiciary Committee for further consideration.

Number 676 Senator Vic Fischer is in agreement with Senator Moss. He would like to go over it some more.

Number 677 Chair Josephson says the matter will come back at Monday's meeting. The meeting was recessed. It reconvened at 3:40 without teleconference participation.

Number 000 BEGIN SIDE 2, TAPE 1

Number 002 Chair Josephson brings SB 74 before the committee. He invites Gayle Horetski, Assistant Attorney General, to testify.

Number 005 Ms. Horetski discusses handed out matrix. The only reduction is on page 2, line 7, a change from class A felony to unclassified felony.

Number 082 Senator Vic Fischer goes along with the House version; he is bothered by the reduction and the use of the male pronoun. He discusses Section 3 and marital rape. He moves to pass the Fischer amendment out of committee. He explains that 16 states now have marital rape exemptions.

Number 180 Senator Halford objects to the motion and discusses the affirmative defense section.

Number 228 Chair Josephson discusses the end result of a false conviction.

Number 256 Senator Vic Fischer discusses legal recourse versus no recourse under existing law regarding rape without pain.

Number 258 Ms. Horetski discusses marital defense and the code definition of physical pain.

Number 289 Senator Vic Fischer wants to pursue the matter further with the Anchorage defense attorney. He said that "this is working in other states and we need to open our eyes to the reality."

Number 309 Senator Halford agrees.

Number 320 Senator Vic Fischer suggests pulling other states' language to help finalize the bill.

Number 312 Chair Josephson asks Ms. Horetski if a spouse twists a wife's arm and has penetration, would he be prosecuted for rape or assault?

Number 312 Ms. Horetski explained that she would look at the case as sexual assault.

Number 342 Senator Vic Fischer asks Ms. Horetski for statistics on marital rape.

Number 346 Ms. Horetski: The information is not readily available.

Number 360 Senator Moss: Does this bill correct existing problems?

Number 362 Gayle Horetski: Yes, the bill is badly needed.

Number 368 Chair Josephson refers to California figures.

He doesn't know how many wives have come in
spouses only to have other agendas transpire.
He sees this as a problem.

Number 384 Senator Halford questions the definition of
co-habitation and when it ceases.

Number 420 Chair Josephson discusses affirmative defense
legalities and the credibility issue.

Number 447 Senator Halford questions Ms. Horetski on the
definition of "legally married."

Number 448 Ms. Horetski discusses valid/invalid marriages.

Number 470 Senator Paul Fischer discusses the 3rd and 4th
degrees and thinks they should be shifted over
to unclassified.

Number 474 Ms. Horetski doesn't agree and thinks they
should stay classified "A."

Number 475 Chair Josephson discusses incest by a first time
offender and legal retribution. He asks whether
we have information on how many of these people
could be helped and rehabilitated.

Number 502 Gayle Horetski: None of that is settled.

Number 504 Chair Josephson: What are we trying to say here?
How do we prosecute and save families and some
time?

Number 519 Gayle Horetski: That is hard to answer; she
agrees.

Number 549 Senator Vic Fischer discusses a person 18 years
or older who has sexual penetration with a son
or daughter under 18. What would the penalty be
if it was other than a son or daughter?

Number 577 Ms. Horetski discusses the ages of actor.

Number 602 Senator Vic Fischer selects to deal with the
marital rape provision.

Number 616 Chair Josephson adjourns the meeting at 4:25
p.m.

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

M E M O R A N D U M

March 17, 1983

SUBJECT: Child pornography
(HB 270)

TO: Representative John Liska

FROM: James H. Lear
Legislative Counsel

In response to your request, I drafted HB 270 relating to child pornography. Monday afternoon, Mike Gay requested that I redo the bill to define the word "obscene". He indicated that it would have to be done by 9:00 yesterday morning. With just a short amount of time to fulfill this request, I inserted sec. 2 that would add a new paragraph to AS 11.41.470 (definitions) that would define "obscene" to mean

". . . conduct that, taken as a whole and applying to contemporary community standards,

- (A) appeals to the prurient interest in sex;
- (B) is patently offensive; and
- (C) lacks serious literary, artistic, political, or scientific value."

This definition sets out the standard established by the United States Supreme Court in Miller v. California, 413 U.S. 15, 37 L.Ed.2d 419, 93 S.Ct. 2607 (1973).

You should be advised that the standard set forth in Miller for determining obscenity may be relaxed by the states in prohibiting child pornography. Unfortunately, I was not aware of the July, 1982, case of New York v. Ferber, ___ U.S. ___, 73 L.Ed.2d 1113, 102 S.Ct. 3348, in which the United States Supreme Court drew the distinction between child pornography and other forms of obscenity.

I will outline the critical points made in New York v. Ferber, supra, and summarize your alternatives with HB 270.

March 17, 1983

At issue in New York v. Ferber is the constitutionality of a New York criminal statute which prohibits persons from knowingly promoting sexual performances by children under the age of 16 by distributing material which depicts such performances.

The decision highlights the fact that the federal government and 47 states have sought to combat the problem of child pornography with statutes specifically directed at the production of child pornography. At least half of such statutes do not require that the materials produced be legally obscene (i.e., that apply the Miller standard). Thirty-five states and the United States Congress have also passed legislation prohibiting the distribution of such materials. Twenty states prohibit the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

The heart of the New York v. Ferber case is a pronouncement by the United States Supreme Court that it is permissible for a state to penalize the production of child pornography and the distribution of material depicting children engaged in sexual conduct without requiring that the material be legally obscene.

Here is how the Court arrived at that decision. The Court stated the issue as follows:

To prevent the abuse of children who are made to engage in sexual conduct for commercial purposes, could the New York State Legislature, consistent with the first amendment, prohibit the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene?

The Supreme Court indicated that this case constitutes its first examination of a statute directed at and limited to depictions of sexual activity involving children. The Court then began with the question of whether a state has somewhat more freedom in proscribing works which portray sexual acts or lewd exhibitions of genitalia by children. The Court reviewed the position taken in Miller, supra, that the

. . . states have a legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries with it a significant

March 17, 1983

danger of offending the sensibilities of unwilling recipients or of exposure to juveniles.

Miller v. California, 413 U.S., at 19.

The Miller standard, like its predecessors, was an accommodation between the states' interests in protecting the "sensibilities of unwilling recipients" from exposure to pornographic material and the dangers of censorship inherent in unabashedly content based laws. Like obscenity statutes, laws directed at the dissemination of child pornography run the risk of suppressing protected expression by allowing the hand of the censor to become unduly heavy. For the following reasons, the Court was persuaded that the states are entitled to greater leeway in the regulation of pornographic depictions of children.

(1) It is evident beyond the need for elaboration that a state's interest in "safeguarding the physical and psychological well-being of a minor" is compelling.

(2) The distribution of photographs of and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children.

(3) The advertising and selling of child pornography provides an economic motive for and is thus an integral part of the production of such materials, an activity illegal throughout the nation.

(4) The value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceeding modest, if not deminimus.

(5) Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is not incompatible with the Court's earlier decisions.

The Court reiterated that the test for child pornography is separate from the obscenity standard enunciated in Miller, but may be compared to it for purposes of clarity. The Miller formulation is adjusted in the following respects:

(1) A trier of fact need not find that the material appeals to the prurient interest of the average person;

March 17, 1983

(2) It is not required that sexual conduct portrayed be done so in a patently offensive manner; and

(3) The material at issue need not be considered as a whole.

The Court did indicate, however, that there are limits on the category of child pornography which, like obscenity, is unprotected by the First Amendment. As with all legislation in this sensitive area, the conduct to be prohibited must be adequately defined by the applicable state law, as written or authoritatively construed. Here the nature of the harm to be combatted requires that the state offense be limited to works that visually depict sexual conduct by children below a specified age. The category of "sexual conduct" proscribed must also be suitably limited and described.

The Supreme Court proceeded to analyze the New York statute observing that the forbidden acts to be depicted are listed with sufficient precision and represent the kind of conduct, that, if it were the theme of a work, could render it legally obscene: "Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals". The Court gave special emphasis to the fact that the term "lewd exhibition of the genitals" is not unknown to the Court in this area and, indeed, was given in Miller as an example of a permissible regulation.

The Supreme Court made it perfectly clear that a state is not barred by the First Amendment from prohibiting the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene.

The Court further clarified its position with regard to child pornography by dismissing the claim that the New York statute is unconstitutionally overbroad because it would forbid the distribution of material with serious literary, scientific or educational value or material which does not threaten the harm sought to be combatted by the state. The Court held this to be the paradigmatic case of a state statute whose legitimate reach dwarfs its arguably impermissible applications. The Court seriously doubted that those arguably impermissible applications of the statute amount to more than a tiny fraction of the materials within the statute's reach.

March 17, 1983

The Supreme Court refused to assume that the New York Courts will widen the possibly invalid reach of the statute by giving an expansive construction to the proscription on "lewd exhibitions of the genitals". Whatever overbreadth might exist should be cured through case by case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Now, how does this decision effect HB 270?

It means that HB 270 could be amended to delete the definition of "obscene" set out in sec. 2 of the bill, since it is permissible for the state to enforce AS 11.41.455 and AS 11.61.125 without a court finding that a depicted touching or exhibition is obscene. I would suggest, however, inserting the word "visually" before the word "depicts" on page 1, line 13, and on page 2, line 18; and changing the word "obscene" to "lewd" on page 1, lines 18, 20, and 24.

The suggested changes to HB 270 would give the state much greater latitude in enforcing the child pornography laws and still be within the constitutional guidelines set forth by the United States Supreme Court.

JHL:ljb
10/012

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 11, 1983

SUBJECT: Child pornography
(HB 270 and SB 221)

TO: Representative John J. Liska

FROM: James H. Lear
Legislative Counsel *JHL*

You have requested our office to respond to the legal issues raised by The Book Cache in a letter to the House Judiciary Committee regarding HB 270 and SB 221 and application of the United States Supreme Court ruling in New York v. Ferber, U.S. ___, 73 L.Ed.2d 1113, 102 S.Ct. 3348 (1982). As a matter of law, both HB 270 and SB 221 fit squarely within the scope of the constitutional guidelines set forth in Ferber, contrary to the inferences raised in the letter.

The letter to the Committee quotes the Association of American Publishers as stating, in reference to legislation like that in HB 270 and SB 221, that "The Court's opinions in Ferber did recognize the potential that a statutory scheme seeking to achieve such a result could improperly impinge upon the dissemination of materials of a non-pornographic nature which have serious literary, artistic, scientific or educational value. In responding to the Ferber decision with any new legislative initiatives you must . . . make provision for the unfettered dissemination of non-pornographic, socially-useful materials which may involve depictions of minors engaged in otherwise forbidden sexual conduct." (emphasis supplied)

Contrary to the above inferences, the Supreme Court did not state in its majority opinion in Ferber that the New York statute in question improperly impinged upon, nor do HB 270 and SB 221 improperly impinge upon, the dissemination of materials of a non-pornographic nature which have serious literary, artistic, scientific or educational value. It is

true that the New York statute does, and that HB 270 and SB 221 would, impinge upon such dissemination, but the Supreme Court clearly declared in Ferber that this is "the paradigmatic case of a state statute whose legitimate reach dwarfs its arguably impermissible applications." The Supreme Court applied Broadrick v. Oklahoma, 413 U.S. 601, holding that whatever overbreadth exists should be cured through case-by-case analysis of the fact situations to which the statute's sanctions, assertedly, may be applied. Therefore, the Alaska State Legislature is not, as a matter of law, required to "... make provision for the unfettered dissemination of non-pornographic, socially-useful materials which may involve depictions of minors engaged in otherwise forbidden sexual conduct" as the letter suggests.

The letter contains a recommendation that the legislature amend the child pornography legislation to provide exceptions or affirmative defenses for "legitimate works" and makes reference to five states that have done so. To place this information in perspective, the Ferber decision indicates that forty-seven states have statutes specifically directed at the production of child pornography, at least half of which do not require that the materials produced be legally obscene. Thirty-five states have also passed legislation prohibiting the distribution of such materials, twenty of which do not require that the material be legally obscene. The five states referenced in the letter represent a relatively small percentage of states that have child pornography statutes. The Supreme Court made it perfectly clear that a state is not barred by the First Amendment from prohibiting the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene.

The Court further clarified its position with regard to child pornography by dismissing the claim that the New York statute is unconstitutionally overbroad because it would forbid the distribution of material with serious literary, scientific or educational value or material which does not threaten the harm sought to be combatted by the state. The Supreme Court forcefully expressed that the states are entitled to greater leeway in the regulation of pornographic depictions of children for the following reasons:

- (1) the legislative judgment that the use of children as subjects of pornographic materials is harmful to the

physiological, emotional, and mental health of the child, easily passes muster under the First Amendment;

(2) the standard of Miller v. California, 413 U.S. 15, for determining what is legally obscene is not a satisfactory solution to the child pornography problem;

(3) the advertising and selling of child pornography provides an economic motive for and is thus an integral part of the production of such materials, an activity illegal throughout the nation;

(4) the value of permitting live performances and photographic reproductions of children engaged in lewd exhibitions is exceedingly modest, if not de minimis; and

(5) recognizing and classifying child pornography as a category of material outside the First Amendment's protection is not incompatible with this Court's decisions dealing with what speech is unprotected. When a definable class of material, such as that covered by the New York statute, bears so heavily and pervasively on the welfare of children engaged in its production, the balance of competing interests is clearly struck, and it is permissible to consider these materials as outside the First Amendment's protection.

Throughout its ruling in Ferber the Supreme Court emphasized that the states have uniformly indicated the paramount government objective of preventing sexual exploitation of children as subjects in sexual performances, since the care of children is a sacred trust and should not be abused by those who seek to profit through a commercial network based on the exploitation of children. The Court underscored the long-term physiological, emotional, and mental repercussions on a child as a result of having a permanent record made of the child's participation in the production of sexually explicit materials, indicating that distribution of those materials may haunt the child for life.

The Court considered it "unlikely that visual depictions of children performing sexual acts or lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work. As the trial court in this case observed, if it were

Representative John J. Liska
Page 4
May 11, 1983

necessary for literary or artistic value, a person over the statutory age who perhaps looked younger could be utilized. Simulation outside of the prohibition of the statute could provide another alternative. Nor is there any question here of censoring a particular literary theme or portrayal of sexual activity. The First Amendment interest is limited to that of rendering the portrayal somewhat more "realistic" by utilizing or photographing children."

In summary, HB 270 and SB 221 do not need to be amended to comply with the pronouncements by the Supreme Court in Ferber. Additionally, the suggestion that the proposed legislation has to be modified to provide exceptions or affirmative defenses for material which, when taken as a whole, possesses serious literary, scientific, social, artistic or educational value, is a policy consideration that the legislature is at liberty to accept or reject without worrying whether the legislation would be declared invalid.

JHL:ljb
19/021

Offered: 4/6/83
Referred: Judiciary

Original sponsors: Liska, Adams,
Bussell, et al

1 IN THE HOUSE BY THE HEALTH, EDUCATION AND
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 270 (HESS) SOCIAL SERVICES COMMITTEE
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to child pornography."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 11.41.455 is repealed and reenacted to read:

9 Sec. 11.41.455. UNLAWFUL EXPLOITATION OF A MINOR. (a) A person
10 commits the crime of unlawful exploitation of a minor if, in this
11 state and with the intent of producing a live performance, film,
12 photograph, negative, slide, book, newspaper, or magazine that vis-
13 ually depicts the conduct listed below, the person knowingly induces
14 or employs a child under 18 years of age to engage in, or photographs,
15 films, or televises a child under 18 years of age engaged in the
16 following actual or simulated conduct:

- 17 (1) sexual penetration;
18 (2) the lewd touching of another person's genitals, anus,
19 or female breast;
20 (3) the lewd touching by another person of the child's
21 genitals, anus, or female breast;
22 (4) masturbation;
23 (5) bestiality; or
24 (6) the lewd exhibition of the child's genitals.

25 (b) A parent, legal guardian, or person having custody or con-
26 trol of a child under 18 years of age commits the crime of unlawful
27 exploitation of a minor if, in this state, the person permits the
28 child to engage in conduct described in (a) of this section knowing
29 that the conduct is intended to be used in producing a live

1 performance, film, photograph, negative, slide, book, newspaper, or
2 magazine that visually depicts such conduct.

3 (c) Unlawful exploitation of a minor is a class B felony.

4 * Sec. 2. AS 11.61 is amended by adding a new section to read:

5 Sec. 11.61.125. DISTRIBUTION OF CHILD PORNOGRAPHY. (a) A
6 person commits the crime of distribution of child pornography if the
7 person brings or causes to be brought into this state for sale or
8 distribution, or in this state possesses, prepares, publishes, or
9 prints with intent to distribute, sell, or exhibit to others for
10 commercial consideration, any matter which visually depicts conduct
11 described under AS 11.41.455(a), knowing that the production of the
12 matter involves the use of a child under 18 years of age engaged in
13 such conduct.

14 (b) This section does not apply to acts that are an integral
15 part of the exhibition or performance of a motion picture when the
16 acts are done within the scope of employment by a motion picture
17 operator or projectionist employed by the owner or manager of a thea-
18 ter or other place for the showing of motion pictures, unless the
19 motion picture operator or projectionist

20 (1) has a financial interest in the theater or place in
21 which employed; or

22 (2) caused the performance or motion picture to be per-
23 formed or exhibited without the consent of the manager or owner of the
24 theater or other place of showing.

25 (c) Distribution of child pornography is a class C felony.

COMMITTEE REPORT
SENATE

FURTHER: JUDICIARY

4/18/83

Date: May 29 1983

Mr. President:

CS 62 HE 270 (HSS)

The Committee on HESS has had _____

Relative to child pornography.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Robert H. Anderson

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

May 11, 1983

teleconference

Joe
Pappy
Paul
Rick
Vic

HB 270 - Child Pornography

Heida Edgeworth - Rep Lisa

- no intent to impede legitimate works.
- protect children
- Bank Cache comments relate to "questionable" banks that can be tested in court - don't want to weaken the bill

Kitchikan

Bob Kuyat

Strong feeling about abuse/damage to children.
That less damaging than physical injury.

Sitka

William Richardson chair friends of?
bill needs more amendments

Pappy - Section 2 - projectivist - no financial interest?

Stephanie Ellis - Juneau

Bill as written should be passed. don't water down.

Sharon Brown - Juneau
supports bill.

Gail Hertzki - Dept of Law

HB has age 18
SB has age 16
16 more consistent to other areas of the law.

HB 270

Mat Su

Wanda Wilkitt -

talking more about films than magazine.

Susan Randam - General
support bill.

98TH CONGRESS
1ST SESSION

S. 57

To amend title 18 of the United States Code relating to the sexual exploitation of children.

IN THE SENATE OF THE UNITED STATES

JANUARY 26 (legislative day, JANUARY 25), 1983

Mr. SPECTER (for himself, Mr. HEFLIN, and Mrs. HAWKINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18 of the United States Code relating to the sexual exploitation of children.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Sexual Exploitation of
4 Children Act of 1983".

5 SEC. 2. The Congress hereby finds that—

6 (1) child pornography has developed into a highly
7 organized, multimillion-dollar industry which operates
8 on a national wide scale;

9 (2) thousands of children including large numbers
10 of runaway and homeless youth are exploited in the

1 production and distribution of pornographic materials;
2 and

3 (3) the use of children as subjects of pornographic
4 materials is harmful to the physiological, emotional,
5 and mental health of the individual child and to
6 society.

7 SEC. 3. Chapter 110 of title 18, United States Code, is
8 amended to read as follows:

9 "CHAPTER 110—SEXUAL EXPLOITATION OF
10 CHILDREN

"Sec. 2251. Definitions for chapter.

"Sec. 2252. Sexual exploitation of children.

"Sec. 2253. Certain activities relating to material involving the sexual exploitation
of minors.

"Sec. 2254. Defense.

11 "§ 2251. Definitions for chapter

12 "For the purposes of this chapter, the term—

13 "(1) 'minor' means any person under the age of
14 eighteen years;

15 "(2) 'sexually explicit conduct' means actual or
16 simulated—

17 "(A) sexual intercourse, including genital-
18 genital, oral-genital, anal-genital, or oral-anal,
19 whether between persons of the same or opposite
20 sex;

21 "(B) bestiality;

22 "(C) sado-masochistic abuse (for the purpose
23 of sexual stimulation);

1 “(D) masturbation; or

2 “(E) lewd exhibition of the genitals or pubic
3 area of any person;

4 “(3) ‘simulated’ means the explicit depiction of
5 any conduct described in clause (2) of this section
6 which creates the appearance of such conduct and
7 which exhibits any uncovered portion of the genitals or
8 buttocks;

9 “(4) ‘producing’ means producing, directing, man-
10 ufacturing, issuing, publishing, or advertising; and

11 “(5) ‘visual or print medium’ means any film, pho-
12 tograph, negative, slide, book, magazine, or other
13 visual or print medium.

14 **“§ 2252. Sexual exploitation of children**

15 “(a) Any person who knowingly employs, uses, per-
16 suades, induces, entices, or coerces any minor to engage in,
17 or who has a minor assist any other person to engage in, any
18 sexually explicit conduct for the purpose of producing any
19 visual or print medium depicting such conduct, shall be pun-
20 ished as provided under subsection (c), if such person knows
21 or has reason to know that such visual or print medium will
22 be transported in interstate or foreign commerce or mailed, or
23 if such visual or print medium has actually been transported
24 in interstate or foreign commerce or mailed.

1 “(b) Any parent, legal guardian, or person having custo-
2 dy or control of a minor who knowingly permits such minor
3 to engage in, or to assist any other person to engage in,
4 sexually explicit conduct for the purpose of producing any
5 visual or print medium depicting such conduct shall be pun-
6 ished as provided under subsection (c) of this section, if such
7 parent, legal guardian, or person knows or has reason to
8 know that such visual or print medium will be transported in
9 interstate or foreign commerce or mailed or if such visual or
10 print medium has actually been transported in interstate or
11 foreign commerce or mailed.

12 “(c) Any person who violates this section shall be fined
13 not more than \$75,000 or imprisoned not more than ten
14 years, or both, but, if such person has a prior conviction
15 under this section, such person shall be fined not more than
16 \$150,000 or imprisoned not less than two years nor more
17 than fifteen years, or both.

18 “§ 2253. Certain activities relating to material involving
19 the sexual exploitation of minors

20 “(a) Any person who—

21 “(1) knowingly transports or ships in interstate or
22 foreign commerce or mails any visual or print medium,
23 if—

1 when taken as a whole, possesses serious literary, artistic,
2 scientific, social, or educational value.”.

3 SEC. 4. Section 1961 of title 18, United States Code, is
4 amended in clause (1)(B) by inserting after “section 1955
5 (relating to the prohibition of illegal gambling businesses),”
6 the following: “sections 2252 and 2253 (relating to the
7 sexual exploitation of children),”.

8 SEC. 5. Section 1964 of title 18, United States Code, is
9 amended in subsection (c) by striking out “his business or”
10 and inserting in lieu thereof “his person, business, or”.

○

Apr. 27, 1983

HB 270 -

Child Pornography

Michael Bay - Liska's office

many newspaper articles on child porn.
in Alaska - no law covering "ice issues"

Brian Foster - lunch. p. chief. - new
amendment

Jim Lear - key legal

amend. proffered after State language.

"An Act relating to child pornography."

House Bill 270 amends the criminal code by adding three major provisions to the laws dealing with child pornography:

1. The parent, legal guardian or person having custody or control of a child under 16 years of age under this Bill commits the crime of unlawful exploitation of a minor if he permits the child to engage in unlawful sexual conduct for commercial purposes;
2. The Bill defines "obscene", which previously had been up to the discretion of the courts to define;
3. The Bill adds a new section which makes the distribution of child pornography materials illegal.

BACKGROUND

The extent to which Alaskan youth are victims of child pornography is unknown, although recent investigations by the Anchorage Crime Commission indicate there may be as many as 30 child slavery and pornography rings in Alaska, with networks to the lower 48 and overseas. Anchorage law enforcement officials believe the problem to be worse in Alaska than in other parts of the country due to criminals being drawn to Alaska by its wealth, by the heavy drug and alcohol abuse, the young and mobile Alaskan population and the overloaded law enforcement and court systems. In a case currently before the courts in Anchorage, one individual is charged with 29 counts of sex crimes against juveniles, including the making of pornographic movies.

It is estimated that at least half the youths in McLaughlin have been sexually abused, and some private residential facilities would estimate that closer to 85% - 95% of the youth served have been victims of sexual abuse. Many youth who have been sexually abused at home, runaway and end up being victimized by individuals who lure them into prostitution, child pornography and other illegal activities.

POSITION

The Department of Health and Social Services supports House Bill 270, which considerably strengthens the statutes regarding child pornography. By making it illegal for the person who has the legal custody or control of the child, whether the parent or not, to permit the child to engage in child pornography for commercial purposes, it recognizes the responsibility of parents and custodians to provide protection for children in their care. Secondly, by extending criminal liability to the distributor of child pornography, this bill recognizes that without promotion and marketing of the child pornography materials, there would be no financial motive for the sexual exploitation of children.

RECOMMENDED: Michael L. Price
Michael L. Price, Director
Division of Family and
Youth Services

DATE: March 23, 1983

APPROVED BY: Robert London Smith
Robert London Smith, Ph.D.
Commissioner

DATE: 3/30/83

I. REQUEST
 Bill/Resolution No.: HB 270
 Title: Child Pornography
 Sponsor: Liska
 Requestor: _____

II. FISCAL DETAIL
 Agency Affected: H&SS
 Program Category Affected: Social Service
 BRU, Program of Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Enactment of this Bill would have no fiscal impact on the Division of Family and Youth Services as child pornography is already included in reporting of abuse.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael L. Price, Director Phone: 465-3170
 Division: Family and Youth Services Date: 3/22/83
 Approved by Commissioner: [Signature] Date: 3/30/83
 Department: H&SS

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 270 (Hess)
 Title: "Child Pornography"
 Sponsor: Repr. Liska
 Requestor: House Finance Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Adm. of Justice
 BRU, Program of Subprogram(s) Affected: Prosecution

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
OPERATING						
100 PERSONAL SERVICES		130.1	165.5	175.4	185.9	197.1
200 TRAVEL		10.1	12.8	13.6	14.4	15.3
300 CONTRACTUAL		18.0	20.7	21.9	23.2	24.6
400 COMMODITIES		10.0	5.7	6.0	6.4	6.8
500 EQUIPMENT		17.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		185.6	204.7	217.0	230.0	243.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		185.6	204.7	217.0	230.0	243.8
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not specified by sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: April 12, 1983
 Approved by Commissioner: Richard I. Pegues / for /
 Department: Department of Law Date: April 12, 1983

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HB 270
Fiscal Note
Analysis

Section 1 of this bill adds a new subsection to the current Unlawful Exploitation of a Minor statute, making it a class B felony for a parent or guardian to knowingly allow his child to participate in sexual activities which will be used to produce a pornographic film, TV show, photograph, etc. Since in most cases a parent who would knowingly allow his child to engage in such activity would also be involved in "inducing or employing" the child to perform these acts (conduct which is already covered under existing law), it is expected that there would be only a few additional prosecutions under this portion of the bill. These few new cases could probably be handled by the present prosecution staff.

Section 2 of the bill makes it a class C felony for a person to knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior. The bill could result in a large number of additional criminal prosecutions, as the sale or distribution of pornographic material of any sort is not now a criminal offense in this state. It is anticipated that enforcement of the new law would require the addition of two new prosecutors and one new secretary statewide. This estimate is based on the number of establishments in this state which are known to sell pornographic material, the complexity of legal issues that are involved in these types of cases, and the knowledge that convictions under similar statutes in other states are almost always appealed on constitutional grounds to the highest appellate court in the state, and frequently to the United States Supreme Court.

The committee substitute increases the age of unlawful exploitation of a minor from 16 years of age to 18 years of age. This change will increase the potential number of prosecutions, however, such prosecutions become more difficult due to the problem of establishing the chronological age of young people who are undergoing rapid physical development, which can vary substantially by individual. Consequently, no changes to our fiscal note dated March 29, 1983, will occur.

Fiscal Analysis - SSHB 270

The impact of HB 270 is expected to result in the addition of two Attorney IV positions (SR 24) and one Legal Secretary position (SR 10).

The first year of this analysis will cover 10 months of FY 84, allowing 2 months for these three positions to be established. The costs beyond FY 84 have been projected on a 12 month basis and include a 6% annual inflation factor.

1st Year (10 months)

	<u>AIV(PFT)</u>	<u>AIV(PFT)</u>	<u>L/SI(PFT)</u>	<u>TOTAL</u>
Personal Services	53.7	53.7	23.4	130.1
Travel	5.0	5.0	-0-	10.0
Contractual	8.0	8.0	2.0	18.0
Commodities - ongoing	1.5	1.5	1.5	4.5
Commod. - single time	2.0	2.0	1.5	5.5
Equipment - single time	1.5	1.5	14.5	17.5
				<hr/>
				185.6

2nd Year (12 months + 6% annual inflation)

Personal Services	68.3	68.3	28.9	165.5
Travel	6.4	6.4	-0-	12.8
Contractual	9.1	9.1	2.5	20.7
Commodities	1.9	1.9	1.9	5.7
				<hr/>
				204.7

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	COV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFI	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	DRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				ADDITION		JUSTIFICATION			
4.	TYPE OF EXPENDITURE.				AMOUNT		<p>To accommodate the addition of new felony statutes for the prosecution of those who knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior, the Department of Law is requesting two new attorney positions and a new secretary position. This is one of two attorney positions which will be responsible for the enforcement of the new felony statutes statewide, including the pursuit of the many cases which will undoubtedly be appealed on constitutional grounds to the state's highest court and to the U.S. Supreme Court. These cases will involve complex legal issues which have been previously unaddressed by Alaska's criminal code.</p>			
	1		2		3					
	PERSONAL SERVICES									
5.	Salary	4,251/month	42,510							
6.	Benefits		6,555							
7.	Supplemental Benefits		2,240							
8.	Fixed Benefits		2,400							
9.	TOTAL PERSONAL SERVICES		01	53,705						
10.	Travel		02	5,000						
11.	Contractual		03	8,000						
12.	Commodities		04	3,500						
13.	Equipment		05	1,500						
14.	Other									
15.	TOTAL COST			71,705						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		G.F. Match	1003							
18.		General Funds	1004	71,705						
19.		I-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
FOR B&H USE ONLY										
AA KEY NUMBER _____										

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law
PROGRAM Due Process
BRU Prosecution
COMPONENT Third Judicial District

Page _____ of _____
Revised Date _____

FY 84

1.	POSITION TITLE Attorney IV				RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE.			AMOUNT	<p>To accommodate the addition of new felony statutes for the prosecution of those who knowingly sell or distribute pornographic material which visually depicts children engaged in sexual behavior, the Department of Law is requesting two new attorney positions and a new secretary position. This is the second of two attorney positions which will be responsible for the enforcement of the new felony statutes statewide, including the pursuit of the many cases which will undoubtedly be appealed on constitutional grounds to the state's highest court and to the U.S. Supreme Court. These cases will involve complex legal issues which have been previously unaddressed by Alaska's criminal code.</p>					
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	4,251/month	42,510							
6.	Benefits		6,555							
7.	Supplemental Benefits		2,240							
8.	Fixed Benefits		2,400							
9.	TOTAL PERSONAL SERVICES		01	53,705						
10.	Travel		02	5,000						
11.	Contractual		03	8,000						
12.	Commodities		04	1,500						
13.	Equipment		05	1,500						
14.	Other									
15.	TOTAL COST			71,705						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		71,705						
19.		I-A Receipts 1005								
20.		Program Receipts 1028								
21.		Other								
FOR B&M USE ONLY										
4A KEY NUMBER _____										

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law
PROGRAM Due Process
BRU Prosecution
COMPONENT Third Judicial District

FY 84

Page of
Revised Date

1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT CCU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.		
2.	TYPE OF POSITION	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 8	LEG.				
3.	CONTINUATION LEVEL				JUSTIFICATION							
4.	TYPE OF EXPENDITURE				<p>This position is required to provide support for the two new attorney positions. This secretary will be responsible for the preparation of a large volume of court documents generated by the appeal of cases dealing with the constitutionality of Alaska's statutes on child pornography. The allocation of a single secretary to serve two full time attorneys is the minimum amount of support needed to meet the workload anticipated and is within the normal ratio of attorneys to secretaries for the Department of Law.</p>							
	1		2								3	
	PERSONAL SERVICES											
5.	Salary 1,726/month		17,260									
6.	Benefits		2,660									
7.	Supplemental Benefits		1,058									
8.	Fixed Benefits		2,400									
9.	TOTAL PERSONAL SERVICES		01								23,400	
10.	Travel		02								-0-	
11.	Contractual		03								2,000	
12.	Commodities		04								3,000	
13.	Equipment		05								14,500	
14.	Other											
15.	TOTAL COST										42,900	
	RECEIPT CODE	FUNDING SOURCE										
16.		Federal Receipts 1002										
17.		G.F. Hatch 1003										
18.		General Funds 1004		42,900								
19.		I-A Receipts 1005										
20.		Program Receipts 1028										
21.		Other										
FOR B&H USE ONLY												
4A KEY NUMBER _____												

13 REQUEST FOR
NEW POSITION

AGENCY Department of Law
PROGRAM Due Process
BRU Prosecution
COMPONENT Third Judicial District

Page of
Revised Date

FY 84

Alaska State Legislature
House of Representatives

While in Session
Pouch V
Juneau, Alaska 99811
(907) 465-3733

John J. Liska

Home - District 15
P.O. Box 421
Eagle River, Alaska 99577
(907) 688-2526



Official Business

TO: All Members, House Finance Committee

RE: House Bill 270, "An Act relating to child pornography."

1. Establishing the age at 18:

Rationale:

- a. Enforcement of this law is predicated on proving to the court that the person featured in these pornographic materials is under a certain age. When a victim cannot be positively identified (as in cases where materials are imported from outside Alaska and the child is not physically present) it is very difficult to prove beyond the standard reasonable doubt that a child who has reached the puberty stage of development is under 16 from physical appearance alone. Using 18, it would be much easier to prove when dealing with victims are actually between 13 and 16. This is the age bracket most encountered in the experience of the Anchorage Police Department according to Police Chief Porter. Attached is a news clippings which draws attention to need for broader parameters of this age limit. In this case as in many, many others, reasonable determination of probable age is the key to successful prosecution.
- b. Under existing law a person under the age of 18 is treated generally as subject to the juvenile system of justice as opposed to the adult system. It is only logical that we apply the same maturity standard when that same person is the victim under the law.
- c. January 26, 1983 Senator Specter introduced similar legislation in Washington, D.C. and the Bill being reviewed by Judiciary uses the age of 18 as its criteria. Should this Bill pass, Alaska State Statutes would conform to the Federal standard.

Locally-sold porn publication leads FBI to missing juvenile

by Jeff Berlner
Times Writer

A homosexual magazine for sale in Anchorage has led to the discovery that a juvenile depicted in the publication is a boy missing from his Costa Mesa, Calif., home for nearly four years.

The youth, James Wilfrid Trotter, now 17, was featured in a November 1982 Reader's Digest article on missing children. His whereabouts had been unknown since April 19, 1979.

Information uncovered by Anchorage police led to Trotter's discovery in San Francisco where he was allegedly working for a company employing underage youths in pornography.

Although an Anchorage ordinance prohibits the sale of pornography featuring minors, police chief Brian Porter said, "We defer to higher police authority: we turned everything over to the FBI."

Anchorage FBI agent John Darst acknowledged that he has the case but said he has not begun an investigation.

The FBI's inaction has angered U.S. Senate investigator Jay Howell who said he has complained to FBI headquarters in Washington D.C. Howell, under the direction of Sen. Paula Hawkins, R-Fla., has been working on the national problem of missing and exploited children.

"Our concern is that cases should be investigated," Howell said, "then what you need is enforcement."

Anyone involved in production, interstate distribution or sale of sexually explicit material employing juveniles is guilty of a felony under federal laws governing the sexual exploitation of children.

This would include the Anchorage book-sellers. One Anchorage adult book store owner denied he sold material depicting juveniles.

Trotter was 15 in some of the magazines for sale in Anchorage adult bookstores, according to a private investigator who — using information from the Anchorage police — found Trotter in San Francisco and verified that he was the "missing" youth featured in Reader's Digest four months ago.

Virginia private investigator Robert Levesque, who specializes in finding missing children, confirmed that he found Trotter and spoke with him.

Levesque gave this account of Trotter's life since his disappearance:

Running away just before his 15th birthday, Jamie, as he is called, made his way to Los Angeles where — after three months on the street — "he was kidnaped by a well-known pimp."

From that point on, Jamie supported himself by selling his body. He has appeared in

films, in 35 pornographic magazines and has worked for a studio which Levesque said specializes in pornography depicting underage youths.

"Jamie is considered a hustler and open for hire," the investigator said.

An unrelated investigation by Anchorage police investigator Frank Feichtinger, who works on child sexual abuse cases, turned up the evidence leading to Jamie's discovery, Chief Porter said.

"The publications are probably illegal," Porter said of the magazines sold in Anchorage featuring Jamie.

To determine whether they really do violate laws against child pornography, Jamie's age must be determined, Porter said. But since more serious federal laws govern child pornography, the chief said Anchorage police did not act to enforce the municipality's misdemeanor law against selling child pornography, but rather turned all its material over to the FBI to use as evidence.

"It's a zero case," said FBI agent Darst. "It's so nebulous that we don't know what we've got. We don't know how old he is in the magazines. Our San Francisco office will investigate it and present it to the U.S. attorney there to decide."

Darst said he has not given the material to the San Francisco FBI yet.

Marroyce Hall

Dear Ms. Hall:

The following written statement reflects my personal views based on my experience as a police officer and citizen of this community.

The Anchorage Police Department investigates cases of lewd and lascivious acts towards children on a regular basis. In my experience, the suspect has a history of such behavior coupled with a drinking problem and a fondness of pornographic material.

Concerning pornographic material and lewd and lascivious acts towards children, one search I conducted produced pornographic material using children in various poses. This material was obtained from a California based firm using children from the ages of nine to fifteen years. The advertisement from this firm was very graphic, stating "Hard to find nymphets, exposing the secrets of puberty. These foxy mini-chicks are luciously posed to tease and please you." "The 8 x 10 sets are something a bit different and unusual. Set #1 contains four different girls in a full figure split pose and nice genital close-up of each. Set #2 features eight different girls, each in full figure split crotch poses."

Other publications using juveniles as the basis for the subject matter are:

YOUNG & NAKED, published by Sun West - \$4.00
TEEN TEASER, Eros Publishing Co. - \$5.00
TEASING TEEN, Eros Publishing Co. - \$4.00
LITTLE NUDES, Phoenix Publishing Co. - \$5.50
LOLITOTS, Delta Publishing Co. - \$9.50
TEENAGE NUDIST, Sun Era, Inc. - \$4.00
TINY NUDES, Golden State News - \$6.00
LITTLE GIRLS FUCK, TOO!, No Publishing company names, no price

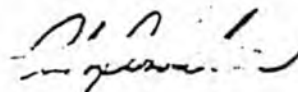
Other publications using artistic semblance to hide behind are:

SHOW ME, by Will McBride - \$12.95
IN SEARCH OF YOUNG BEAUTY, by Charles Dubois Hodges - \$8.50
published by A.S. Barnes and Co., Inc.

All of the listed publications and two photograph albums with pictures obtained through the California publishing company were obtained in Anchorage this year. This search resulted in a conviction on one subject for two counts of lewd and lascivious acts towards children, the oldest of which was nine years old. The defendant in this case did have a drinking problem, did have a history of such behaviour and obviously had a fondness for this type of material. He showed this material to the two young boys and then performed acts on them, presumably while another child took photos.

I am not a psychiatrist nor am I a social worker; simply a police officer and a father. It is my opinion that there is no reason why such material should be sold or transported through the mail. I am not concerned for the consumer. My concern is for the children being used and the victims of such acts as I have described.

Sincerely,

A handwritten signature in dark ink, appearing to be "D. D. I." followed by a flourish.

1. Sex Offense Statutes

All states have sex offense statutes which prohibit certain sexual acts such as incest, sexual intercourse and other forms of sexual contact between adults and minors.³² These laws have several limitations in their application to child sexual exploitation. First, while they may outlaw the actual production of child pornography, they do not apply to its distribution and sale. Second, sex offense statutes generally do not address situations where a child is forced to pose alone or is depicted with other children; they apply only when the child is abused by an adult.³³ Finally, these laws present problems of proof: usually, the abused children are difficult to identify and locate. In the event that they are found, the victimized children are often poor witnesses; many are too young, frightened or emotionally attached to the perpetrator.

2. Child Abuse Laws

Child abuse laws may also be used in response to child sexual exploitation, but they also have certain limitations. Most child abuse laws cover only parents, legal guardians, or persons in loco parentis. Considering that many children are exploited by strangers, these laws are clearly inadequate. Also, these statutes focus on the "fitness" of the child's parents and the responsibility of the state to intervene on behalf of the child allegedly receiving inadequate parental care. They are not designed to deter all categories of child pornographers. Moreover, while child abuse laws may in some cases apply to the production of child pornography (i.e., if a parent uses or permits his or her child to be used for the purpose of producing child pornography), they do not specifically cover its distribution and sale.

3. Contributing to the Delinquency of a Minor laws

Statutes which make it an offense to "contribute towards the delinquency of a minor" may also be used to prosecute exploiters of children. However, they may only be applied to persons who use children for prostitution or for the production of pornography. They can not be used to prosecute distributors and sellers of child pornography who have no direct contact with the exploited children. Perhaps more importantly, they usually provide weak criminal sanctions.

4. Child Labor laws

In an attempt to curb child pornography, child labor laws have been amended in several jurisdictions. These amended statutes are diverse; they target different aspects of the problem and impose varying degrees of punishment. Because no one statute deals comprehensively with all facets of child pornography, their ability to combat the problem is severely hampered. For example, California Labor Code § 1309.5 imposes a recordkeeping requirement for persons engaged in activities related to the sale and production of child pornography. Its scope is therefore limited to retailers and distributors of the finished product, and it does not pertain to those persons in direct contact with the exploited minor. Conversely, Idaho Code § 44-1306 is a general proscription against all theatrical employment of children which is dangerous to their life and limb or which is for "any obscene, indecent or

immoral purposes." However, it does not address itself to those who sell and distribute a finished printed or filmed product. Failure to comply with both statutes is only a misdemeanor. A further example of a state child labor law aimed at eradicating child pornography is Massachusetts Gen. Laws Ann. ch. 149 § 104A, which makes it a felony to employ or hire a minor to pose nude or to participate in sexual conduct for purposes of visual productions. Massachusetts, like Idaho, focuses upon the person who actually employs the child.

The federal child labor law, 29 U.S.C. §212, is a general proscription against any oppressive child labor, which could be construed to include minors employed for pornographic purposes. It also is limited, however, by the fact that its provisions only pertain to producers, manufacturers, dealers and employers, and not to those persons who enlist the services of the minor outside of an employment relationship.

5. Obscenity Statutes

Obscenity statutes proscribe the production and distribution of visual and printed material which is legally obscene. While most child pornography is generally considered obscene³⁴ and falls within the purview of these laws, they still have several weaknesses. First, obscenity statutes have generally failed to differentiate between pornography involving adults and material depicting children, although this has changed with the advent of the new laws.³⁵ The traditional obscenity laws have never underscored a concern for this particularly offensive form of pornography. Second, the obscenity laws apply only to the material which is determined to be legally obscene. More importantly, these laws are aimed at the finished product and not at the actual harm done to the child in the process of production. The production of pornography can be harmful to the child without the finished product being considered legally "obscene."

II. NEW LEGISLATION

A. Federal Statutes

Serious legislative attention to the problem began in 1978 when Congress enacted the Protection of Children Against Sexual Exploitation Act (Public Law 95-225, 18 U.S.C. §§ 2251-53). This law, a result of extensive hearings in both the House and Senate, extended the federal government's authority to prosecute both the producers and distributors of child pornography. In addition, the law prohibited the transportation of children across state lines for the purpose of sexual exploitation.

Signed into law by President Carter in February, 1978 18 U.S.C. § 2251 now provides punishment for persons who use, employ or persuade minors (defined as any person under 16) to become involved in the production of visual or print material which depicts sexually explicit conduct, if the producer knows or has reason to know that the material will be transported in interstate or foreign commerce, or mailed. Punishment is also specifically provided for parents, legal guardians, or other persons having custody or control of minors who knowingly permit a minor to participate in the production of such material. Distributors of the material are also covered, as Section 2252 prohibits the shipping or receiving, for the purpose of distribution, of "obscene" child pornography through interstate or foreign

commerce or the mails. Finally, the new law amends the Mann Act (18 U.S.C. § 2423) to extend protection to males who are transported across state lines for the purpose of prostitution and additionally of prostitution and additionally prohibits the causing of a minor to engage in sexual conduct for commercial exploitation. Previously the Mann Act only prohibited the transportation of females for use in prostitution.

The sanctions provided by the new law are stiff. Both production and distribution carry penalties of imprisonment up to ten years and fines up to \$10,000. In addition, the maximum penalties are increased to 15 years imprisonment and \$15,000 for subsequent offenses.

Drafting Public Law 95-225 proved to be a difficult task. Sexual exploitation of children presents legislators both on the federal and state levels with two distinct but interrelated problems: 1) the use of children in the production of pornography; and 2) the distribution and sale of the material. While the most disturbing part of the problem is the actual use of the children, it is obvious that the industry could not flourish without the various distributors and retailers, who are said to retain as much as 70% of the profits.³⁶ Given that producers can rarely be found or identified, Congress believed that effective legislation must prohibit both the production and sale of child pornography, and it accordingly included separate provisions making each aspect illegal.

Child pornography, like child abuse, is generally a state concern. However, based on the federal government's constitutional power to legislate under both the commerce and the postal power clauses, Congress was able to exert significant control over trafficking and production of child pornography. Furthermore, given the gravity of the problem and the lack of resources to combat it on the local level, it is apparent that the legislative reform movement in this area arose primarily from a desire on the part of the local law enforcement officials to obtain federal assistance and the resources of federal law enforcement agencies. As the legislative history of the new federal law states:

We perceived a need to not supplant or discourage state and local response to those practices, but to respond in the areas where the states turned to the federal government for assistance.³⁷

WHERE HAVE ALL THE CHILDREN GONE --- A NATIONAL TRAGEDY

.....Our national runaway count continues to grow, with estimates now reaching well over 1 million children each year.

.....National estimates are that over 50,000 children each year disappear from their homes, not counting habitual runaways and parental abductions. A majority of these children never return, many are murdered.

.....The 1979 Uniform Crime Reports listed 2,773 child homicides.

.....Further, Kenneth Wooden, Director of the National Coalition for Children's Justice has testified before the U.S. Senate sub-committee on juvenile justice that more than 4,000 children are murdered each year in the United States. Many child murders go unreported.

.....There has been, for at least the last decade, a litany of tragedies involving the youth of America. The rapidly increasing role of organized crime has emerged as one major factor in the involvement of runaway or missing children in continuing criminal activity.

EXPLOITED CHILDREN - INTERNATIONAL

According to exploited children units in New York and Los Angeles, the past few years have witnessed a dramatic rise in the white slavery of children for purposes of prostitution.

"Prime" boys - aged 11 to 14 are kidnapped from their homes in Europe and South America, and smuggled into the U.S. where they are peddled for up to \$10,000 to men who call themselves pedophiles, or boy lovers.

Men involved in the purchase of children for sexual purpose are not Skid Row types. Police say they occupy some of the highest and most respected positions in society. According to one undercover agent in New York city, "one thing these people have in common is that they're not bums. They're the guys in Brooks Brothers suits. They are often wealthy and important."

An investigator posing as a pornographic movie producer, made contact with the leader of a gang of German child peddlers who had smuggled a dozen boys from Germany into the U.S. He attempted to sell the boys to the police investigator for \$10,000 a piece.

The boys were kept in a drugged stupor by forcing them to take Quaalude capsules every two hours. The kidnapper bragged about how roughly they had been treated to illustrate how grateful they would be for any kindness shown them by their new owners.

He proudly displayed a portfolio of advertisements clipped from German newspapers, ads placed by grieving parents offering rewards for information about their lost sons.

He used the ads to prove to prospective clients that his cargo of boys came from good families.

These 12 boys are only a small part of a monumental tragedy. Police sources, who describe the situation as a national disgrace say that besides the hundreds more American children also involved, hundreds of innocent youngsters are bought and sold in the U.S. every year.

One New York agent stated "We are dealing with very intelligent criminals. They don't trust anyone." These vice rings are nearly impossible to infiltrate, investigators say, because they often demand that newcomers prove themselves by having sex with little boys.

Police report that the rings sometimes operate through organizations that publicly defend sex between boys and adults. These groups, which go by names like Nambla (North American Man-Boy Love Association) and the Pedophile Information Exchange, trade names, addresses, and photos, and publish literature extolling the joy of sex with children. They also distribute instructional books, with titles like "How to Pick Up Boys".

The methods of the homosexual white slavers who prey on American boys varies. Normally they are too discreet to just yank boys off the street at gunpoint police sources say. They often take youth-oriented volunteer jobs as camp counselors and sport coaches. Once in a position of trust, they spend lots of time with the boys and shower them with presents. Often, unsuspecting

parents appreciate the attention their sons are being shown and the vulnerable boys learn to trust and love the pedophile.

Eventually, the boy will begin to express dissatisfaction with his parents. His newfound friend then helps him "run away" - but in truth the child ends up belonging to international pimps who trade boys like shares on the stock exchange.

Authorities recently broke up a homosexual white slave ring in New York. One of the three men arrested allegedly used to open his lavish home on Long Island to pedophiles who often flew there in their corporate jets for weekends. A police investigator in Los Angeles estimates that the number of active pedophiles in the United States may reach into the hundreds of thousands.

He said the most despicable aspect of the whole sordid business is that the pedophiles, when caught often defend their activities by claiming the boys benefit from the experiences. The outraged cop concluded: "I've seen what these guys do to the boys they get, and I could shoot them all day long, as fast as you could load my gun and not lose a minute's sleep."

Who are the runaway-throwaways? Where do they come from?

The answer to this question is simple - from everywhere, from all cultural and social backgrounds, rich and poor alike. Some come from the lower 48 states to Alaska seeking the other parent or family member in divorce situations. Others come from average working or middle class homes right here in our state. Still others come from families that make well over \$60,000 dollars a year. Runaways come from the full range of the economic spectrum, from the poorest families of our state to the wealthiest. No stratum is immune. Any child can fall victim to the street life and the hell it brings to them.

I meet many types of youth that the Justice system does not reach here in Alaska. Although my contact is only with juveniles in the Anchorage area, some come from other states and others come from rural Alaska. The runaway who becomes a throwaway is generally very transient individual. He or she often moves from one city to another, from one state to another and becomes prey for not only organized rings but also random predators.

Dave was 16 at that time. His parents had left him here in Anchorage when they came to this state for vacation. They told him that he was old enough now to take care of himself. He was left with some money, but it soon ran out. He tried to get a job, and held on to a few, working in a couple of fast food restaurants here in town. It was never enough to keep him properly fed and supply his shelter needs. The rooming house he stayed at when he had the money charged \$5.00 dollars a night. Like most runaways he was very determined to make it on his own and enter the adult world. For a period, he could not get a job and started panhandling in the downtown Anchorage area. During the winter, if he did not have enough money for a room, he slept under the blower vent from the grill of McDonalds next to the Sunshine Mall. He had purchased a sleeping bag previously and hid this and his other possessions when he panhandled during the day. He was sexually molested by a drunk adult male who offered to help him with a place to stay.

Jeff: My contact with Jeff came approximately two years ago in a shoplift incident. Often runaways will shoplift from stores for money and clothing. It is quite easy to go for some time without being caught. Most stores do not have security floor walkers. Jeff was 15 at the time I apprehended him. He had runaway from home many times before this and his parents just did not care anymore nor did they report him as a runaway. He often talked to his parents by telephone and always lied about his true situation. Jeff stayed with friends at first, often staying a month or more, at least until his welcome wore out. He was a heavy user of drugs - popping pills, smoking marijuana and often mixed drugs with alcohol. His addiction stopped him from getting or holding a job. He was raped by an adult male one evening when he was very high on LSD (Lysergic Acid Diethylamide).

Mike: I first met Mike when he tried to panhandle some money from me. He told me that time that he had not eaten in a week, and from the looks of him I could believe it. He was 16 and could not have weighed more than 100 pounds on a 5'6" frame of a body. I took him to a restaurant for a meal. He ate three complete dinners. He had made money before by prostituting himself for \$30.00 dollars a trick, but was once beaten up after the sex act by his client and robbed of all his money. Since then he said that he would never prostitute himself again, that he would starve first.

Mary: I met Mary in one of the downtown malls. She was a prostitute and only 16. She was a Native and had got pregnant from a boy in her village and attempted an abortion on herself with a wire hanger, had a miscarriage and ran away. She was picked up by a pimp, often beaten and never left with enough money to return back to her village. She was also strung out on drugs which her pimp supplied for her. She died of an overdose.

Gregg: Picked up by a patrol officer wandering the streets of downtown Anchorage. He was poorly clothed and in a dazed and disoriented condition. It was found that he had been the import of a homosexual ring from Seattle. He had been sexually abused for nearly two years. He could not provide enough information to make a case against his captors. At the time he was taken into protective custody he was eleven years old.

While there is a certain spontaneity about the involvement of street kids and runaways in prostitution, i.e., when you are hungry and need to survive on the streets, the options may be few, there is also ample evidence of networks and organization in child prostitution and pornography. Cases continually produce child prostitutes who know each other, who tend to service overlapping clientele, adults who may make referrals to each other, as well as exchange photographs and information.

An apparent by-product of this "netowrking", and the type of adult who tends to frequent the areas in which child sex flourishes (i.e., professional, prominent, affluent, with family, etc.) is the growth of extortion as a spin-off. This further demonstrates the potential for child victimization, murder and other violence.

We have discovered that treatment and follow up for identified child prostitutes/exploited children generally is very difficult. While there are many excellent models nationally of community based treatment centers and shelters, unfortunately the data is not ample on success stories. In this community our priority has been identification of the adult exploiters along with the protection of the child. Ultimately the child must be prepared to cope with the environment in which he or she was exploited.

Regarding adult customers for child pornography and prostitution, the sample is far less and the conclusions drawn are less objectively based. However, to date there is reason to believe that adult pedophiles tend to be white well-established males, 40-60 years old, are or have been married generally have from 2 to 4 children, and are earning in excess of \$35,000 per year. They are usually college-educated and most are professional persons and well thought of by the community.

ARREST RECORDS OF ANCHORAGE JUVENILES TYPICAL OF THE REVOLVING DOOR SYSTEM

(Note age and progression of crimes particularly last case)

<u>AGE</u>	<u>SEX</u>	<u>DATES</u>	<u>TYPE OF CONTACT</u>
16 Years	Female	1-13-	Larceny from building
		1-13-	Larceny from building
		3-30-	Assault & Battery
		5-10-	Assault & Battery
		5-10-	Juvenile Incident
		5-11-	Assault & Battery
12 Years	Male	8-1-	Vandalism
		8-3-	Vandalism
		8-28-	Shoplifting
		4-14-	Burglary
		8-28-	Retention Found Property
		2-4-	Shoplifting
		2-4-	Shoplifting
		2-4-	Shoplifting
		2-4-	Shoplifting
		3-5-	Incorrigible Juvenile
		4-2-	Larceny/Bike
		4-28-	Vandalism
7-31-	Runaway		
12 Years	Male	8-11-	Runaway
		9-18-	Vandalism
		8-30-	Runaway
		9-30-	Burglary
		10-30-	Burglary
4-28-	Juvenile Incident		
13 Years	Male	2-3-	Runaway
		6-18-	Vandalism
		3-12-	Larceny
		3-10-	Burglary
		3-6-	Larceny
2-12-	Larceny		
16 Years	Male	6-15-	Larceny from building
		6-14-	Truant/Runaway
		8-28-	Truant, Runaway
		8-18-	Shoplifting
		10-12-	Suspicious Person
		11-8-	Burglary
		1-18-	Extradition for Jurisdiction
		6-29-	Stolen Vehicle
		8-3-	Larceny from Auto
		7-15-	Lost & Found Property
		6-30-	Burglary
		8-8-	Burglary
		8-31-	Burglary
		8-6-	Burglary
		8-16-	Larceny from Auto
		8-16-	Larceny from Auto
		6-25-	Burglary
		8-12-	Burglary
		8-12-	Burglary
		8-15-	Burglary
		8-8-	Burglary
8-1-	Burglary		
7-7-	Traffic Violation		
4-30-	Escape/Wanted Person		
4-21-	homicide		

HOME FINAL

ALASKA'S LARGEST NEWSPAPER

The Anchorage Times

250 pages

11th year

THURSDAY, NOVEMBER 25, 1982

Arrest cracks sex crime operation

by Jeff Berliner
and Cary Virtue
Times Writers

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An organized sex crime operation in Anchorage — whose victims included as many as 60 children aged 12 to 16 — has been cracked by Anchorage police after months of investigation.

A secret 29 count indictment issued Friday led to the arrest Wednesday of Carlos Romeo "Chico" Rodriguez, 45, at his Miami, Fla., home.

Rodriguez is being held in Dade County Jail on a \$1 million cash-only bail set by Alaska Superior Court Judge Mark Rowland. The state has begun extradition proceedings to return Rodriguez to Anchorage.

Police hope the arrest of the former Anchorage resident may provide clues to other sex crimes involving children. All the children involved were allegedly used for prostitution and pornographic movies and other illegal sex activities here.

Some of the children were raped.

A dozen children — identified in the secret indict-

ment only by their initials and ages, 14 to 16 — appeared before a grand jury here.

Police said at least 30 — and as many as 60 — children as young as 12 years old were involved in a variety of sex crimes, including pornographic films. Some of the children were described as homeless and runaways.

Drugs and money were used to entice some of the children to perform homosexual and heterosexual acts with each other, with Rodriguez and perhaps with others, according to the indictment.

The alleged crimes occurred over a three-year period, from 1978-80.

Police are convinced that sex crimes involving children — including prostitution and pornography — did not end with the Rodriguez arrest. Authorities are continuing their investigation.

"It's the tip of the iceberg," said Anchorage police officer Frank Felchtlinger, who has investigated child pornography here for five years.

Felchtlinger called the case "very serious" and said police are "actively pursuing other cases of a similar nature involving child prostitution and child pornography" in the Anchorage area.

"I don't believe this is the only case," Felchtlinger said.

"It's indicative of a national epidemic. This case is just one of many that have been uncovered (nationally)," he said.

"The police department has several open cases involving similar cases of pornography and/or prostitution," Felchtlinger said. "It's a big problem (locally and nationally)."

Rodriguez is accused of making and selling pornographic movies which depicted illegal sex acts involving children. The movies may have been distributed nationally.

Police began to crack the case last spring when several sexually abused children came to them. Three police investigators pursued the case.

Rodriguez, 45, was arrested on a warrant at 12:30 a.m. EST Wednesday (7:30 p.m. Tuesday AST) at his Miami home, 296 Atlantic Isle, by the Dade County Metro Police force.

Miami police have been working with Anchorage investigators on the case since April.

Anchorage investigators are attempting to extradite Rodriguez — a process that may take anywhere

from two weeks to two months.

Authorities hope Rodriguez will waive extradition, cutting in half the time it could take to return him to Anchorage, according to Assistant District Attorney Helene Antel.

The indictment accuses Rodriguez of lewd and lascivious acts toward children, rape, attempted rape, contributing to the delinquency of a minor, sexual abuse of a minor, unlawful exploitation of a minor and promoting prostitution.

Rodriguez is accused of making the pornographic films at his Anchorage home. The acts of prostitution were also alleged to have been committed at Rodriguez' home, although other locations may have been used.

"Also, there are some allegations of sado-masochistic acts," Felchtlinger said. "We know some of the kids spent the night there. We don't know if he (Rodriguez) provided any long-term place to stay."

Little is known about Rodriguez. He was born in the Virgin Islands in 1937, and apparently was raised in San Francisco. He has lived in Las Vegas. He traveled under several names: Chico Romeo Rodri-

See Sex, page A-4

—Introduction into Organized Crime

What has developed in this community, as is characteristic of other communities in other states, is a network of criminal activity of which juveniles play a substantial part, to the extent that many of our young persons so exposed actually are a part of a sub-culture existing in the same space but at different times within the mainstream of our society. This subculture has a set of values and morals that are substantially different than those of the mainbody of our society and paramount within this set of values is the belief that youth equates to victimization. When a young person in our community is, for a variety and combination of reasons, forced out of the home environment and onto the "streets" (so to speak), he is subjected to an elaborate system of victimization on the part of adults within the community who, in essence, use youth to their advantage in the perpetuation of their criminal activities and personal desires.

A young person finding himself/herself within this position is necessarily forced to first, survive. In order to do this, the youth must engage in activities which an adult can support. These activities from theft to drug usage/sales and prostitution. Adults involved in these activities will promote the involvement of juveniles to the advantage of the adult while at the same time providing for the juvenile, as a minimum, the basic needs of food, clothing and shelter needed by the juvenile to survive. Juveniles within this community are extensively involved in theft, drugs and prostitution and these activities are promoted and supported by adults within the community. The extent of the problem is largely unseen, even by many persons within the criminal justice system who deal with these juveniles daily as a part of their jobs, because the juvenile does not often talk about depth of involvement to anyone, other than his/her peer group and in some cases, not even to them. The system tends to look at each individual act by itself, failing to realize that there is a much greater problem, individually and collectively, lurking below the surface of the individual act.

As an example of what I have previously stated, I would estimate that about 50% of all the boys admitted to McLaughlin Youth Center have had some contact with adults of a homosexual nature. I would further estimate that in excess of 25% of these have had what could be termed deep involvement with more than one adult. Often, this kind of activity, develops in relation to other types of activity including the adult using the juvenile for drug sales and to provide merchandise for fencing operations of small and large scale. It is not surprising then, that when the juvenile so involved is picked up for a property crime or drug related offense, the depth of his involvement is never revealed to those professionals within the system that later deal with him.

Any juvenile who, for whatever reasons, spends more than a short amount of time living away from a home and on the "streets" will become involved to a greater or lesser degree in the kind of activity I have just described. Since the adult(s) involved use the juvenile for their purposes, the normal role of adult guidance in the maturing process is severely distorted which in turn perpetuates the problem as the juvenile grows older and changes from being the victim to the user. Over a period of time of involvement in these kinds of activities the youth gradually begins to believe that the

only thing that will change his being used to another's advantage is age and that when that age is attained, the role can be reversed.

It is virtually impossible for a young person to survive away from home without becoming involved in these kinds of activities because of the inability of a young person to legitimately obtain the basic necessities of food, clothing and shelter necessary for survival. It is further, virtually impossible, for that young person to steal enough through burglary, robbery or theft to attain these necessities. As such, the young person in that position, must turn to other more profitable activities. These activities involve drugs and prostitution. The problem is further compounded, in most cases, because of the emotional problems that the youth is experiencing as the result of his necessity to leave the home or to replace the home needs with persons met outside the home and his resultant turn towards drug usage. Drugs are expensive and not within the reach of the average young person through legitimate earnings. Adults desiring use of juveniles for sexual purposes are well aware of the juvenile's problems and will frequently provide, either the basic needs of survival, or drugs or both in return for sexual favors. In many cases, the juvenile can provide sexual favors for a much higher fee than could be obtained through other types of criminal activity. Adults desiring these kind of favors are very perceptive in being able to identify those juveniles that are in a position to which they would be susceptible to such propositions.

All this exists on a large scale in the Anchorage area. The extent of this existence increases steadily because of the inability of the criminal justice system and the community to control it estimate that the extent of the problem in Anchorage is proportionately greater than it is in other comparable communities in the United States, again for a variety of reasons. It is common knowledge that large scale fencing operations exist within the Anchorage area as is evidenced by the very small percentage of stolen property that is recovered and the relatively high frequency of recovery of stolen property from Alaska in other states. The extent of drug sales operations and drug usage among juveniles in the Anchorage area, again, is particularly high. Further, it is virtually impossible for any young person not to be exposed to drugs, and not just marijuana, beginning in junior high school. The extent of juvenile prostitution activities, particularly as it involves males, is also extremely high in the Anchorage area to the degree that virtually all juveniles living out of the home are exposed and many still living at home are exposed.

* There exists, in Anchorage, so-called safe houses where juveniles on the run can find temporary shelter. These "safe" houses are provided either directly or indirectly by an adult. Unfortunately, there are strings attached to the use of the safe house by the juvenile. There have been commercial pornography operations involving sexual involvement of juveniles in the most perverted kinds of sexual activity operating in the Anchorage area. These operations have been directed by criminal organizations from outside the State of Alaska. There have been commercial prostitution operations within the Anchorage area in which juveniles were the merchandise and in which the fees paid were extremely high. There have been large scale drug operations in which juveniles, many of them going to school and living at home, were involved as the primary pushers. There have been large-scale fencing operations in the Anchorage area in which merchandise stolen by juveniles was fenced by adults to create huge profits.

The depth of this whole problem is really seen when one realizes what becomes of the juvenile that is involved in these kinds of activities. All young persons growing up need adult guidance and emotional support in order that a moral and value system can develop. If the child receives, for this need, guidance and "emotional support" from persons that only wish to use him, it is understandable how we are developing a subculture of increasing size within the mainstream of our primary culture, in which the value system is as foreign as one would be from a far Eastern country. The use of youth for personal gain is as foreign to the basis of our culture as is the crime of murder and yet we are allowing this to exist, and to, in fact, grow within the Anchorage area to a massive degree.

*Information provided by local law enforcement officers experienced in the field of exploited children.

Child sex abuse 'epidemic' hits home

Copyright 1982, The Anchorage Times
by Jeff Berliner
Times Staff

"Catastrophic" is the term Anchorage Superior Court Judge Ralph Moody uses.

"Epidemic," proclaims assistant Attorney General Gayle Horeski.

Once something thought to occur in New York, Los Angeles and other big cities, it was something you read about in national magazines, something horrible but safely distant.

Now it's hit Anchorage. Some say it's been here for a long time, but the community refused to admit it or recognize that it existed.

The sexual abuse of juveniles by adults, Alaskan adults sexually attacking Alaskan children.

"It's the grossest, most vicious (thing) you could possibly imagine," says Fairbanks District Court Judge Gerald Van Hoomissen.

"I don't want parents to get

paranoid, but we're all vulnerable," says John Niethamer, executive director of the Boys Club of Alaska.

"Anchorage is a big city. We have it," says police chief Brian Porter of widespread sexual abuse of children by adults.

Be it a new problem or not, people in Anchorage are being bombarded by news of it — in the courts, in the press, in everyday life.

See Child, page A-4

THE UGLIEST CRIME

Sexual abuse of Alaska's children

Today The Times begins a multi-part series with an overview of the problem. On Monday, the victims speak out.

Child sexual abuse 'epidemic' strikes hard in Anchorage

Continued from page A-1

"The number of prosecutions has mushroomed," says assistant District Attorney Elizabeth Sheley.

"People ought to open their eyes," says Bonnie Scnell, the grand jury foreman who, with 17 other grand jurors, listened to 20 youngsters tearfully reveal their involvement in a pornography and prostitution ring run by adults. The grand jury returned a 23 count indictment against one of the men alleged to be a principal in that operation.

No longer just isolated incidents of a man raping a young girl or a boy being fondled by an adult, the past 12 months have brought case after case of multiple victims, mostly young teenage boys.

In one of the largest, police have evidence of a massive juvenile prostitution and pornography ring that involved children, aged 13 to

Many of the convicted adults in positions of public trust: the former assistant director of the Boys Club stands accused of six separate incidents of molesting boys; a former foster parent and juvenile probation "pass partner" stands accused of eight acts of molesting boys; a rural school superintendent has been sentenced to eight years in jail for molesting boys; a bus driver has been sentenced to 23 years in jail for molesting boys; a former public safety officer has been jailed for molesting boys.

All typical citizens taking typical children and doing previously unmentionable things to them. It's illegal. And in increasing numbers, these adults are getting arrested.

The children most often preyed upon are runaways — many of them running away from the sexual abuse of an incestuous home life. They find that sex for sale may be the only way to make a living in the world where you're too young to get a



job, you have no skills and you've dropped out of school.

Anchorage had 563 runaways in 1982, according to police reports, and another 325 juveniles are simply listed as "missing." The youths who do not return home often depend on selling their bodies for survival.

Chief Porter has three investigators working on cases of adults sexually molesting children. If he had more money, the chief says, he'd throw more investigators at the problem.

"We're flooding the court system," Sheley says. She works full-time doing nothing but prosecuting adults accused of molest-

ing children. His time is spent on adult sexual assault cases.

Olson is preparing to prosecute Carlos "Chico" Rodriguez, indicted for 29 sex crimes against juveniles in what police describe as a child pornography and prostitution ring.

And because there are so many cases cropping up, Anchorage District Attorney Victor Krumm is considering adding a third prosecutor to the sex crimes unit he created just 2 1/2 months ago.

Fifty cases are awaiting prosecution in Anchorage. Two or three new cases are referred to the Anchorage district attorney's

office.

Judges in Anchorage are so sickened by the constant parade of sexual offenders, Sheley says, that prosecutors are winning long jail terms for convicted offenders. One judge — after two straight weeks of hearing juvenile sex abuse cases — opted to have a murder case come before him to get a break from the cases of adults molesting children.

Dr. Roland Summit, a psychiatrist from UCLA, speaking at a sexual abuse symposium in Fairbanks last year, estimated that 500 Alaskan juveniles at any given time are victims of sexual abuse.

Half the boys at McLaughlin Youth Center have been sexually abused, according to George Duhite, the center's clinical services administrator. Even more of the girls have had sexual encounters.

Odyssey House, the national organization leading the fight against child pornography and prostitution, has sent one of its nationally recognized experts, Glen Lambert, to Alaska to help advise McLaughlin counselors — to tell them what to look for, how to spot the problem, how to deal with it.

Lambert, of the Salt Lake City Odyssey House, said his first audience in Fairbanks expressed disbelief when he confronted them with figures on child sexual abuse in Alaska. Last month, when Lambert offered advice to McLaughlin counselors, he said no one questioned the problem's existence.

Incest victims frequently become involved in prostitution, even when they have run away from sexual abuse at home, reports Marguerite Lupori of Parents United, a local group organized to fight incest.

By age 16, one in five girls will be abused and one in 10 boys will have been molested, Lupori says, citing Division of Family and Youth Services figures.

There were 64 cases of sexual abuse reported to the Department of Health and Social Services in 1982, and 385 suspected cases.

Reporting of cases of adults sexually abusing children is up partly because tough new laws require certain professionals — doctors, nurses, social workers, teachers, youth counselors — to report them to the police or face

penalties. The taboo against talking about sex — especially sexual abuse and homosexual abuse — is dropping away, leaving people more inclined to report incidents.

This change has been noticed by the police chief, prosecutors and others.

"These cases were virtually not prosecuted until two years ago," Sheley says. People simply did not come forward.

Porter and two of his aides give much of the credit for the breakthrough to officer Eric "Frank" Felchinger, who has won the confidence of sexually assaulted boys. And because they have talked to him, he has been able to gather evidence to bring to court.

Officials are bringing it out in the open, too. Gayle Horetzki, who works out of the chief prosecutor's office in Juneau, has testified before legislative committees about the "epidemic." And last week she finished rewriting a package of laws to close loopholes through which she claims some sex offenders slip.

Lupori is working with Marroyce Hall of the Anchorage Crime Commission's juvenile committee to expose the local problem publicly and suggest solutions.

And STAR — Standing To-

gether Against Rape — is proposing to make its educational campaign a permanent part of the public school curriculum — beginning in elementary school.

Anxious to help male and juvenile victims also, STAR reports a ninefold increase in reported sexual assaults against males the last two years. STAR also reports that 43 percent of victims of sexual assaults are youths 18 or younger.

At a recent sentencing, Horetzki told the judge the problem has become "epidemic in our society," and the judge, Ralph Moody, handed down a 23-year jail sentence to a man convicted of 22 sex offenses against boys.

"We've got to let people know in this society that we won't stand for this kind of abuse," Moody said.

Adults who turn teenagers and younger children into sex objects either for pleasure or pay are going to jail, Sheley reports that prosecutors here have a 89 percent conviction rate.

A package of new, tougher laws Horetzki has given to the governor may make it even tougher on offenders.

Though the adults may end up behind bars, the children end up scarred, perhaps for life.

Monday: the victims talk.

Boys lured into city's sex-for-profit operation

by Jeff Beriner
Times Writer

Brave burglar and child pornography star—that's Joey.

But that is belied by Joey's soft-spoken shyness and embarrassment about how he got into robbing Anchorage homes and starring in locally-produced sex films.

Joey is no isolated case of abuse. Incidents of Alaskan adults sexually assaulting Alaskan juveniles has reached epidemic proportions, state officials say. In every classroom of 16-year-olds in the state, experts estimate that one in every 10 boys

has been attacked and one of every five girls has been molested.

Half the young people in McLaughlin Youth Center have been sexually assaulted. Prosecutors cannot keep up with all the cases police are finding. The once well-hidden cases of occasional incest or isolated rape have mushroomed, and now regularly include cases where there are multiple victims.

In one operation, as many as 60 youths aged 12 to 16 worked in one pornography and prostitution ring in Anchorage. Here are the

See Friend, page A-5

THE UGLIEST CRIME

Sexual abuse of Alaska's children

Once something thought to occur only in big cities, the sexual abuse of juveniles in Alaska has reached 'epidemic' levels. In this multi-part series, The Times examines the problem. On Tuesday, a look at child pornography.



'Friend' lured victims into pornography ring for children

Continued from page A-1
stories of three of the young victims.

"I was having problems at home," Joey says. Almost embarrassed now that he ran away from home when he was 12 years old.

He had to do it, he says. He now wishes he had never done it. He justifies it by describing a horrible family life, but realizes — even as he talks — that he fell into something much worse than what he left. His life was not bad by any stretch of the imagination and his long-established Alaskan family had more money than most.

He fought with his step-father and fled to other relatives. "Please don't write about my family," he says, trying to preserve what was once there and what he's now trying to put back together. Though he lives apart from his patched-up family, they visit. Old wounds are healing.

But Joey still shows the scars of never wounds inflicted in the life he embraced when he fled from home. Introduced by someone older, someone he knew and respected, to a man who expressed interest in his troubles, Joey thought he had finally escaped homelessness and chaos.

The man befriended Joey, offered him some affection, a place to stay and a job — selling drugs. A perfectly normal kid by his own account and according to his psychiatrist, Joey never returned home, never returned to school where he had been doing well, and suddenly his only friends were the other runaways he found were his new roommates at a house in Spenard.

Years of burglaries, forced sex, drug dealing and numerous arrests later, Joey is trying to put his wrecked life back together. And he is talking — for the first time — about what happened to him.

Now a jittery young man growing out of his teens, Ronny came up and wants to change the subject away from that day when he was 12 years old, that day he ran away, upset and confused, from the Anchorage home where he had lived his short life.

Although he is agreed to talk, he keeps trying to change the subject to what he is doing now, how he's trying to gather the widely scattered pieces of his young life and put them back together. He can't fully admit what he allowed grown men to do to him. Tough as he is, street-wise, a fighter, defensive and grown into an adult before his time, Ronny can't cut up a storm and brag about crimes he got away with. But he can't talk about those sex films with men. Then, suddenly, he blurts out that he would like to kill the man who changed his life.

Having said that, having gotten that off his chest, again, he talks about himself as a child and how he got dragged into a strange adult world of sex and violence and drugs that he — and most people in Anchorage — previously did not know existed, certainly not here.

Standing near the Fireweed Theater, his thumb out, Ronny was 12 and looking for a ride farther away from his nearby home shattered by alcohol and suicide when his life changed.

He has rarely traveled out of his own neighborhood before, except with his family. Yet there he was — still in his own neighborhood — his thumb trying to flag down a way out.

Angrily asserting that he was then a normal kid, he quickly adds that if he is not now leading a normal life, it is because of the man who stopped to pick him up — a warm, friendly guy.

But it was too late — the man had pulled up, motioned him in

with a smile, offered him a joint and a warm place to stay, and Ronny's life has not been the same since.

And bit by bit, he acknowledges the years of allowing himself to be sexually abused on film.

Ronny's biggest concern is his family — the one he left destroyed behind him and the new one he has haphazardly created: a young baby he doesn't live with and a new girlfriend for away.

Ronny ran from one chaotic situation to another. His Anchorage family was disintegrated and Ronny, in the stirred siang of a school dropout, knows he can hardly keep his own life in one piece, much less his families of then and now.

He set out to escape drugs and suicide at home. What he met was a life of drugs and sex and burglaries.

Barely in his teens, living in an idyllic Alaskan setting, the mountaineer retreat called home was wrecked by the screaming and fighting going on inside the house. In fact, it drove Pat out.

He was brought back, but he left again.

New tangles with a step-parent got him sent to a foster home, but that didn't work any better for Pat, and he ran from there, ending up getting some professional counseling and a bit of schooling. He never completely cut his ties with his home, his family, and his education. Nor did he get out of being a burglar, a drug dealer and a prostitute until recently.

But a certain inner strength — which comes across in his gruff self-confident speech — kept him straddling both worlds and never moving in with a man who opened his doors to him.

While he never completely cut his ties with home, he never moved back in either and was on the streets constantly at age 13 after earlier brief experiences living the life of a runaway.

Describing himself as a normal kid who took vacations with his family, who led a relatively regular life, Pat admits he just couldn't get along at home. But never willing to give up, he tried to pick up skills. Too young to get a real job, his main skills were as a burglar, drug dealer and prostitute for both men and women. Now highly skilled and working successfully at his business in Anchorage, Pat still remembers that day he went to the house of a man he didn't know to sell guns — stolen guns.

Joey did not use drugs and did not sell them. But having run away from home and needing a place to sleep, Joey jumped at the first of a job even if it was delivering drugs.

But his first delivery never got completed. Robbed of the 11 ounces of cocaine and beat up by the two robbers, Joey returned to his supplier, crying and empty-handed.

He was told the drugs were worth about \$4,000 and he would have to work to pay it all back. Work he did — burglarizing homes, selling more drugs and acting in pornographic films with boys, men and girls.

Later he learned he was set up. The robbery had been a fake. It was a scheme to make him indebted and scared and turn him into a burglar and child porn star.

Joey was paying his "debt" slowly. The burglaries would give him the goods to sell. The money he earned for selling the stolen goods went right back to his self-appointed benefactor.

The benefactor "got mad at me because I wasn't paying him (back) fast enough," Joey says.

He was told that "a faster way to pay me off would be to make these movies for me." He said he'd kill me if I didn't.

In one frequently filmed nude scene, "He handcuffed me to a chair and used sadist articles like whips. Plus he was taking still pictures."

"He made me cry a lot of times. It showed up on screen. I begged him to stop."

How often was this scene filmed?

"Almost every time except when I was with the women..."

He was filmed on "paydays" — not the days he was paid for the goods he stole, but the day he was to pay installments on his debt. Wednesdays and Saturdays were Joey's payday.

But those were the days he also picked up more drugs to sell — giving them to make them go farther so he could earn a little extra money.

"I needed a place to stay. I needed drugs to sell and make money for myself. It's kind of hard in the winter."

Burglary became his main job.

"The more you do it, the easier it becomes. I would have quit. It was scary, but he forced me and I got to the point I wasn't scared."

No one ever got caught pulling a job for the man, Joey says.

"He set up the places and told me how to do it. He took me there and I did it. He'd tell me what to grab. He knew what was in the house. It was big houses and every time I went they were never home. Nobody was ever home."

"He always made me do it by myself. I'd have a bag or a pillow case and he had the old station wagon and we'd load up the back of it. He knew where the stereo was. And the TVs. He wanted out front, sometimes on the side or

somewhere close by so I didn't have to carry the stuff very far.

"We'd go back to his house and he'd give me money for it. He'd pay me for things I got. Live stereos he'd give me \$150 or \$200. TVs \$50, \$100. Guns \$150, \$200."

"If there was a gun, he'd know where it was. It'd be surprising. He'd tell me there was a gun under the bed in so-and-so room and there'd be a gun there. I don't know how he found out but he did."

How many jobs did Joey pull?

"I lost count. It was a lot. It got to where I was into burglary so much I lost count."

Over the years, Joey says he probably committed 300 to 400 burglaries in Anchorage and neighboring communities. Only a handful of times was he ever caught.

Drugs, filmed sex, burglaries — that became his life and every one he saw was involved.

"It was kind of like our job."

Joey says he'd like to kill his former "benefactor" for "months of torture." "Which Joey says "named my life."

Why didn't he do something about it back then?

"He was real scary. But he was somebody who protected you and helped you with money and food and stuff and a place to stay. He'd be like a friend. It never crossed my mind to kill this guy."

Why didn't he run away?

"Where was I going to run to? I couldn't go back home. There was nowhere to go."

Alcohol, suicide and bad times at home chased Ronny into the streets where he found drugs, sexual torture and more bad times.

But it wasn't that way at first, Ronny says. When he climbed into the stranger's truck, "we got stoned cruising around. We went over to his house and he offered me a place to stay. And he set me up with different broads" — for money.

But all the money was supposed to go to the man. When he found out that Ronny was soliciting "tips" on top of the "rental" fee, he "slapped me around for talking about money."

Ronny says he desperately needed a little cash. "I was only in the sixth or seventh grade and I wasn't working."

Films followed.

"He told me if I ever told anybody about his film equipment, he said he'd kill me."

Ronny's sex setup here was good when he was rented out to women, he says, and he pro-

formed in films with two lesbians.

Ronny was paid for films, but burglaries were more lucrative, he says. His supplier "paid in cash and dope" for the "jewelry, nuts, stereos, guns — especially pistols" which Ronny brought him.

Ronny was paid in every kind of drug he could want — "opium, hash, quaaludes, speed, everything, coke."

Drugs and money lured him while the sexual torture repelled him.

Why didn't he leave?

"When you think the whole world's against you and you're 12 and he makes out like he's your friend, he's got you. He acts like he's your best friend and you're so down and out and lonely."

He seems to understand and justify why he never fled that life then. But now?

"I'd like to kill him."

Pat was used to hard times and when he and his friend came across this guy who handed out drugs so freely, bought their nuts and offered to buy more, Pat recognized what for a kid on the street was a good thing — or at least as steady an income as he could hope for.

Naive even for a teenage runaway, Pat's "good thing" took on a new turn.

The fence (someone who buys stolen goods) told him, "I need a boy for women."

Pat had no sexual experience. He didn't know what he was getting into. But it promised him a steady income.

"When I was 13, I used to sell

myself for money," he now says matter-of-factly, describing it as a "rent-a-boy" operation.

"Sometimes they'd rent kids out for the weekend," he says, "it wasn't cheap."

For a one-night rental, Pat said he pocketed \$100, while \$300 to \$400 went into the pockets of the men who ran the sex ring.

He was rented some 50 times for weekends. Pat says usually it was men who bought his services, but a few women used him, too. When Pat freelanced, selling himself on the street, on his own, he charged up to \$150 per hour.

Pat says the man "offered money and everything you could imagine" to get him to act in sex films, \$100 to \$150 per film.

"He just gave us drugs, tubes (quaaludes) and everything."

Pat started selling the drugs, and stealing — sewing jewelry and other stolen goods.

Pat says he even broke into the man's house once where he says he saw "books, stinkies and handcuffs in the bedroom... and piles and piles of magazines. He had guns all over the place, laying on his bed."

"He had a lot of control; he had a lot of power," Pat says, and a lot of drugs and money to pass out.

Pat says he didn't know what was normal and what wasn't, what was right and what was wrong.

Now, he says, he knows. "I grew up fast."

The man who allegedly did these things to in jail in Anchor-

age.

Basement porn drags youths into underground

by Jeff Berliner
Times Writer

In the basement of a house in Anchorage, a group of teenagers shed their clothes. They're stars — of pornographic movies.

Over a five-year time span these youths, and dozens of others like them, appeared in hundreds of films, made at a house in Spenard. From Anchorage, the films disappeared into the secret underground of child pornography.

Child pornography is big business, a multimillion-dollar business. And it's illegal, both nationally and in Alaska.

Once thought to be something that thrived in big metropolitan centers, child pornography has been produced in Anchorage on a commercial scale since about 1976, police said.

The going rate for adult pornography is doubled or tripled if juveniles are featured, said Myron Ace, once Alaska's largest operator of adult book stores. An 8mm adult film sells for about \$25; a videotape goes for between \$65 and \$100.

A 30-page magazine featuring a juvenile in homosexual scenes may be purchased over the counter. See Child, page A-5

THE UGLIEST CRIME

Sexual abuse of Alaska's children

Once something thought to occur only in big cities, the sexual abuse of juveniles in Alaska has reached 'epidemic' levels. In this multi-part series, The Times examines the problem. On Wednesday: procuring the children.



Child porn is big business

Continued from page A-1
counter in Anchorage for \$15.

"There are over 400 publications that deal exclusively with child pornography," said Glen Lambert of the Utah Odyssey Figure, the organization leading the fight nationally against what is commonly called "kiddie porn." Lambert has advised youth counselors in Anchorage about sexual abuse of juveniles.

"No one knows how many pornographic films depicting juveniles may be in circulation or available for sale. Anchorage ordinances forbid the sale of sexual material depicting juveniles. State law prohibits its production in Alaska.

Yet sexually explicit magazines involving juveniles have been purchased at Anchorage adult book stores. These nationally distributed magazines traditionally do not bear addresses or dates or place of publication — making it difficult to determine ages of the models. Some publishers protect themselves by printing a notice at the beginning of the magazine that all models depicted are over 18.

One of the nation's largest publishers of adult entertainment has joined a campaign against juvenile pornography. Al Goldstein, publisher of "Screw" magazine, told The Times that he is "appalled and disgusted" by the use of children in sexually explicit material.

Goldstein has joined Dr. Judianne Demson-Gerber, a psychiatrist and lawyer, in leading the fight against child pornography.

"Among the pornographers I know, it's abhorrent," Goldstein said. "I know no one who is into this. If I did, I'd report them. It makes it harder for me to defend erotic behavior between consenting adults."

Pornography is a \$2 billion business in this country and child pornography is thought to make up no more than 5 percent of the trade.

"It exists. There's a market," Goldstein said. "It's a very high mark-up item. The more bizarre the fetish, the higher the price."

Ace said he gets regular requests for child pornography at his adult bookstores and has been

approached by makers of child pornography in Anchorage to buy material produced locally.

Customers request "chicken stuff," Ace said, a euphemism for pornography depicting juveniles. Those who make and distribute it are known as "chicken hawk."

Child pornography is difficult to obtain, Ace said. He gets long distance requests for it in Anchorage, including a regular inquiry from Canada.

Most child pornography is distributed through the mails, a fact that angers Odyssey's vice president, Jean Lothian. She said the material passes freely through the postal system, often between members of groups such as NAMBLA, the North American Man/Boy Love Association. The postmaster general and customs officials do nothing, she said.

Several years ago, U.S. customs officials in Alaska intercepted some material and sentenced 40 years in jail, James Cameron, special agent in charge of the customs office here, said another case is now under investigation.

Last November, Anchorage police arrested Carlos "Chico" Rodriguez on 29 counts of sex crimes against minors. Police believe he was connected with making juvenile pornographic films here.

What authorities know about Anchorage-made kiddie porn comes from the actors and actresses involved in these movies. The Times interviewed several of these youths, with the guarantee of anonymity.

The films produced in Spenard ranged from 15 to 30 minutes, though some were as long as 50 minutes. Both silent and sound movies were made. The ones with sound often had nothing more than just that: sounds. Still shots were also taken. The actors were given a sexual situation and told to act it.

The films were fully produced, in color, with a beginning and end, and had titles like "Sensations" or "Doggie Style," but no credits.

"They looked professional. But there was no plot — just

sex," said one actor.

All sexes and ages were represented in the movies and some involved people and animals. The sexual configurations were varied, as were the sadistic devices used as props.

One actor said he was handcuffed for 45 minutes; another recounted a session where his hands were handcuffed to a chair and his feet were tied.

Many of the films made in the house were previewed by the actors. Other films were shown there — apparently to arouse the audience and encourage "spontaneous" orgies which were filmed by hidden cameras.

The number of actors involved in the weekly film-making sessions was small, but rotating. "I know nine that were acting and there were about 10 or 15 I didn't know," said one actor. Another actor knew a few different participants in the film-making. Several others who were aware of the filming report they were offered \$150 per film.

Actors and authorities alike agree that most of all of the films were eventually shipped to the Lower 48 for distribution.

One youth said there was no local underground trade in the films in Anchorage because it was safer to ship them outside Alaska where none of the participants or locations could be recognized.

Odyssey House's Lambert tends to agree. Child pornography "is a real business," he said. "Producers usually don't distribute and distributors usually don't see what they're selling."

STAR — Standing Together Against Rape — devoted its last newsletter to child pornography and STAR's executive director and her predecessor are working with the Anchorage Crime Commission to halt child pornography in Alaska.

But, as the Goldstein points out, as long as there are people willing to pay for the material, it will exist. And as long as there are children available — usually in, always are the most vulnerable — child pornography will be produced.

Throwaway youths become easy targets

by Jeff Berlner
Times Writer

He was very much a father figure. He was old enough to be father to the young teens he befriended, but he acted more like a peer. Offering friendship, money, drugs and shelter to youths on the run, they saw in him a genuine escape to a better life. Bedecked in jewelry, driving a souped-up car and passing out drugs and money, this small, outgoing, generous man circulated through an Anchorage game room, acting in the words

of one victim, "like he was your best friend." Only later did the youths learn that his real motive was to turn them into prostitutes and burglars. In fact, as many as 60 youths, aged 12 to 16, mostly runaways, were attracted to this man, police said. But this man did not work in isolation. Groups of youths involved in drugs, pornography, prostitution and burglaries operate out of 30 houses around Anchorage, according to police chief Brian Porter and Marroyce Hall, chairman of the Anchorage Procurement, page A-5

THE UGLIEST CRIME

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Procurement seek lonely youths

Wednesday, March 16, 1981, The Anchorage Times A-5

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Crime Commission's committee on organized crime and exploited children.
The two called a press conference Tuesday to release a report detailing the existence of organized juvenile crime rings in which adults gather youths for the sole purpose of using them for burglaries, drug dealing and commercial sex.

How do adults lure these youngsters into their web?
Most of the youths go willingly, Porter and Hall said, picked up at Anchorage game rooms and shopping center malls. In isolated cases, juveniles have been kidnapped. Some youths interviewed by The Times said they knew of cases where adult procurers brought young teens to Alaska from outside for use as prostitutes and actors in pornographic films.
Many ingredients help lure these boys, who are mostly in their early teens, to sticky runaways.

The procurer is very adept at "reading" vulnerable young people, Hall said. They know what to offer the youths: affection, money and a means to make more money.
All too often the affection is phony. But the money is real, especially to a runaway without a job. One youth interviewed by The Times boasted that he once had \$8,000 in his pocket. He said he enjoyed the frills and thrills and riches he could never afford in his broken home, though he didn't like being a prostitute or having an adult "rent" him for the weekend.

A man under arrest for running a juvenile sex-drugs-burglary operation used to brag that he had a group of youths working for him who would do anything, according to Myron Ace, who once ran Charlie Brown's, a game room which the man used as a pickup point.
This man "was admired by the kids at Charlie Brown's," Ace said. "He was their buddy."

He had the kind of personality the kids respected. Kids came up to him and said, 'Hey, how's it going?' He was coming in pretty regular. He was a big wheel thriving on his own little harem and kingdom."
The same man, said a snack bar attendant at the game room, "would come in acting like one of the kids and talk to the kids there," flashing bills — 20s, 50s, even \$100 bills.

The man used cash and drugs to lure the youths. And he had a good supply of both.
The dealer who supplied most of this man's drugs bragged that he did a \$25,000-a-month business with him. "I supplied everything — marijuana, PCP, acid, uppers, downers, everything," he told The Times.

The youths attracted to the likes of this man often had their sexual boundaries destroyed before they even met him, according to Marguerite Lupori, a member of the juvenile crime commission and outreach director for Parents United, a group which fights incest.

Many of them had run away to flee sexual abuse at home, Lupori said. When they discovered that their sexual services were required again, it was easier to submit; their values had been distorted and once-precious boundaries violated. When sexual services were required for drugs, money and a warm place to stay, the price didn't seem all that high, Lupori said.
But sexual abuse and burglaries lead to more of the same — according to the youths themselves. After a while, burglaries are no longer "scary," and sex becomes easier.

When these youths finally break out of the pattern of sex-for-hire and burglaries-for-compassion, they often need long-term treatment, said Glen Lambert, a national consultant who journeyed from his Salt Lake City Odyssey House counseling service to Anchorage to advise counselors at McLaughlin Youth Center.

And their attitude changes. Once removed from the situation, several youths interviewed by The Times voiced a desire to kill the men who forced them to rob houses and sell their bodies.
"It's easier a couple years later to say, 'I'd like to kill that guy,'" said Lambert.
But before a youngster reaches that stage, he will more than likely defend his abuser, experts said.

"A child is having problems with his own family and is befriended by an adult who substitutes that relationship to himself," Porter said. That youth may remain subverted until, perhaps consciously, he manages to get caught committing a burglary, Porter said.
"The most common way to get out is to get caught," Porter said. And once caught, the youths end up at McLaughlin.

Half the youths there have been sexually abused, said McLaughlin Clinical Services Director George Bunite. Hall's juvenile crime committee thinks the number could be higher.
"A lot of these kids don't feel good about themselves and their bodies," Bunite said. "They don't respect themselves. They don't care in a sense."
They are "easy" victims.

Odyssey House vice president Jean Lothian characterizes the victims as "runaways, usually running away from sexually abusive homes. They have a great need for affection and no family to protect them. Many are 'throwaways' tossed out by their parents. They are easy prey, lost and lonely kids."
The abusing adults "give the kids what they need," then condition them to be passive.

"Kids are very protective of the people who abuse them," said Odyssey House's Lambert. "We usually find loyalty to prostitution clients and the abuser."
Many youngsters leave a bad home situation and end up in a worse one.
"It's a choice of one hell or another," Lothian said.

Curtain of victims' silence shields abusers

"I've tried to think of a thousand ways to bust open the operation. The only way you could do it is get inside. You'll never do it. You'll never break it open. You'll never be able to do it."

by Jeff Berliner
Times Writer

Mark was once very much on the inside.

Inside a ring of prostitution, drug deals and robberies.

That was before Mark became angry, furious with the adults who lured him into a life he found disgusting.

Now Mark (not his real name)

has decided to go straight by pulling the cloak of secrecy off the ring which for years provided him with "work" while providing adults with the profits earned from Mark's body.

But there was a time not too long ago when Mark would not even talk to his friends about the sex-for-pay operation. It was too sensitive, too touchy, too embarrassing.

Police know only too well that stopping an epidemic of child sexual abuse — especially when it is part of a larger ring which

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Parents didn't suspect abuse

Continued from page A-1

Stealing herself, Ginny went downstairs to tell Lynn and her husband, Steve. That night, with her questioning, they learned their fourth grade daughter had been raped. As the word spread around the apartment complex, they found out they weren't alone.

They're not alone, statisticians estimate that by age 18, one of every five girls and one of every 10 boys will have been sexually abused. Lynn herself had been sexually abused as a child. But those were just numbers and bad dreams. She never suspected anything wrong with her children.

"They always had a lot of kids' toys, knowing Walt Disney movies on the video machine," Steve recalls. "His wife would call and ask if our daughter could spend the night at parties over there. Then it came out that he'd done stuff with our daughter three different times."

The other children, including Ginny's, were "fondled," she says. Only girls were molested; in fact, Ginny says, many times her son was not invited to Jim's. And her youngest daughter, known for her inability to keep secrets, wasn't welcome either.

Looking back, she wishes she had realized that might have been a signal. The only thing Lynn thought was unusual was the day her daughter came home from play and wanted to take a bath.

"It was only about 5:30 or 6:30; she'd never done that so early," Lynn remembers now. "Kids don't do that."

Later, she would learn that night was the first time her daughter had been raped.

Steve and Lynn describe their daughter as more trusting and perhaps more naive than most 5-year-olds. But some of the children involved were a few years older, and most of them had been told about sex, about where babies came from.

But the parents don't think their children really understood that what Jim was doing was sexual. Sex involved falling in love and getting married; there was none of that here.

"He told them he was their adopted-type father, and it was OK if he did things with them," Steve says. The children were asked to sign oaths of loyalty and secrecy, all administered with the trappings of "secret club" mystique that children so often love.

"In general, they couldn't say no to him, and had to do what he said," Ginny says. "Kids would think nothing of it, but an adult could see right through it." And the children were ordered not to tell their parents about the oaths.

"By giving the kids a secret, he was treating them like adults," Lynn says. "They thought that was neat."

In return, there were parties with popcorn and movies on the video machine, games and crafts that their own parents couldn't afford.

The parents thought Jim a nice guy. He visited with his neighbors, had them over for coffee, gave them rides when their cars broke down.

"That's not to say that everyone in the neighborhood who lives kids is molesting them," Steve adds hastily.

But just before the incident was uncovered, he saw a television special on child molesting. "They said if someone is so good with kids that it seems too good to be true, maybe it is."

The day after the word about Jim was out, the parents took their children to the police station to sign statements against him. He was arrested and the last the parents heard was being held for \$10,000 bail.

The 'nice man' next door was too good to be true

by Carol Murkowski
Times Writer

The children knew all about strangers offering rides, strangers offering candy, strangers calling from bushes and alleyways.

They didn't know about the nice man next door.

An Anchorage man is awaiting trial on charges of sexually molesting 10 children. And back at the apartment complex where he and his victims lived, parents move about their lives with little icicles in their hearts.

"If my fingers shot bullets, I'd have shot him," says Ginny,

mother of two of the molested children.

"How many kids has he ruined?" mourns Lynn, whose 9-year-old daughter was raped three times. "We know of 10, but how many others?"

Ginny and Lynn, who asked that their names not be used, were used to their children and others spending time at Jim and Vi's place. They knew that children often pick one house in the neighborhood to hang out. Their biggest worry was that the children were bothering the couple, but Jim assured them he loved

kids.

He did.

About three weeks ago, Ginny got a phone call from Jim's first wife, whose 13-year-old daughter had just filed sexual abuse charges against Jim.

"You'd better talk to your girls," she suggested, knowing that Ginny's four children spent lots of time at Jim's.

Trying to hide her tears, Ginny turned to her daughters, who had overheard the telephone conversation. They were frightened, but finally admitted being sexually fondled by Jim.

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A half hour after Steve and Lynn found out about their daughter, concubine knocked at their door in the form of a petition for SLAM — Society's League Against Molestation. The national group works to establish tougher laws against child molesters, and the parents at their apartment building have all become firm believers in its work.

Too late, they know what to look for: "Take more time, look at your kids, know who they spend time with," Ginny says.

She has urged her children and their friends that if they're afraid to tell their parents, to talk to a teacher or neighbor.

Take note of any unusual behavior, Lynn adds — even something like a bath at the wrong time of day.

And now, they wait to see what the courts will do with the charges filed against Jim. They've been told the case may not go to court for several months, possibly as long as a year. There are 50 such cases in the district attorney's office now, and two or three new ones are referred every week. They know they have to be patient, but it's hard.

And in the meantime, Jim's wife is still living in the apartment complex; every time they see her, it all comes flooding back.

"I guess all you can do is go on and try to keep raising your kids and teach them what's right. Maybe they'll be okay," Steve says. "But it makes you wonder how they'll handle it when they get married."

Lynn bitterly remembers how she was sexually abused as a child.

"I grew up thinking I couldn't say no, that I didn't have the right to say no," she says. "I never wanted that to happen to anyone else."

ANCHORAGE

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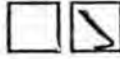
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HOME SECURITY

SURVEY



Curtain of victims' silence shields abusers

"I've tried to think of a thousand ways to bust open the operation. The only way you could do it is get inside. You'll never do it. You'll never break it open. You'll never be able to do it."

by Jeff Berimer
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includes trafficking in drugs and stolen goods — is no easy task.

In fact, it's one of the toughest crimes of all to do anything about, police chief Brian Porter said.

Young people who are forced to have sex with adults naturally don't like to talk about it. When the sex is "kinky," or involves homosexual acts or has been filmed, the taboo is stronger.

Those who talk are few. And when the young people have been paid in illegal drugs for "services rendered," or have been involved in burglaries or other crimes, getting them to agree to talk to police is almost impossible.

Because many of these teenagers have a "macho" street image, it's doubly difficult for them to break down, said Glen Lambert, a national expert from Odyssey House who was in Anchorage recently to advise McLaughlin Youth Center counselors about sexually abused children.

"These kids don't testify," Lambert said, "and most of these people don't get arrested."

But without the young victims' testimony, there is no case: there is no victim to tell his tale in court. There is nothing, nothing but suspicion and statistics to show that these juvenile crime rings are real: that burglaries committed by teen-agers are on the increase, that drug use by young people is up and sexual abuse of juveniles is up.

"It takes a lot of salesmanship to convince kids and their parents to come forward," Porter said.

The police department's best "salesman" is Anchorage police officer Frank Feichtinger who, in case after case, has convinced teen-age boys to tell him embarrassing and illegal things they did and had done to them.

But even Feichtinger's successes don't make him optimistic. The arrests he's made thus far are just "the tip of the iceberg," he said. The chief uses the same phrase. Feichtinger is one of several officers working in the police sex crimes unit.

The biggest case brought by police and prosecutors is against Carlos "Chico" Rodriguez, who allegedly employed up to 60 Anchorage children, aged 12 to 16, as prostitutes, burglars, drug dealers and pornographic film stars.

"Did you know it took Feichtinger five years to make that case?" said police Lt. George Novaky.

Feichtinger first heard about the activities of this alleged crime ring when he worked for the Alaska State Troopers. Later, while he was working at McLaughlin, young boys who had been part of the ring began confiding in him. Then last year, Porter put Feichtinger on the case full-time until enough evidence was gathered to make an arrest.

Such operations frequently go undetected for years.

"Kids will talk about anything but this," Feichtinger said. "This is a taboo subject amongst their peer group. It's just not a subject of discussion, period. And it's just as much taboo with parents and police. That makes it harder to solve, harder to get into than most cases."

Sexual abuse of juveniles by adults is an "offense that has been hidden for decades," Porter said. "They're not easy cases to

meanor charges which carry a 90-day jail sentence.

"People don't come knocking on your door," Feichtinger said. "You have to coax it out and pursue it. It requires more than sitting down and saying this happened to you."

"It takes a certain knack to be able to question these kids and get them to talk," said Bonnie Schnell, foreman of the Rodriguez grand jury which listened as 20 young people came before the jury of 13 strangers and told their stories.

"It took a lot for those kids to get up there and testify, especially with 18 people staring at you. You feel sorry for the kids," she said.

The now-public indictment against Rodriguez protects the identities of these juveniles by revealing only their initials and ages. Eventually, though, they will have to tell their stories in open court and face questioning by both prosecution and defense lawyers.

Juveniles who do talk have their reasons. Several boy burglars who also worked as prostitutes told The Times they were willing to have their stories told to get it out of their systems, off their chests. They said they want to save other teen-agers from having to go through the sexual torture that dominated their rough street life.

And, they admit, they want revenge: they are willing to suffer police questioning and the further indignities of courtroom grilling to put their abusers behind bars.

"They are hurting so much that they finally talk," said one McLaughlin counselor who asked not to be named.

"Sometimes they'd point out others who were involved, but the others deny it. I don't know any kids that were public at all about it. Kids aren't going to spill the beans, they're afraid of their own image."

Homophobia — fear of being a homosexual — explains why some boys cannot talk about sex acts with men, the counselor explained. Often initiated into sex by men, the youths are uncertain of their sexual identity and afraid to admit what they have done.

Young children may not understand what happened to them and they do not have the vocabulary to articulate it.

Anchorage prosecutor Elizabeth Sheley, who works full-time on cases of sexual abuse against children, uses an anatomically explicit doll to help young victims explain what was done to them. But for her to do that, the children must first have communicated to their parents about the incident and parents must bring it to the attention of police — something which does not always happen, especially if a relative or friend of the family is involved.

And so the coverup persists — partly out of taboo, partly out of protecting a father or uncle's incestuous acts, partly out of protecting the family from embarrassment or worse. Authorities said it is common for a mother or other relative to convince a child to recant damaging testimony or not to talk at all by saying, "You don't want Daddy to go to jail, do you?"

This failure to report sexual abuse of a juvenile prompted Alaskan legislators to pass a law requiring teachers, doctors, nurses, youth workers and others to report suspected cases of abuse or themselves face misde-

Getting people to talk about the sexual abuse of juveniles is just one step toward cracking these cases. Authorities more frequently rely on the traditional methods of investigation.

The FBI's national lab is on the lookout for child pornography and has been alerted to keep an eye out for specific material Anchorage police would like to use as evidence.

Raids are few and far between, but about a year ago the FBI raided a warehouse in Syracuse, N.Y., which was purportedly the biggest child pornography processing plant in the country.

FBI officials have not examined a computerized list of 25,000 names seized in the raid — names of customers and suppliers of raw film — to alert law enforcement agencies elsewhere in an attempt to crack other cases. It would be impossible to do this, a New York FBI official told The Times.

This lack of cooperation between law enforcement agencies does not lend itself to stopping illegal child pornographers, says Marroyce Hall, chairman of the Anchorage Crime Commission's juvenile committee.

Customs officials here would like to intercept juvenile pornography which they believe is going in or out of the country — some of it through Alaska. The most recent case here was several years ago when a Fairbanks man was jailed for 40 years. Another case is under investigation now.

Thus so-called kiddie porn is not easy to ferret out.

"Dogs can't smell it," said special agent in charge of the U.S. Customs office here James Cameron, referring to the use of dogs to find hidden drugs.

"It's one of our high priorities as far as smuggling goes," he said. "If we had sufficient knowledge to know what we're missing, we'd probably catch them."

Some home-grown pornography is thought to be shipped abroad for processing and duplicating and then returned to this country with all identifying characteristics removed as if it were made abroad.

But proving that a young person depicted in a film or magazine is a juvenile presents its own problems. Alaska has no obscenity laws and pornography is not illegal — unless the sexually explicit scenes feature minors.

But that may be changing. A bill that would make it a felony for parents or guardians to let their children engage in commercial pornography was introduced in Juneau Wednesday.

The bill, sponsored by Rep. John Liska, R-Eagle River, would add three sections to the state law that prohibits commercial production of pornographic film, photos, slides, books, magazines or live performances if they depict a child under age 16.

A parent or guardian who lets his children engage in pornography would face a maximum sentence of 10 years in prison and a \$50,000 fine, under the bill.

The bill also would make it a felony to import, distribute or possess with intent to distribute material that depicts the sexual abuse of a minor. The maximum sentence would be five years in prison and a \$50,000 fine. A movie projectionist would be exempt unless he had a financial interest in the theater or he showed the film without the consent of the theater owner or manager.

Further, the bill would define obscene as conduct that appeals to a prurient interest in sex; is patently offensive; and lacks serious literary, artistic, political or scientific value.

Liska picked up 14 co-sponsors before introducing the measure Wednesday.

He said the measure was spurred in part by the indictment of Rodriguez.

"I feel that somebody has to take a stand on this thing. If we, as lawmakers, don't do it, nobody will," he said.

'Showing care' works both ways

by Jeff Bertner
Times Writer

"Show a little care, show a little concern. That's how you get the kids. Then they'll do anything for you — even have sex with their friends on film. I got mostly high school dropouts. If we (molesters) can show concern, why can't the people who should show concern do so? Parents don't care."

That comment from a man who once made his living procuring boys for commercial sex in Anchorage sums up the problem — and, perhaps, its solution.

Boys, kicked out of home or school, naturally gravitate toward someone who appears to really care about them and offer them something. Girls come too, but boys increasingly are the victims of sexual abuse, and they are more in demand as burglars, drug couriers, prostitutes and actors in pornographic films.

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A drug and sex-for-hire dealer, now out of business, ran his Anchorage operation with impunity and suggests that it was easy.

Police admit that catching people involved in drugs and sex is not easy.

An epidemic of juvenile sexual assault cases — Alaska's adults sexually abusing Alaskan boys and girls — has brought the problem out in the open.

Anchorage Police Chief Brian Porter says there is no one solution to the problem. But con-

fronted with the sudden spate of sex crimes against juveniles, a lot of people, including the chief, are grappling with ways of dealing with the problem.

Some think the solution is as simple as the one suggested by

See Officials, page A-1

Officials disagree on complexity of abuse problem, solutions

Continued from page A-1

But if Krumm and Porter can be credited with doing their jobs — police present evidence to prosecutors in several new child sex assault cases every week and the DA's office has a near-perfect conviction rate — the problem is still very much there.

"The numbers are overwhelming us," Krumm says. "There are a lot of pretty awful things going on."

Krumm plans to mail 4,000 letters to schools, doctors, day care centers and others instructing them to be on the lookout for cases of sex abuse of children and telling them what to do when they suspect it.

Mayorre Hall's juvenile crime committee, part of the Anchorage Crime Commission, will soon propose solutions after last week unveiling a report dealing with adult-supported rings of runaways who rob, deal drugs and sell their bodies for shelter and money.

School suspensions are up 22

percent over last year. More than 1,500 students were formally barred from Anchorage classrooms during the first semester, sometimes for minor infractions. Prevented from attending school, many of these youths end up on the street or in places where they are vulnerable to being picked up by adults seeking boys for sex or burglaries.

"Schools must reassess the suspension onto the streets program," Hall says. "That only confounds the problem. Kids should not be kicked out of school for behavior which warrants suspension. They should be put in a special in-school program which addresses the child's needs."

The schools should be teaching younger and younger children how to protect themselves, say police and Standing Together Against Rape.

STAR is proposing to make its safety program part of the school curriculum.

Last year, 8,300 children from kindergarten through sixth grade heard STAR's safety pitch.

Schools co-sponsor the Safe Homes programs: houses, usually near schools, where volunteer citizens — checked out by police — post an orange "Safe Home" sign indicating that a child in trouble can safely take shelter there.

Now in its second year, with 700 safe homes and 45 of the city's 82 elementary schools participating, program founder Linda Hodgins says, "Kids can run to a safe home to get away from someone trying to pick them up, or even marauding dogs."

During the 1981-82 school year, there were 12 incidents every week involving young children, from actual assaults to suspicious circumstances. This year, Hodgins says incidents are down.

People who work with children should go through a record check, some argue.

The Anchorage chapter of SLAM (Society's League Against Molesters) is asking lawmakers to approve legislation to permit employers to examine the criminal records of anyone working with minors.

SLAM is also seeking tougher laws against molesters.

Krumm, formerly head of the state law department's sexual crimes unit, would like to see a sexual assault and child abuse center, modeled after Seattle's Harborview program, open here. Such a center would also serve as a training ground for professionals.

Victims have not always been helped by officials, Krumm said, pointing to a recent case where state social workers repeatedly sent sexually abused children

back to the home of their father, who continued to abuse them.

That doesn't happen any more, Krumm says, now that a new law requires agencies to report child sexual abuse to police. But Krumm would still like to see what he calls a "child sexual abuse protocol" — an agreement among various state agencies about how to handle these cases.

the man quoted above — give children enough care and concern and they won't imitate people like him. Others think the solution is more complex. They say the multimillion-dollar market for so-called kiddie porn indicates the problem is tougher.

Among the solutions that have been proposed for dealing with the growing epidemic of sexual abuse of minors:

- End the Anchorage School District's policy of suspending students out of the classroom and onto the street.
- Create a sexual-assault and child-abuse center in Anchorage, modeled after a successful center in Seattle.
- Treat missing children reports seriously and, through coordination of law enforcement agencies, try to track down these disappearances.
- Educate children beginning in elementary school about personal safety and about what kind of advances to be wary of.
- Hire more police and prosecutors to tackle the ever-increasing child sex abuse caseload.
- Permit police background checks of job applicants who would work around children.
- Establish a runaway center — someplace for juveniles to run to besides wandering the streets.

Public awareness is the first

step toward combating the problem of juvenile sexual abuse, authorities agree.

Overcoming the "hidden" nature of the crime and the reluctance of people, including parents, to discuss the sexual abuse of children is the first step toward solving it, Porter says.

But now that the problem is "coming out of the closet, it's overwhelming us," says district attorney Victor Krumm.

Krumm and Porter say they would assign more people to child sex crime cases if they had the money.

"For a long time, people thought this was a family problem. They just wanted it to go away," Krumm says. "The simple solution is for the men to stop messing with the kids. I can remove the men and that's what we're doing. Incarcerate them as long as the law allows."

Many victims are runaways — left to fend for themselves, but too young to get jobs, they are vulnerable.

If runaways had someplace to go — away from home but not onto the street — the adults now abusing them would not have such an easy time of it, authorities say.

Establish a runaway center and staff it with sympathetic professionals, suggests Glen Lambert of Salt Lake City's Odyssey House. Lambert was in Anchorage recently to advise McLaughlin Youth Center counselors about sexually abused children.

Nancy Barros, an Anchorage woman who founded a group called Missing Children of America after her estranged husband kidnaped her three children 2½ years ago, thinks authorities should not dismiss disappen-

ances of children lightly.

A new program of fingerprinting juveniles has been started by police to help track down missing children.

Abuse doesn't happen only to runaways, alone on the streets. It can happen to any child, in any home.

"Listen to your kids," urges police Lt. George Novaky.

Watch for signs of odd behavior or indications that a child is afraid of someone, or disturbed about something but won't talk about it, professionals say.

Says Bonnie Schnell, grand jury foreman in the biggest sexual abuse case brought in Anchorage, in which a man is charged with 29 felonies in connection with a commercial juvenile pornography and prostitution operation, offers this advice: "I think we can learn a lesson from it. I hope the people of Anchorage take note what is really happening around them and that it opens peoples' eyes. Listen to the kids. Don't ignore them."

City closes shelter

Continued from page A-1
street people.

Sheri Hess, co-owner of the Rusty Harpoon, a nearby business, said Friday she thinks Knowles "made a good decision." But she refused further comment, saying merchants have been unfairly portrayed as villains insensitive to the problems of the street people.

Hess said she supports the idea of the center, but thinks "it is located in the wrong place."

Wilson, who recommended the closure to Knowles, said he could understand the merchants' frustration.

"I wouldn't want them next to

equivalency). There were five therapists in here today counseling people. Two people right now are being taken to a detoxification center. It's happening right here now. When it closes they'll be back out on the street."

Wilson said the city decided to concentrate its funds instead on a new building for the Brother Francis overnight shelter now at 811½ W. Fourth Ave. He said the center is critical during the winter when people can die outside from hypothermia. Because of fire code problems and the Alaska Court System's plan to build an annex on the site, the shelter will close next month, he

Children are prey of local crime rings

By TOM KIZZIA
Daily News reporter

offers of safety, said Mar-
royce Hall, chairwoman of
the Crime Commission sub-
committee on juvenile crime.
She said their existence has
come to light in the past two
years through police inter-
views with repeat juvenile
offenders.

The report, based primarily
on interviews with Anchorage
police and other law enforce-
ment officials, says the prob-
lem appears to be worse here
than in other parts of the
nation.

"Nationally, organized
crime has discovered children
and youth to be a highly
marketable commodity," the
report says. "Anchorage hard
core adult criminals have also

See Back Page, NETWORK

Network of modern-day Fagans is turning Anchorage kids into criminals, report claims

Continued from Page A-1

found juveniles to be saleable for a variety of criminal ac-
tivities and sexual abuses
limited only by the imagina-
tion and resources of the
criminal minds involved.

The committee report at-
tributes the "large scale" ac-
tivities here to Alaska wealth
as a draw to criminals, heavy
drug and alcohol abuse, a
young and mobile population,
and overextended law enforce-
ment and court systems.

The report also says, "In-
creasing openness regarding
homosexual activity has cre-
ated in our community and in
most communities a market
for young, male "street hus-
tlers," serving the needs of
cruising homosexuals."

Hall said a second report
containing committee recom-
mendations would be released
in 20 days.

"The volume of these cas-
es) we are now getting is
alarming, but we only see the
tip of the iceberg," said An-
chorage Police Chief Brian
Porter.

In the biggest case current-
ly before the courts, Carlos
"Chico" Rodriguez has been
charged with 27 counts of sex
crimes against juveniles, in-
cluding the making of porno-
graphic movies. Rodriguez
was extradited from Miami,
Fla., after his indictment here
last November for alleged ac-
tivities between 1978 and
1980, and is scheduled to go to
trial April 25.

Child pornography
produced in Anchorage, in-
cluding movies and still pho-
tographs, is usually shipped
Outside for commercial distri-
bution because actors would
be recognized locally, Hall
said.

"These (pornography) orga-
nizations have been directed
by criminal organizations
from outside the state of
Alaska," the report says. Hall
and Porter did not provide
specific details at a press con-
ference called to publicize the
findings, except to say that in
one case several years ago
pornographic material made
in Alaska was traced to a
market in Germany. Hall said
the FBI was investigating
these connections.

Prostitutes who com-
mand high fees are drawn
from local transients and are
also shipped north from Out-
side, Hall said. "Virtually all
juveniles living out of the
home are exposed and many
still living at home are ex-
posed," the report says.

The report cites law en-
forcement estimates that 75
percent of the boys incarcer-
ated at McLaughlin Youth Cen-
ter have had some kind of
homosexual contact with an
adult.

Porter and Hall said while
victims of individual child
molestation cases may be
more numerous than the vic-
tims of the organized rings, it
is the groups that wreak the
most havoc on the communi-
ty.

The report charts a course
by which runaways, frequen-
tly from broken homes, be-
come "throwaways." These
youths gather in so-called safe
homes where they find friend-
ship and shelter under the
wing of an adult.

"While the nation and com-
munity has long recognized
the difficulties caused (by) in-
dividual or loosely knit
groups of juvenile offenders,
findings indicate this prob-
lem becomes infinitely more seri-
ous when this juvenile popu-
lation falls victim of street
wise individuals who perceive
youth as a commodity or a
weapon to be turned against
society," wrote George Nel-
son, chairman of the Police/
Crime committee of the Crime
Commission. In a letter ac-
companying the report.

These modern-day Fagans
cruise gathering places, in-
cluding malls, video parlors,
and reputable youth groups,
with a keen eye for character
traits suggesting a child can
be moved into their under-
world system, Hall and Por-
ter said.

The men who run the rings
can be well-liked people with
connections to the "straight"
world, they said. "There's no
stereotype of the unshaven
man hanging around school-
yards," Porter said.

Mainly they are looking for
boys instead of girls, because
they make better burglars
and are more marketable as
prostitutes, Hall said. "For
some strange reason the hom-
osexual aspect of young boys
is in," said Hall, who apolo-
gized several times during the
press conference for having to
"bring this rotten stuff before
the community."

Once they have been drawn
into the Anchorage under-
world, the boys frequently go
to work as thieves, the report
says. "It is common knowl-
edge that large scale fencing
operations exist within the
Anchorage area as is evi-
denced by the very small per-
centage of stolen property
that is recovered and the rela-
tively high frequency of re-
covery of stolen property
from Alaska in other states."

Some become middlemen
in the local drug trade to
juveniles, according to the re-
port. "It is virtually impossi-
ble for any young person not
to be exposed to drugs, and
not just marijuana, beginning
in junior high school," the
report says.

The need for drugs and
money, and the manipula-
tions of adults, can turn the
youths toward prostitution,
the reports says. Adult clients
may know each other and
exchange photos and informa-
tion about child prostitutes, it
says.

The committee said sketchy
data suggest that "adult pedo-
philes tend to be white well-
established males, 40-60 years
old, are or have been married,
generally have from two to
four children, and are earning
in excess of \$35,000 per year.
They are usually college-edu-
cated and most are profes-
sional persons and well
thought of by the communi-
ty."

The children themselves
may be victim to extortion
and violence and lasting psy-
chological damage, the report
says. The committee quotes a
Los Angeles detective fami-
lar with the subject: "When a
child has been coerced or se-
duced into giving his only

true possession — his body —
he loses his self-respect and
his morality. If he doesn't
care about himself, how can
he care about someone else?
Such a child could be re-
stored psychologically and
may never be a productive
member of our society."

Some youths involved in
the sex underworld find a
way out by getting caught in
a criminal act, Porter said.
Hall told of an unnamed re-
peat offender who said he had
been thru "a variety of
rehabilitation programs but
had not stopped until he was
old enough to be thrown in
the Sixth Avenue jail.

At the press conference,
Porter said new legislation
making it easier to prosecute
juveniles would be helpful in
two ways: It would make it
easier to put dangerous repeat
offenders in jail, and it would
"thwart the sales pitch" made
by adults who tell juveniles
they can break the law with-
out fear of serious retribu-
tion.

Porter said police would
also like to see legislation
allowing them to fingerprint
juveniles and keep the finger-
prints on file.

The Anchorage Crime Com-
mission is a citizen's group,
created by then Mayor George
Sullivan in June 1981.

TESTIMONY

BY

ERNEST E. ALLEN, Chairman
Jefferson County Task Force on
Child Prostitution and Pornography

RONALD J. PREGLIASCO, Vice Chairman
Jefferson County Task Force on
Child Prostitution and Pornography

JOHN B. RABUN, Manager
Exploited Child Unit
DHS, Jefferson County

before the
Subcommittee on Juvenile Justice
Committee on the Judiciary
United States Senate

November 5, 1981

Hearing on

EXPLOITATION OF CHILDREN

Subcommittee on Juvenile Justice

Committee on the Judiciary

United States Senate

November 5, 1981, 9:30 A.M.

6226 Dirksen Senate Office Building

WITNESS LIST

David, introduced by John B. Rabun, Manager, Exploited Child Unit of the Jefferson County, KY, Department for Human Services.

Terry Sullivan, former prosecutor for the State of Illinois, involved in the prosecution of John Gacy.

Father Bruce Ritter, Executive Director, Covenant House, New York City.

John B. Rabun, Manager, Exploited Child Unit of the Jefferson County, KY, and

Ronald J. Precliasco, Vice Chairman of Jefferson County's Task Force on Child Prostitution and Pornography.

C. Edward Dobbs, Chairperson, Young Lawyers Division, American Bar Association, and

Howard Davidson, Director, National Legal Resource Center for Child Advocacy and Protection, American Bar Association.

Mr. Chairman and members of the Committee, I am Ernest E. Allen, Chairman of the Jefferson County Task Force on Child Prostitution and Pornography. Accompanying me today are Ronald J. Pregliasco, Vice Chairman of the Task Force and John B. Rabun, Jr., who is Manager of the Exploited Child Unit, Jefferson County Department for Human Services. We are very pleased and honored to have the opportunity to appear before you today and to discuss what we consider to be a problem which is rapidly reaching epidemic proportions in the United States, the exploitation and victimization of children.

The Task Force on Child Prostitution and Pornography was established by Jefferson County Judge/Executive Mitch Mc Connell on March 26, 1980 in the wake of the increasing incidence of criminal victimization of children nationally, particularly through sexual exploitation. It was a time of outrage over child murders such as those in Chicago and Houston and over the "discovery" of child murders and tragedies nationally.

Judge Mc Connell created the Task Force with a clear mandate to examine our local setting and determine whether or not there were present those conditions which breed child tragedies. We also visited other cities in which child tragedies had occurred, we reviewed the national literature, and we indeed did conclude that a virtual epidemic was occurring in America.

Let us cite just a few examples:

- (1) In his book "Murder USA", John Godwin identifies the development of a "multiple-murder" syndrome, warning that the second

half of the 20th Century could be called America's Age of the Mass Murder. He examines America's history of mass murder since the turn of the century and finds that there were only seven such incidences in our first fifty years (seven or more victims). However since 1950, and in Mr. Godwin's book he only counts through 1976, there have been 16, 10 of which occurred between 1970 and 1976. It is shocking to note that most of our recent mass murders involved child victims.

In addition if we add to the list since 1976, we have several more multi-victim child tragedies, not the least of which is Atlanta. Further, the list does not include the September 1981 tragedy on our northern border in which nine children were murdered in Vancouver, British Columbia.

(2) National estimates are that over 50,000 children each year disappear from their homes, not counting habitual runaways and parental abductions. A majority of these children never return, many are murdered.

(3) Our national runaway count continues to grow, with estimates now reaching well over 1 million children each year.

(4) Kenneth Wooden, Director of the National Coalition for Children's Justice has indicated that more than 4,000 children are murdered each year in the United States, but that many of them go unreported. The 1979 Uniform Crime Reports listed 2,773 homicides involving children.

There has been for at least the last decade in America a litany of tragedies, a litany of names which have been burned into our collective memories: John Gacy, Dean Corll and others. It seemed to us in Jefferson County, however,

that somehow most of America was missing the point. In each case there was national consternation and alarm, coupled with talk about "sick minds" and "sick society". In the recent Atlanta tragedies there were even discussions about the "decay of Atlanta" and the breakdown of one of America's fastest growing and most progressive cities of the 1960s and 1970s.

It is painfully apparent that there is nothing particularly unique or aberrant about Atlanta, or Chicago, or Houston. Through our efforts as a Task Force and a community, we are now convinced that there is indeed a national epidemic of child tragedies, and that absent immediate and decisive national action, and strong and coordinated involvement by many units of government and many agencies, the tragedies of Atlanta, Chicago, and Houston will be repeated.

In his announcement of the creation of the Task Force, Judge Mc Connell stated

"In recent years, America has begun to address the phenomenon of runaway children and the tremendous mobility of young people. We must also address the vulnerability of these young people and the ease with which they become the victims of criminal intent. I am serving notice today that we will make every effort to ensure that John Gacy tragedies don't happen here, and that those who would exploit our young people for profit will be identified and swiftly prosecuted."

We are very pleased with an opportunity to discuss with you what we did, what the results have been, and to make some recommendations to you regarding Congressional action and federal involvement.

Task Force Report

The Jefferson County Task Force on Child Prostitution and Pornography has been a unique, intergovernmental and across the system effort, involving the Jefferson County Department for Human Services, the Jefferson County Police Department, the Louisville Division of Police, the Commonwealth's Attorney for Jefferson County, the Jefferson County Attorney, the Federal Bureau of Investigation, the Kentucky State Police, the United States Post Office/Postal Inspection Service, the University of Louisville, the Jefferson County Office of Intergovernmental Affairs, the Louisville/Jefferson County Criminal Justice Commission, in addition to many other agencies and organizations across the community which have become involved because of their concern about treatment needs, community protection, etc.

This cooperative approach began with the conviction that modern youth were particularly vulnerable. Larger numbers of juveniles run away from home each year, they are becoming more mobile, they spend more time on the streets, becoming "street wise" earlier, and are increasingly forced to survive on the streets. This "child liberation" which is a product of societal change and evolution generally, has a devastating by-product, which is the increased vulnerability of young people to various kinds of exploitation and made them more likely targets for adult exploiters and violent criminals.

Increasing openness regarding homosexual activity has created in our community and in most communities a market for young, male "street hustlers", serving the needs of cruising homosexuals purely for economic reasons. This "chicken hawk" phenomenon occurring across America lends itself dramatically

to the John Gacys.

The Task Force identified as a contributing cause to child tragedies the poor communication and information sharing between the various agencies of the criminal and juvenile justice systems. The demands upon law enforcement are many and are increasing. Resource limitations make it virtually impossible to investigate every missing person report or runaway. Therefore, victimized or exploited children are in many cases simply not identified. Further, the presence of a 12 or 13 year old boy or girl, or indeed even younger, in the same area at 1:00 a.m. every morning may not even be considered particularly unique.

Child tragedies are made possible because there are holes or gaps in the system. Law enforcement and social services within the same community may not even be aware of each others existence, let alone share information, work together and fill the gaps. Between communities the information sharing is even worse. How many known child exploiters move from one community to another in virtual anonymity and security?

We have even identified in Jefferson County evidence of the recruitment of young girls out of group homes and runaway shelters for prostitution purposes. Clearly new and different informational networks were necessary, and a willingness of various professionals to rethink their roles as they relate to kids was mandatory.

Fortunately, the agencies participating in the Task Force saw these needs. Information sharing, interagency and intergovernmental cooperation, and role redefinition have been outstanding. Similarly, we sincerely believe that the impact upon the problem has been enormous. Let us cite some

highlights of Task Force work to date:

(1) Public Awareness - The Task Force viewed as an immediate need the sensitizing of the public to this shadowy problem involving "hidden victims". An intensive public awareness/public education campaign was launched with over two thousand posters distributed across the community and indeed around the state. Distribution was accomplished through city and county neighborhood organizations, as well as personal distribution accomplished by members of the Task Force and employees of Task Force agencies.

24 Hour Information Line - A 24 Hour number was established (502-585-2199), which is housed and manned in the office of the city/county Criminal Justice Commission by the Jefferson County Department for Human Services, Exploited Child Unit. Since its inception 59 calls have been received which were subject to investigation and follow up, roughly half of which have resulted in fact finding efforts.

(2) Exploited Child Unit - In July of 1980, the Exploited Child Unit was established as an arm of the county Department for Human Services, but housed in the Criminal Justice Commission office in order that it might work closely and in tandem with law enforcement agencies. The ECU, which is managed by John Rabun, an investigative social worker, with long background in child prostitution and child exploitation case investigations, exists to detect and investigate cases of youth in Jefferson County who are at risk of being or actually are endangered by adults in prostitution/pornography and to assist the appropriate law enforcement agency in its

criminal investigation of such adult sexual exploitation of children.

The Exploited Child Unit now includes three investigative social workers, and has played a major role in training and coordination community wide. Meetings with school system counselors, pupil personnel officials, various community groups and organizations, have broadened the scope and impact of the Task Force effort.

(3) The Police/Social Work Team - Perhaps the cornerstone of the entire effort is the development of a team including the ECU social workers, city police youth officers, and county police intelligence officers. The Police/Social Work Team works out of a neutral setting, the Criminal Justice Commission, and works diligently to close those previously discussed "system gaps". We have found that it is possible to preserve the professional integrity of each while generating a level of cooperation and teamwork which truly protect kids.

Tremendous credit must go to Lt. John Aubrey, former Youth Bureau Commander of the Louisville Division of Police, Lt. Gerald Beavers, present Youth Bureau Commander of the Louisville Division of Police, Captain James Black, Commander of Jefferson County Police Intelligence, and those officers who have been assigned to the unit, Det. Bob Hain, Louisville Division of Police, Det. Gary Smith, JCPD Intelligence, Det. Rick Dillman, LDP, Det. Bill Lettie, JCPD, and Det. Mike Simpson, JCPD. Their cooperation, and their willingness to work with social services has produced dramatic results. Further, law enforcement at all levels has gained impressive new skills in child interrogation and investigation. We have learned that "kid cases" are indeed different, and that they cannot be treated as if the

child is a small statured adult.

Further, as you will note when we present some prosecutorial highlights, we have had excellent cooperation from other law enforcement agencies as well. Several cases have involved inter-state issues, in which the Federal Bureau of Investigation, through its offices in Louisville and in Southern Indiana, has been very helpful and effective. The Kentucky State Police has been involved and has been sensitive to the transportation of children for purposes of exploitation intrastate, and we have worked closely with the United States Postal Inspection Service regarding child pornography and its involvement with the mails.

(4) Information/Intelligence - The Task Force/ECU effort has resulted in dramatic increases in information referrals and attention given to child victimization problems. By illustration since the establishment of the ECU, and the implementation of the Police/Social Work Team, the number of case referrals has doubled each month. In sixteen months, the ECU report shows

750 Informational Leads Received

526 Children's Cases Opened (70% of Total)

510 ECU Cases Closed (97% of Total Children's Cases Opened)

117 Unfounded (23% of ECU Cases Closed)

176 Not Proven but receiving continuing monitoring
(34% of ECU Cases Closed)

218 Substantiated by ECU and referred to appropriate
law enforcement agency(s) (43% of ECU Cases Closed)

16 ECU Cases Open (3% of Total)

224 Purely Intelligence/Information Leads (30% of Total)

9

Of the 750 informational leads, 210 (28%) came from law enforcement agencies; 238 (32%) came from other DHS programs; 59 (8%) came from the Information Line; 151 (20%) were developed by the ECU; and 92 (12%) came from other agencies throughout the region.

(5) Case Prosecutions - As a result of the cooperative law enforcement effort, aggressive social work, and a close liaison with prosecution, particularly the Jefferson County Commonwealth's Attorney David L. Armstrong and his Assistant Dee Pregliasco, we have made a strong start in identifying and prosecuting child exploiters. To date highlights are as follows:

(A) In 1980, two men living in Kentucky were prosecuted in U.S. District Court in Southern Indiana following their arrest on behalf of two children living in Kentucky. One girl was a 13 year old runaway for five days and the other was a 14 year old who had been missing from a foster home in Frankfort, KY for two years. Both girls had been transported from Kentucky to Indiana to work as prostitutes at various truck stops. With the cooperation of the Southern Indiana office of the FBI, the men were charged and convicted. The U.S. District Court sentenced each man for 5 years on guilty pleas. Subsequently, the Jefferson Circuit Court in Kentucky sentenced each man to an additional five years on various sex offenses involved with the case.

(B) In 1980, one man and one woman were prosecuted in U.S. District Court for the Western District of Kentucky following their arrest on behalf of one child who had been a runaway for only a few hours from a

juvenile home in mid New York State. This 14 year old girl was brought to Louisville, taught/trained to be a bar girl and prostitute, and placed by the couple at a night club where prostitution flourished. The U.S. District Court sentenced both the man and the woman to terms of five years each after the jury found them guilty. In this case the law enforcement effort involved strong cooperation between various agencies, including the Louisville office of the FBI.

(C) After a six month investigation in 1981, a local clergyman was arrested and indicted on multiple sex crimes charges involving child prostitution and pornography and approximately a dozen boys, ages 12-16. Trial is set for January, 1982.

(D) In 1981, after a five month investigation involving 15 boys in Kentucky and Southern Indiana, a local businessman was arrested and indicted by the Clark County, Indiana Circuit Court on multiple sex crimes charges involving child prostitution and pornography. The charges include allegations that the defendant took various boys with him to Missouri, Florida, Ohio, Washington D.C. and Mexico. Trial is set for early 1982.

(E) In late 1980, after a four month investigation involving four young girls and numerous women, a housewife was arrested, indicted and convicted on charges of sexual abuse of minors as a parent, promoting the prostitution of minors, and unlawful transaction with minors in District Court in Jefferson County, KY. This mother had promoted her own child into prostitution in Louisville and Fort Knox, KY. She was sentenced to two one year terms on these Class A Misdemeanors. It is significant to note in this case that she had been promoting prostitution for at least 10 years, and that felony charges could have been utilized if in earlier cases convictions

had been obtained and the record made. However, this had not occurred. This emphasizes the importances of building criminal records in these kinds of cases, even with misdemeanors.

(F) In 1981, after a three month investigation involving eleven young boys and a number of other men, a local man was arrested, indicted and plead guilty to numerous counts of sex crimes with minors and child pornography. The Kentucky Circuit Court in Jefferson County sentenced him to fifteen years in prison.

There have been a number of other cases of importance. Currently, a number of major investigations are under way involving the use of many young girls in five states by one pimp who uses truck stops on the interstate highway system and large brothels in major urban centers for placement of these girls into prostitution.

(G) Research/ Information Gathering - One of the priority concerns of the Task Force has been identifying the "hidden victims", learning about the system of child exploitation, and developing a data base for further system programs and efforts. Among the information gathering techniques have been specialized action projects conducted in conjunction with the Louisville Police Fifth District and the Jefferson County Police Intelligence Unit. Through these efforts a team of individuals from Task Force agencies in cooperation with the Fifth District police identified suspected "street hustlers", made informational stops on "Johns", and assessed the nature, scope, and methods of operation of girl/boy prostitution and pornography.

We are particularly enthused about the work of the Task Force Research

Consortium. Headed by Professor Ron Holmes of the School of Justice Administration at the University of Louisville, Criminal Justice Commission Director of Research Mike Bewley, and Professor J. Kerry Rice of the Kent School of Social Work at the University of Louisville, the Consortium has begun an impressive data development process. To date, through the interviews of 190 children by the E.C.U., Task Force research efforts have indicated the following set of indicators for other law enforcement and social service personnel in the Louisville area to use in interviewing children to detect and identify child victims of prostitution/pornography.

Girls/boys who are exploited as prostitutes may be expected to be of normal intelligence, 11-16 years of age, from a blue collar background, with a high degree of racial prejudice in the family. Eighty percent will be from a single parent family with the mother divorced and dating/remarried and working. 94% indicate drug usage with 30% demonstrating drug dependency (daily use). 90% are runaways and only 18% indicate a close/"warm" family setting. 53% indicate a hostile/rejecting/"throw-away" relationship by parents. 37% became involved in some form of child pornography. The age of first sexual intercourse for these children was 12 with the greatest frequency between 10 and 13 (lowest was 6). Only 2% ever used shelter house facilities for runaways (national norm suggests 5%). Various interview schedules indicated up to 90% had been the victims of child physical abuse by parents, and up to 50% had been the victims of child sexual abuse by parents (data taken from local and national research). The vast majority of girl prostitutes have a pimp/business agent/boy friend, where most of the boy prostitutes and "self employed" runaways seeking to survive on the streets seem to operate relatively independently.

At the close of this testimony we have attached a more complete discussion with numbers of our research effort so far. We anticipate a continuing effort to build information and a data base which should be of significant value in future planning and programming.

Regarding adult exploiters, the sample is far less and the conclusions drawn are less objectively based. However, to date there is reason to believe that adult pedophiles in the Louisville area tend to be white males, 40-60 years old, living in relatively upper income type homes, who are or have been married, generally tend to have from 2 to 4 children, and are making in excess of \$35,000 per year. They tend to be college educated and most are professional persons.

There are other areas of activity which are receiving strong attention such as legislation with the Kentucky General Assembly's 1982 Session beginning in January. In addition a statewide social service information/referral network is now organized and functioning.

In summary the progress made has been considerable in more fully detecting and identifying child victims and adult sources of child prostitution and pornography. The ECU orientation and training of various social services and school staffs is increasing the numbers of referrals and accordingly, the number of serious law enforcement cases being investigated and prosecuted is on the increase.

The Task Force believes that in future months the activities undertaken will have even greater impact.

What Have We Learned?

In the twenty months of the Task Force operations, we have come a long way, particularly in understanding the complexity and magnitude of the child victimization problem. Certainly, we have made major strides in beginning to control the problem and to make less likely that child tragedies of the magnitude of Atlanta will happen in Louisville and Jefferson County. However, as important has been our growing knowledge and understanding of the problem.

(1) We have learned that the criminal and juvenile justice systems can and will work together. In the beginning we were warned about the turf disputes, the unwillingness of police to share information with social workers and work with social workers, and vice versa, and about the inability of different political jurisdictions to work as a team focused upon a particular problem.

Through incredible good faith and a willingness to participate as a team to solve a problem, we have overcome the concerns. The police departments actually assigned their personnel to the police/social work team, where they worked in tandem with all of the other parties to the Task Force in a neutral setting. Police and Social Workers make runs together, interview children together, and within the limits of law and professional ethics, share information and join in actions for the best interests of the child.

These actions often entail that a police officer will act in ways in which he would not ordinarily act if he were operating as an individual. It has also taken social workers slightly beyond the realm of traditional social work. However, the nature of the problem and the vulnerability of the children, requires atypical approaches and innovative techniques.

(2) The focus of the unit is that the child is victim. All of our efforts have been oriented toward protecting children. However, it is frequently apparent that many of the "street kids" are not innocent, vulnerable victims, but rather are perpetrators in their own right. We have discovered major overlaps with other criminal activity, and in fact, have found that in many cases it is difficult to precisely identify which of the parties is exploiter and which is exploited.

Certainly, it is apparent that there are dramatic intelligence benefits to enforcement and prosecutorial agencies from working these cases. While it must be a constant source of concern that units such as ours not "pimp" kids in a different way, we have increasingly become aware that many of the street kids know everything about what is happening on the streets, intelligence which can be of major benefit to law enforcement.

Another question has been "do exploited children graduate to more sophisticated criminality?" Detective Lloyd H. Martin, of the Sexually Exploited Child Unit of the Los Angeles Police Department said

"When a child has been coerced or seduced into giving his only true possession - his body - he loses his self respect and his morality. If he doesn't care about himself, how can he care about somebody else? Such a child could be destroyed psychologically and may never be a productive member of our society".

Sgt. Martin has also observed that "...the sexually exploited child of today has a good possibility of becoming the hardcore criminal of tomorrow."

In testimony before the California Legislature, Dr. A. Nicholas Groth, Director of the Sex Offender Program at the Connecticut Correctional

Institution observed that "more than half the child molesters I have worked with as adults attempted or committed their first sexual offenses by the age of 16" and that "the majority of child molesters were themselves sexually abused as children".

Further, research around the United States, specifically including Kentucky and Connecticut seems to demonstrate that the vast majority of violent sex offenders (rapists, sex murderers, etc.) and child molesters have themselves been the victims as children of child physical abuse and/or child sexual abuse.

It has been the premise of the Task Force and the ECU that if we are to curb this cycle of violence, social work/police teams and task forces must aggressively seek to find child victims early and vigorously prosecute the adult offenders. The prevention of violent sex crimes to children as well as adults largely is tied to the detection and exposure of those offending adults to insure public accountability.

(3) We have discovered that while there is a certain spontaneity about the involvement of street kids and runaways in prostitution; i.e. when you are hungry and need to survive on the streets, the options may be few, there is also ample evidence of networks and organization in child prostitution and pornography. Task Force cases continually produce child prostitutes who know each other, who tend to service overlapping clientele, adults who may make referrals to each other, as well as exchange photographs and information.

An apparent by product of this "networking", and the type of adult who tends to frequent the areas in which child sex flourishes (i.e. professional, prominent, affluent, with family, etc.) is the growth of extortion as a spin off. This further demonstrates the potential for child victimization,

murder and other violence.

(4) We have discovered that treatment and follow up for identified child prostitutes/exploited children generally is very difficult. While there are many excellent models nationally of community based treatment centers and shelters, unfortunately the data is not ample on success stories. In this community our priority has been identification of the adult exploiters along with the protection of the child. Ultimately the child must be prepared to cope with the environment from which he or she escaped and to avoid the environment in which he or she was exploited.

The national reduction of resources for social services and local assistance at this particular time complicates the follow up. Government must increasingly enlist private sector assistance and involvement.

(5) Finally, we have discovered that a chief cause of child tragedies is the inability of government to recognize a problem and to respond. Our contacts with units of government from coast to coast dramatically make three points:

- (A) Governmental awareness of problems or potential problems is minimal.
- (B) Governmental coordination and information sharing is virtually non-existent.
- (C) Federal involvement, assistance and coordination is similarly for all intents and purposes non-existent.

Recommendations

We endorse with enthusiasm the effort by Senator Hawkins and you to provide a federal role in the tracking of missing persons and runaways.

We recommend the establishment of a national intelligence network for the exchange of information on the exploitation and victimization of juveniles. It is no longer acceptable that the John Gacys should serve time in one state, move to another state and victimize others without law enforcement agencies being fully aware and alerted.

We recommend the targeting of some modest amount of your already limited federal assistance for creative research and limited program money which could be used for establishing special units, strike forces, etc.

We recommend the undertaking of an extensive program of public education and perhaps the establishment of a national 800 type "Hot Line" for information regarding the exploitation of youth.

We have recommended to various national agencies for almost two years the convening of a national symposium on the victimization of juveniles which would bring together representatives of law enforcement, social services, research/academia, media and government for the purposes of examining the problem and developing a cooperative national strategy for protecting kids. I am delighted to report to you that such a symposium will in fact occur, thanks to the sponsorship of the U.S. Department of Justice/Community Relations Service, the National Conference of Christians and Jews, the National Coalition on Children's Justice, the Alpha Phi Alpha Fraternity, Inc., and the Louisville/Jefferson County Criminal Justice Commission. Attendees will include Dr. George Gallup, Jr., who is presently performing a national survey of citizen attitudes on child

victimization, Kenneth Wooden, author of Weeping in the Playtime of Others, leading law enforcement officials involved in the field, social services and research professionals, concerned community leaders, parents of victimized children, including Julie Patz of New York, Camille Bell of Atlanta, John Walsh of Hollywood, Florida, and Rosemary Kohm of Santa Claus, Indiana, and many others. We encourage you to join with us in this effort, and hope that you can come to Louisville, November 29 - December 2 for the symposium, which will be entitled "Child Tragedies: A National Symposium on Exploited and Victimized Children".

Finally, and pertaining to the issue of federal role, jurisdiction and involvement, we recommend that the Congress and the President take a hard and long look at expanding federal role and jurisdiction in child victim cases. Specifically, the recent report of the Attorney General's Task Force on Violent Crime recommended that United States Attorneys play a coordinative role in convening local and regional justice system officials to discuss areas of concern and to facilitate cooperative efforts. What more appropriate area for U.S. Attorney attention than child victimizations?

We have witnessed in the past a reluctance on the part of federal officials and agencies to even get involved in child cases. We have proven in this community that the FBI can and will play a strong and significant role, and in the face of tragedy in Atlanta, there was apparently a similar effort. However, there must be national attention and national commitment to this area, and in our judgement a mandate from the leadership of the federal government.

On March 17, 1981 I wrote to the Vice President of the United States to commend him for his efforts regarding the missing and murdered children in Atlanta. I indicated that "your visible and active role has been

nationally reassuring and has provided the sort of leadership and symbolism which offers great hope, not only for the present tragedy but for improved inter-governmental relations in many other areas."

However, I added that "I urge you to view your present leadership role on the issue of victimized kids as just a beginning...I urge you to take quick and decisive action to truly address the national implications of Atlanta. Your administration can make the protection of kids a national priority and can make the recent carnage in American cities less likely."

Without a concerted, coordinated national effort, the continuing and inevitable victimization of kids will grow to epidemic proportions. We, in Jefferson County, are proud of the start which we have made. However, much more needs to be done. Perhaps, in the wake of Atlanta and Chicago and Houston and Vancouver and "Everywhere USA", we can be moved to action.

Mr. Chairman and members of the Subcommittee, we urge you to make the protection of kids a national priority.

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TESTIMONY BY TERRY SULLIVAN, ESQ.
BEFORE THE SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON JUVENILE JUSTICE

NOVEMBER 5, 1981

WASHINGTON, D. C.

My career as a prosecutor in the Office of the State's Attorney of Cook County, Illinois, has carried me into virtually every aspect of the criminal justice system. In addition to my years as a trial lawyer, I spent a portion of my career as a supervisor of the Narcotics Courts in Chicago. I, also, was supervisor of two suburban districts of Cook County. In such capacity, I came in contact with most every area of crime and many types of criminals. I had the opportunity to originate and develop a Drug Abuse Prevention Program as an alternative to criminal prosecution and, likewise, headed a special investigation and prosecution of child abuse which lead to murder. I have lectured to various police departments, colleges, and district attorneys' associations throughout the country. I am a past chairman of the Drug Abuse Committee of the American Bar Association and have been vice-chairman of various other committess; and presently am a member of the ABA Committee on Rules of Criminal Procedure and Evidence. Last year, I was a member of the prosecution team in the case of People vs. John Wayne Gacy, the largest mass murder case in the history of the United States in which the defendant was convicted of murdering thirty-three young boys. With that, I wish to thank this sub-committee for the invitation to address you today.

The experience that I have been able to attain in a relatively short time has enabled my paths to cross and criss-cross over again with virtually every element

of society toward which this Honorable Sub-Committee is directing its attentions today. Quite obviously, my career has placed me in touch with the workings and ideas of many judges and prosecutors. Likewise, I've worked with thousands of police officers and probation officers, but most importantly, for purposes of these discussions I have had many, many opportunities to deal with both victims and criminals. In weighing all of my experiences, my assessment of the criminal justice system is that most people expect us to prosecute, defend, judge, institutionalize, protect, and in the end to produce from the criminal a new "man or woman" who has now been transformed into a law-abiding citizen, free from all tendencies toward criminal activity. The real problem with our woefully over-burdened criminal justice system is that it usually receives the criminal after such tendencies have already long taken root. Therefore, the modern day criminal justice system has, in my opinion, had to take the role of protector of the community and, therefore, of necessity deal with the effects of crime. It is, I further believe, a myth perpetrated on our fellow-citizens to allow them to think that this system is prepared to deal with the problem of the causes of crime. I hasten to add that a good juvenile justice system may be the only exception to the general rule.

In reflecting upon the many experiences I have been fortunate enough to have in the criminal justice system, I recall many conversations I have had with many criminals, young and old, male and female, and every ethnic background imaginable. While conceding that my experiences lack any scientific basis, they certainly do contain an error of believability never found in pure facts or figures. I recall many men and women being sentenced to the penitentiary or the county jail after trial, or a plea of guilty. And, in a great majority of those cases, that person

would be sentenced without the aid, comfort, or support of his or her parents. It is my distinct conclusion from conversations with those people that had their home environment been different, they wouldn't be going to jail that day. One cannot help but realize, therefore, that whatever brought that individual into the criminal world was caused prior to his entry into the criminal justice system. That system today is nothing more than a stop gap measure; I am firmly convinced that for us to ever begin reducing the tremendous effects of crime in our society today, we must direct our majority of efforts at identifying, preventing, and curing those things that cause people, especially the young, to enter the criminal world.

One thing we know for certain is that the young criminal has a very good chance of becoming an old criminal. That has been born out time and again as I have studied the criminal history sheets of many defendants. Especially in the area of street crime, a common adult criminal more than likely started his career as a youth. My concern and the challenge to this sub-committee is to identify those causative elements that direct the youth toward crime. Once identified, we can then act in those special areas which hopefully, and I think certainly, will eventually reduce the rampant crime rate.

In my experience I have found that there is unfortunately a very thin line which distinguishes our youthful victims from a young criminals. Many of the criminals I have dealt with have expressed the fact that they left their homes as youths for a variety of reasons. Some were mistreated and beaten, while others were simply abandoned. Still others were sexually abused while some others still sought relief in the outside world from parents who were alcoholics or addicts. At the initial stage these young people are certainly victims, but now alone and naive, they must find a means of survival on the streets of our cities. Penniless, they may

find no alternative but to steal or rob, with or without a dangerous weapon. Those youths who chose to use a weapon oftentimes panic and unfortunately end up murdering innocent people. Still others will be led into using their bodies for easy money. Child prostitution and child pornography are flourishing for this very reason. And yet other youngsters will be led into the world of drugs in an effort to alleviate their misery. They likewise have a very good chance of becoming involved in the illicit, criminal activities of drug dealing and stand a good chance themselves of becoming addicted for life. Unfortunately, all of these young people stand a very good chance of becoming adult criminals and most of this element could be completely wiped out if we could find the resources and the responsibilities which would keep that youngster from crossing that line from victim into criminal.

My experiences in the investigation preparation for trial and prosecution of John Wayne Gacy for the murders of thirty-three young boys in the Chicago area brought me into personal contact with the under-ground, big city world of runaways (I hasten to add that not all of these victims were, in fact, runaways). I saw first-hand how young boys who for various reasons left their homes had to survive on the streets of a big city. Living day-to-day in different places and with no visible means of support, some of these young men are forced into the world of "hustling." Using the only way they knew to make a few bucks, the streets are a veritable playground for those like John Gacy. It is unfortunate that a youngster who ran away from home would end up tied and bound and, eventually, under the dirt and lime in Gacy's crawl space. In a very short span of time, some of these young boys had gone from runaways (victims) to juvenile delinquents and, incredibly enough, back to victims again. Those victims are prime examples of the terrible

exploitation of our youths who, for one reason or another, end up on the streets of our cities.

The solutions to the problem do not, for the most part, lie in the proposals for more laws. Certainly, I favor stricter laws aimed against the exploiter (pornographer, etc.) of our youths but the main thrust in the direction of solutions must be aimed at the "victim" level. We must establish programs and places for abused and mistreated children so that they have an alternative to living on the streets. Efforts by well-intentioned social agencies are becoming virtually ineffective due to the overwhelming number of cases they must handle. Likewise, our juvenile courts have become so inundated of late that the youths that enter that system become mere statistics. Somewhere, soon, someone must have the initiative to start a pilot project, if only on a smaller scale, where each of the youths are treated as an individual as soon as they come in contact with the system. Probation officers who can adequately counsel the young, judges who can remember the faces of the youngsters, and social agencies with the wherewithall to care for each child must be set up if, in fact, we are ever to attack the increasing problem of crime. There is no doubt in my mind that at the present time we are involved in a losing battle. Someone somewhere sometime must stand up, face the problem, and attack it head-on.



ADMINISTRATIVE OFFICES
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RECEIVED
MAY 05 1983
Josephson,

Committee on Health Education & Social Services April 30, 1983
Alaska State Senate:
Pouch V
Juneau, Alaska 99811

Further reference Senate Bill #221.
This is addendum to Book Cache packet dated April 23, 1983.

Attached is a copy of page S 316 of The Congressional Record of January 26, 1983 containing S.57, A bill to amend title 18 of the United States Code relating to the sexual exploitation of children; to the Committee on the Judiciary in the United States Senate.

I have highlighted that portion of the Congressional Record that deals with the reference we have made in our letter of April 23 regarding Senator Spector's proposal for an affirmative defense.

We continue to be concerned about protection of children. We are also concerned about the protection of the First Amendment rights of all citizens. Since it appears that the amendment proposed to the U.S. Senate will be adopted, it would seem appropriate that similar language be included in either SB 221 or HB 270.

If further information can be of assistance please call.

Sincerely,

Russ Riemann
President

*See —
This is the additional
material I spoke of the
other day*

(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

(3) the use of children as subjects of pornographic materials is harmful to the physical, emotional, and mental health of the individual child and to society.

Sec. 3, Chapter 110 of title 18, United States Code, is amended to read as follows:

"CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

"Sec. 2251. Definitions for chapter.

"Sec. 2252. Sexual exploitation of children.

"Sec. 2253. Certain activities relating to material involving the sexual exploitation of minors.

"Sec. 2254. Defense.

"§ 2251. Definitions for chapter

"For the purposes of this chapter, the term—

"(1) 'minor' means any person under the age of eighteen years;

"(2) 'sexually explicit conduct' means actual or simulated—

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) sado-masochistic abuse (for the purpose of sexual stimulation);

"(D) masturbation; or

"(E) lewd exhibition of the genitals or public area of any person;

"(3) 'simulated' means the explicit depiction of any conduct described in clause (2) of this section which creates the appearance of such conduct and which exhibits any uncovered portion of the genitals or buttocks;

"(4) 'producing' means producing, directing, manufacturing, issuing, publishing, or advertising; and

"(5) 'visual or print medium' means any film, photograph, negative, slide, book, magazine, or other visual or print medium.

"§ 2252. Sexual exploitation of children

"(a) Any person who knowingly employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, shall be punished as provided under subsection (c), if such person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed, or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be punished as provided under subsection (c) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

"(c) Any person who violates this section shall be fined not more than \$75,000 or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than \$150,000 or imprisoned not less than 2 years nor more than 15 years, or both.

"§ 2253. Certain activities relating to material involving the sexual exploitation of minors

"(a) Any person who—

"(1) knowingly transports or ships in interstate or foreign commerce or mail; any visual or print medium, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(E) such visual or print medium depicts such conduct; or

"(2) knowingly receives any visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, if—

"(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

"(B) such visual or print medium depicts such conduct;

shall be punished as provided in subsection (b) of this section.

"(b) Any person who violates this section shall be fined not more than \$75,000 or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than \$150,000 or imprisoned not less than two years nor more than 15 years, or both.

"§ 2254. Defense

"In any prosecution brought under this chapter for the production or distribution of a visual or print medium depicting sexually explicit conduct as defined in section 2251 (1)(2)(D) or (E), it shall be an affirmative defense that the medium, when taken as a whole, possesses serious literary, artistic, scientific, social, or educational value."

Sec. 4, Section 1981 of title 18, United States Code, is amended in clause (1)(B) by inserting after "section 1955 (relating to the prohibition of illegal gambling businesses)," the following: "sections 2252 and 2253 (relating to the sexual exploitation of children)."

Sec. 5, Section 1984 of title 18, United States Code, is amended in subsection (c) by striking out "his business or" and inserting in lieu thereof "his person, business, or".

By Mr. SPECTER:

S. 58. A bill to authorize incarceration in Federal prisons of convicts sentenced to life imprisonment under the habitual criminal statute of a State; to the Committee on the Judiciary.

S. 58—INCARCERATION UNDER HABITUAL OFFENDER STATUTES

Mr. SPECTER. Mr. President, I now send to the desk two bills which are meant to supplement the Armed Career Criminal Act of 1983, which I just introduced.

The first of these bills, S. 58, grants the Attorney General authority to incarcerate in Federal facilities persons convicted and sentenced to life imprisonment in State courts under their habitual offender statutes.

Permitting these persons to be transferred to Federal prisons will encourage more prosecutions under State career-criminal statutes. These statutes normally allow judges to sentence habitual offenders for significant periods in order to keep them from engaging in further criminal activity. Often, local district attorneys have task forces specially created to target career criminals. Unfortunately however, long-term incarceration of these criminals is nearly impossible due to already crowded State prison conditions. Prisoners are sometimes set free early to

make room for the continuing stream of newly convicted persons.

By holding persons sentenced to life imprisonment under a State's career criminal statute, the Federal Government is reducing the burden of overcrowding caused by prisoners serving long sentences.

Recent statistics show that the State prison population continues to increase at an alarming rate. Since 1975 the total U.S. prison population grew by only 1.2 percent. In the first 9 months of 1982, the State prison population exploded with a 10.4-percent rate of increase over 1981 prison population figures. Over the same 9 month period, the Federal prison population increased only 4.5 percent, much of that attributed to unsentenced prisoners under the jurisdiction of the U.S. Immigration and Naturalization Service.

The States need help from the Federal Government to reduce overcrowded conditions. This bill provides this assistance by allowing special targeting efforts to be directed at career criminals.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 58

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Congress finds that—

(1) career criminals commit a large percentage of the violent and major felonies afflicting society, causing immeasurable physical injury to innocent persons and damage, destruction, or loss to their property estimated at billions of dollars annually, thereby terrorizing law-abiding citizens, disrupting the community, and undermining respect for law;

(2) the continuing criminal activity of career criminals adversely affects interstate commerce;

(3) despite prior convictions for serious offenses, many repeat offenders are placed on probation or sentenced to unduly short terms of imprisonment by State judges, to the detriment of public safety;

(4) many repeat offenders cannot reasonably be rehabilitated and, unless incarcerated for life, will commit further felonies;

(5) many States have "habitual criminal" statutes providing for life sentences for repeat offenders, upon subsequent felony convictions;

(6) many State prison systems are severely overcrowded, understaffed, and unable to confine convicts sentenced to life imprisonment under such statutes in a safe, secure, and humane manner;

(7) State judges may be deterred by the lack of sufficient prison space, staff, and funding from imposing life sentences for repeat offenders as provided by State law, and the legislatures in those States without habitual criminal statutes may be dissuaded by such considerations from enacting such statutes;

(8) the interests of justice and public safety would be served if State authorities felt free to impose life sentences for repeat major offenders unrestrained by such considerations;