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SENATE JUDICIARY

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HOLD YOUR FIRE

Gun Control Won't Stop Rising Violence

DAVID B. KOPEL

As deaths from rampant gun violence mount, and city-dwellers from Boston to Los Angeles learn to distinguish the pop of a Smith & Wesson pistol from the blast of a Winchester shotgun, Americans insist on action to combat the national crime epidemic.

Although the per-capita murder rate remains below the record set in 1980, the actual number of homicides reached an all-time high of 24,703 in 1991; most of these murders were committed with guns. Most disturbing of all is the rise in violent crimes committed by gun-wielding teenagers. Able to acquire illegal weapons with ease, in spite of a nationwide prohibition on firearms sales to minors, teenage thugs display a disregard for human life that would have shocked the criminals of earlier generations. The latest urban terror, "carjacking," is the seizure at gunpoint of automobiles from their drivers, usually women.

As armed gangs settle turf disputes over drug-selling territory through mortal combat, they kill not only each other, but also innocent bystanders caught in the crossfire. Firearms violence, once thought to be the problem of the inner city, is spreading into the suburbs and beyond. And with depressing frequency, newspapers report stories of children dying in senseless gun accidents. In Louisiana last October, a Japanese exchange student was mistakenly shot when he entered the wrong house on the way to a Halloween party, and, not understanding the warning, continued to advance toward the homeowner despite an order to "Freeze!"

To some well-meaning Americans, the antidote to gun crime is gun control. Senator John Chafee (R-RI) calls for the confiscation of all handguns. Other voices, such as Handgun Control, Inc.'s Sarah Brady, urge a national waiting period on handgun purchases, and a ban on assault weapons. The national media's insistent message is that we must "do something" about guns.

Meanwhile, the National Rifle Association adds tens of thousands of members every month—membership is at a record three million—and continues to stymie gun control at nearly every turn. Although the 99th, 100th, and 101st Congresses passed some minor gun controls, the 102nd Congress went home without enacting any new gun-control measures. The New Jersey legislature is

ready to overturn its assault-weapon ban the moment the legislative leadership schedules a vote on the issue.

Critics of gun control believe that it violates the right to keep and bear arms guaranteed by the Second Amendment of the United States Constitution and by 43 state constitutions. In the American political tradition, the right to own a gun is seen as intimately related to the natural right of self-defense, to what John Locke described as the natural right to control and protect one's body and property. Millions of Americans consider an armed citizenry to be one of the principal safeguards against possible tyranny by the state.

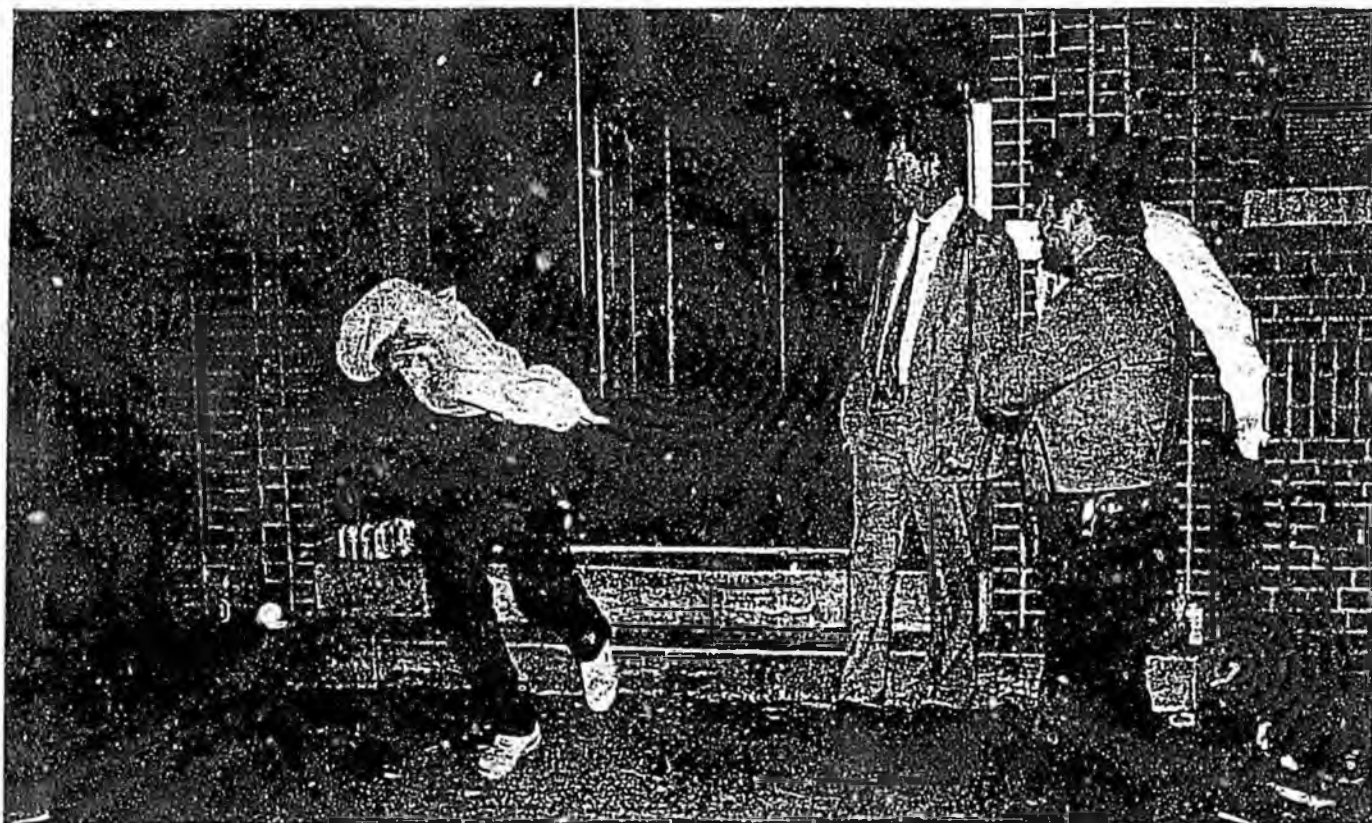
The constitutional argument against laws that infringe on gun ownership was strengthened by the 1990 Supreme Court decision in *United States v. Verdugo-Urquidez*. There, Chief Justice Rehnquist observed that the phrase "right of the people" occurs several times in the Bill of Rights, specifically the Second Amendment's "right of the people to keep and bear arms," the First Amendment's "right of the people peaceably to assemble," and the Fourth Amendment's "right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures." In all cases, the Court said, the phrase "right of the people" was used as a "term of art" that referred to individual Americans.

But critics of gun control do not base their opposition on political principles alone. They also cite a large body of recent social science research, much of which has been produced by scholars who formerly believed that gun control was an obvious solution to crime.

Jimmy Carter's Shocker

When gun control first became an important national issue in the 1960s, there was almost no research worth noting on the subject. Partisans on both sides of the debate had hardly more ammunition than intuitions and

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AP/Wide World Photos

As armed gangs settle turf disputes through mortal combat, innocent bystanders are caught in the crossfire.

bumper-sticker slogans.

The man most responsible for the change in the intellectual terms of the gun debate was Jimmy Carter, or, more precisely, the grant-review team that Carter appointed to the National Institute of Justice. Intending to build the case for comprehensive federal gun restrictions, the Carter administration handed out a major gun-control research grant in 1978 to sociology professor James D. Wright and his colleagues Peter Rossi and Kathleen Daly. Wright was already on record as favoring much stricter controls, and he and his colleagues were highly regarded sociologists. Rossi, a University of Massachusetts professor, would later become president of the American Sociology Association. Wright, who formerly served as director of the Social and Demographic Research Institute at the University of Massachusetts, now teaches at Tulane. Daly is now at the University of Michigan.

Wright and his colleagues were asked to survey the state of research regarding the efficacy of gun control, presumably to show that gun control worked and that America needed more of it. But when the researchers produced their report for the National Institute of Justice in 1982, they delivered a document quite different from the one they had expected to write. Carefully reviewing all existing research, the three scholars found no persuasive scholarly evidence that America's 20,000 gun-control laws had reduced criminal violence. For example, the federal Gun Control Act of 1968, which banned most interstate gun sales, had no discernible impact on the criminal acquisition of guns from other states. Washington, D.C.'s ban on the ownership of handguns that had not already been registered in the District

was not linked to any reduction in gun crime. Even Detroit's law providing mandatory sentences for felonies committed with a gun was found to have no effect on gun-crime patterns, in part because judges would often reduce the sentence for the underlying offense in order to balance out the mandatory two-year extra sentence for use of a gun.

What Criminals Say About Gun Control

The most thorough subsequent study of the efficacy of gun control has been performed by Florida State University's Gary Kleck, who analyzed data for all 170 U.S. cities with a population over 100,000, testing for the impact of 19 different types of gun controls, and looking for the controls' effects on suicides, accidents, and five different crimes. Kleck, a liberal Democrat and ACLU member, found that gun controls did reduce gun suicide, but not the overall suicide rate. The only control that reduced crime was a strict penalty for carrying an illegal gun, which seemed to lower the robbery rate. Waiting periods, various licensing systems, and registration appeared to have no statistically discernible impact. Kleck's analysis was based on data for the years 1979-1981, and is included in his recent book, *Point Blank*, which contains the best single-volume overview of gun-control research.

Wright and Rossi produced another study for the National Institute of Justice, this one involving the habits of America's felons. Interviewing felony prisoners in 10 state correctional systems in 1981, Wright and Rossi found that gun-control laws had no effect on criminals' ability to obtain guns. Only 12 percent of criminals, and only 7 percent of the criminals specializing in handgun

crime, had acquired their last crime handgun at a gun store. Of those, about one quarter had stolen the gun from a store; a large number of the rest, Wright and Rossi suggested, had probably procured the gun through a legal surrogate buyer, such as a girlfriend with a clean record. For the few remaining felons who actually did buy their own guns, the purchase might have been lawful because the purchaser as yet had no felony record.

The survey further indicated that 56 percent of the prisoners said that a criminal would not attack a potential victim who was known to be armed. Seventy-four percent agreed with the statement that "One reason burglars avoid houses where people are at home is that they fear being shot during the crime." Thirty-nine percent of the felons had personally decided not to commit a crime because they thought the victim might have a gun, and 8 percent said the experience had occurred "many times." Criminals in states with higher civilian gun-ownership rates worried the most about armed victims.

Since criminals can never be entirely sure which burglary targets may or may not contain a homeowner with a gun, or which potential robbery or rape victims may be carrying a concealed firearm, the ownership of firearms by half of American households provides a general deterrent to crime that benefits the entire population.

How Guns Prevent Crime

Consistent with the reports of criminals, ordinary citizens also report that gun ownership plays an important role in preventing crime. Professor Kleck estimates that handguns are used approximately 645,000 times for defense against an attacker every year in the United States.

The figure, ironically, is based on data from a survey conducted on behalf of the pro-control National Alliance

Carter's researchers found no persuasive evidence that any of America's gun-control laws had reduced criminal violence.

Against Violence (NAAV). NAAV hired Peter Hart, a leading Democratic pollster, to survey Americans on guns, asking, among other things: "Within the past five years, have you yourself or another member of your household used a handgun, even if it was not fired, for self-protection or protection of property at home, work, or elsewhere, excluding military service or police work?" Six percent answered "yes." Follow-up questions revealed that 3 percent of the respondents had used the handgun against a person, 2 percent against an animal, and 1 percent against both. That 4 percent said "yes" to defensive gun use against persons meant that about 18 percent of households where a handgun was owned for protec-

tion had actually used the handgun for protection.

Kleck's analysis started with the 4-percent "yes" from Hart's data. Kleck made the conservative assumption that each "yes" related to only one gun usage in the last five years—that no household used a firearm for self-defense two or more times in the five years. Thus, 3,224,880 households reported self-defense usage. Kleck then divided by five (since the question had asked about usage in the last five years) to arrive at an estimate for the annual number of uses of a handgun for self-defense: 644,976—or roughly once every 48 seconds.

Since Kleck's estimate is based on responses to a pollster, it should be emphasized that the 645,000 figure is necessarily imprecise. The original question posed by Peter Hart could have elicited a "yes" answer from an insecure gun owner who had perceived a criminal threat that did not in fact exist. Kleck partly controlled self-defense inflation from false "yes" answers by assuming that no "yes" answer related to more than one defensive use. In addition, the 645,000 estimate applies only to handguns; the original question did not ask about defensive use of rifles or shotguns.

In 1990, Professor Gary Mauser, of Canada's Simon Fraser University, asked Americans about use of a handgun or a long gun for self-defense; the responses suggested approximately 691,000 annual defensive uses of guns of all types. Accordingly, we may conclude that guns are used defensively at least half a million times a year.

Of course, the fact that a gun is used for defense does not mean that a shot is fired, or an attacker wounded or killed. About 95 percent of self-defense usage, says Kleck, involves merely the brandishing of a weapon to deter a perceived attack.

While the majority of defensive handgun use is simply brandishing a weapon to frighten away an attacker, Kleck suggests that 1,700 to 3,100 homicides a year are actually justifiable homicides committed by citizens using a firearm to defend themselves or another person against violent attack.

One Bullet at a Time

While most Americans believe they have a right to own a gun, and believe that guns can be protective, even many gun owners are baffled at the gun lobby's apparent intransigence in its refusal to accept a ban on so-called assault weapons or a waiting period on gun purchases.

The assault-weapon issue, however, turns out to involve much less than meets the eye. First of all, it should be emphasized that most people who own semi-automatics support strong controls on actual machine guns. Ever since the National Firearms Act of 1934, acquisition of real machine guns—guns that continue to fire bullets repeatedly as long as the trigger is held down—has required a difficult-to-obtain federal license. The NRA did not oppose the restrictive machine gun law when it was enacted, and has never indicated any desire to repeal the law.

While machine guns do have a unique capacity for rapid fire, what we know as assault weapons do not. Although most of the public believes that assault weapons are machine guns, the guns in question simply look like military weapons. Appearances notwithstanding



The waiting period promoted by Sarah Brady would not have stopped John Hinckley from shooting her husband Jim.

ing, the guns fire just as every other common American gun does: squeezing the trigger fires one, and only one, bullet. According to Martin Fackler, former director of the Letterman Army Institute of Research, assault weapons are actually less lethal than many firearms commonly associated with hunting, such as an old-fashioned 12-gauge Winchester shotgun. The Bureau of Alcohol, Tobacco, and Firearms states that no guns available for sale to the public can be easily converted to fire automatically.

Hard to Convert

The fact that semiautomatic assault weapons differ from other guns only cosmetically is one reason why legislative bodies have had so much trouble defining them. Since the guns do not fire faster than other guns, legislative definitions sometimes focus on extraneous features, such as the presence of a bayonet lug—as if we were suffering from a rash of criminals bayonetting people.

Other definitions are merely a list of particular guns with a military appearance. Among the guns targeted by assault-weapons legislation are the M1 Carbine; the AKS Rifle; the Uzi Pistol and Carbine, the Colt AR-15 H-Bar Rifle; the Springfield Armory 4800 Rifle; the M10 Pistol and Carbine; and the AK-56 rifle. Yet some of these guns are in no way distinguishable from many other guns not on the lists, such as the popular hunting rifles made by Winchester, Remington, and Ruger. As former Attorney General Richard Thornburgh noted, the main characteristic of an assault weapon seems to be that it has a black plastic stock rather than a brown wooden stock.

In practical terms, the legislative definition of assault weapon amounts to "the largest number of guns that a given legislature can be convinced to ban." The New Jersey assault-weapon prohibition even outlaws BB guns.

While assault weapons have been claimed to be the "weapon of choice" of criminals, such guns constitute a very small number of the crime guns seized by the police. The Florida Assault Weapons Commission's 1990 report found that assault weapons were used in 17 of 7,500 gun crimes in the years 1986–1989. The Washington, D.C. director of the police firearms section stated in early 1989 that not one of the more than 3,000 weapons the Washington police confiscated in 1988 was a semi-automatic assault rifle.

While some gun-prohibition advocates have claimed that a record number of police are being murdered by assault weapons, police-officer deaths in the line of duty are at their lowest level since 1968. The percentage of police homicides perpetrated with assault weapons is about 4 percent, a figure that has stayed constant over the last decade. The FBI's Uniform Crime Reporting Program, which collects extensive data on all murders of police officers, reports no instance of a drug dealer ever killing a police officer with an Uzi.

That assault weapons should appear so rarely as crime guns seized makes sense. Street criminals need concealable weapons, and a Colt or a Kalashnikov rifle is pretty difficult to stick in a pocket. Indeed, rifles of all types constitute a tiny percentage of crime guns. According to the Washington, D.C., Metropolitan Police Department, rifles are used in less than one-tenth of 1 percent of armed robberies in the District. Nationally, only about 4 percent of the weapons used in homicides are rifles.

Occasionally, so-called assault weapons are used in gruesome mass murders. In Stockton, California in January 1991, Patrick Purdy used a Kalashnikov-type semiautomatic rifle to fire 105 shots in about four minutes at a schoolyard full of Cambodian immigrant children. Thirty-five people were wounded, six of whom died. Purdy's rate of fire could have been duplicated by



Children praying for their slain schoolmates in Stockton, California. The media's inaccurate description of the murderer's gun enabled the California authorities to escape censure for having freed this dangerous man.

anyone with an old-fashioned bolt-action rifle or simple revolver, and autopsies of the victims showed that the wounds were approximately equal in severity to wounds associated with a medium-sized handgun, which explains why 29 of the 35 people who were shot survived.

Thus, Purdy could have committed the same crime using many other types of guns. But the national media incorrectly told the American public that Purdy had used an automatic AK-47 rifle, and that such guns could be bought over the counter.

Lost in the media frenzy over Purdy's gun was Purdy himself, who committed suicide with a pistol at the end of his spree. Purdy perpetrated his crime after he had told a state mental-health worker that he thought about committing a mass murder with a gun or a bomb, and even though a parole report called him "a danger to himself and others."

Purdy had a lengthy history of crime and arrests, including a robbery in which a 55-year-old woman was seriously injured, receipt of stolen property, criminal conspiracy, possession of illegal weapons, and assault of a police officer, all reduced to misdemeanor charges. His crime career began when he was 14 years old and continued unabated for the next decade, until he killed himself at Stockton. Not one of Purdy's two-dozen encounters with the law ever led to more than a few weeks

in prison. The media's hysterical focus on Purdy's gun enabled California's decrepit criminal-justice bureaucracy to escape public censure for allowing Purdy to roam the streets, free to commit his final, horrible crime.

"Cooling Off"

The waiting period, like the assault-weapon ban, becomes considerably less attractive when examined carefully. While the waiting-period initiative is often called the "Brady Bill," it would not have prevented John Hinckley from shooting Ronald Reagan and Jim Brady. When Hinckley bought two handguns in October 1980, he had no felony record, and no public record of mental illness. The simple police and mental health records check proposed by the Brady Bill would not have turned up anything on him. And since Hinckley bought the guns more than five months in advance, a one-week wait would not have made any difference to him.

Indeed, a "cooling-off" period for handgun purchases requires a number of unlikely assumptions in order to work. First, the potential murderer—denied a handgun immediately—must then decide not to buy a rifle or a shotgun, which the Brady Bill would allow him to do. Then, he must not know how to buy a handgun on the black market, or how to obtain one from friends, relatives, or acquaintances. In addition, the type of murder he intends must not be one for which readily available alternative weapons, such as knives, automobiles, or bare hands will work. Finally, the person who was literally ready to commit a murder on day one of the waiting period must calm down by day seven, and stay calm from that day forward.

This scenario, while implausible, is not impossible; it is at least theoretically imaginable that a waiting period could "save at least one life." But a waiting period can cost lives, too.

"I'll Be Dead by Then"

Even a short waiting period will inevitably prevent people from protecting themselves against criminal attack during the wait. When Los Angeles citizens went to gun stores to buy firearms to protect life and property during the recent riots, they were told to come back 15 days later, to comply with California's waiting period on all guns.

After Hurricane Andrew, Florida's looters did considerably less damage than their California counterparts, in part because Florida has only a three-day handgun waiting period, and no wait at all on long guns.

Nor are waiting period victimizations confined only to periods of civil disorder. In September 1990, a mail carrier named Catherine Latta of Charlotte, North Carolina, went to the police to obtain permission to buy a handgun. Her ex-boyfriend had previously robbed her, assaulted her several times, and raped her. The clerk at the sheriff's office informed her the gun permit would take two to four weeks. "I told her I'd be dead by then," Latta later recalled. That afternoon, she bought an illegal \$20 semiautomatic pistol on the street. Five hours later, her ex-boyfriend attacked her outside her house, and she shot him dead. The county prosecutor decided not

to prosecute Latta for either the self-defense homicide or the illegal gun.

A Wisconsin woman, Bonnie Elmasri, was not so lucky. On March 5, 1991 she called a firearms instructor, worried that her husband—who was subject to a restraining order to stay away from her—had been threatening her and her children. When she asked the instructor about getting a handgun, the instructor explained that Wisconsin has a 48-hour waiting period. Elmasri and her two children were murdered by her husband 24 hours later.

Waiting periods that appear reasonable in a legislative chamber may become unreasonable through administrative abuse. Although New Jersey law requires that the authorities act on gun license applications within 30 days, delays of 90 days are routine; some applications are delayed for years for no valid reason. In Maryland, where an appeals process exists, the police are overruled on 78 percent of the denials that are appealed.

Instant Records Check

If it is determined that the way to keep criminals from getting guns is to impose background checks on retail handgun sales—a questionable determination—a mandatory instant records check makes sense. The same technology that allows a store to receive verification of credit card validity within a few minutes can also allow firearms dealers to dial a state government registry and verify that a gun buyer has no felony record.

Polling data suggests that most Americans prefer the instant check to the waiting period, particularly when presented with the choice of mandatory immediate check (the NRA proposal) versus a waiting period with no requirement than any check be conducted (the Brady Bill). In recent years, many states have made major progress in bringing their criminal-records histories online. Thus, an instant check should become feasible in the near future.

And if records are not sufficiently accurate to support an instant check, they are also not sufficient to support a check with a one-week wait. Former Attorney General Thornburgh's task force found that even if there were no improvement in state criminal records, an instant check would be just as accurate as a check that could be completed in one week.

Unfortunately, if adequate safeguards are not in place, the instant check, like the waiting period, can be misused by police departments to create a registry of gun owners. In 1991, California admitted that it had used the state's handgun waiting period to create a list of handgun owners, even though nothing in California law authorizes the compilation of such a list.

Although the federal gun-control debate talks almost exclusively about retail handgun sales and the Brady Bill, the most effective method to deal with criminals obtaining guns might be to focus on the major source of criminal guns: the black market. A sensible first step in dealing with the black market would be to increase penalties for fencing a gun known to be stolen. In some states, theft and sale of a \$75 gun amounts only to petty larceny. Selling a "hot" \$75 pistol ought to be a more serious offense than selling a "hot" \$75 toaster-oven.

NRA's Reform Proposal

While Congress has spent most of its gun-control effort debating new restrictions on gun acquisition, the discussion in many state legislatures has shifted to the carrying of firearms. The Second Amendment refers to a right "to keep and bear arms," and if the text is read consistently with original intent and judicial interpretations of the following century, the government cannot require that citizens ask for permission to carry an un-concealed gun in public.

But in many states, the right to carry has been obliterated by laws that require a police license to carry, and by police administrators who give out carry licenses only to the political elite. In New York City, crime victims who will testify at a forthcoming trial, and who are receiving death threats from the criminal's friends, are denied carry permits—while politically powerful citizens are routinely granted them. While New York's abuse of licensing discretion is notorious, the licensing systems in many other cities are also skewed against people without some kind of clout.

Based on a literalist reading of the Constitution, Second-Amendment advocates should lobby for repeal of all laws requiring a license to carry a gun. But instead, the NRA suggests only reform of easily abused gun licensing systems.

The NRA proposal requires that applicants for a permit to carry a protective firearm must undergo safety training and must submit to a police background check. Then, if the applicant passes the safety class and back-

Every 48 seconds, an American uses a handgun for defense against an attacker.

ground check, he or she is to be granted a license to carry. The bureaucratic discretion to deny permits to qualified citizens simply because the bureaucrat does not like guns would be removed.

Progress in the Gunshine State

Carry reform was first enacted in Florida in 1987, amidst vociferous cries from gun-control supporters in the legislature that blood would run in the streets as Floridians shot each other while jostling in line at fast-food restaurants. Florida would become the "Gunshine State," it was warned.

Today, those same critics have admitted that they were wrong, and that they regret the harm done to Florida's reputation by the histrionic campaign against carry reform. Indeed, while the murder rate has risen 14 percent nationally from 1986 to 1991, it has fallen 20 percent in Florida. The state's total murder rate was 36 percent higher than the U.S. murder rate in 1986, and is now 4 percent below the national average. In the same



Bans on semi-automatic "assault weapons" are based on the misconception that they fire rapidly like machine guns. They actually fire like every other common gun—one bullet per squeeze of the trigger.

period, robbery rose 9 percent in Florida, and 21 percent nationally.

There has been no research proving that Florida's carry reform was part of the reason for Florida's relative improvement in recent years. But the experience of Florida, and of other carry reform states such as Oregon, Montana, Mississippi, and Pennsylvania, demonstrates that people who are already good citizens and who are willing to pass through a licensing process do not suddenly turn into murderous psychopaths when granted a permit to carry a firearm for protection.

Interrupting a Mass Murder

While tragic mass murders are frequently used by the pro-control lobby to push restrictive laws, evidence suggests that laws prohibiting firearms carrying may be costing innocent lives.

In October 1991 in Killeen, Texas, a psychopath named George Hennard rammed his pickup truck through the plate glass window of a Luby's cafeteria. Using a pair of ordinary pistols, he murdered 23 people in 10 minutes, stopping only when the police arrived.

Dr. Suzanna Gratia, a cafeteria patron, had a gun in her car, but, in conformity to Texas law, she did not carry the gun; Texas, despite its Wild-West image, has the most severe law in the country against carrying firearms. Carry-reform legislation had almost passed the state legislature, but had been stopped in House Rules Committee by the gun-control lobby.

Gratia later testified that if she had been carrying her gun, she could have shot at Hennard: "I know what a lot of people think, they think, 'Oh, my God, then you would have had a gunfight and then more people would have been killed.' Unhuh, no. I was down on the floor; this guy is standing up; everybody else is down on the floor.

I had a perfect shot at him. It would have been clear. I had a place to prop my hand. The guy was not even aware of what we were doing. I'm not saying that I could have saved anybody in there, but I would have had a chance." Hennard reloaded five times, and had to throw away one pistol because it jammed, so there was plenty of opportunity for someone to fire at him.

Even if Gratia hadn't killed or wounded Hennard, he would have had to dodge hostile gunfire, and wouldn't have been able methodically to finish off his victims as they lay wounded on the floor. The hypothetical risks of a stray bullet from Gratia would have been rather small compared with the actual risks of Hennard not facing any resistance. But because of the Texas law, Gratia had left her gun in the car and couldn't take a shot at Hennard. Instead, she watched him murder both her parents.

Two months later, a pair of criminals with stolen pistols herded 20 customers and employees into the walk-in refrigerator of a Shoney's restaurant in Anniston, Alabama. Hiding under a table in the restaurant was Thomas Glenn Terry, armed with the .45 semiautomatic pistol he carried legally under Alabama law. One of the robbers discovered Terry, but Terry killed him with five shots in the chest. The second robber, who had been holding the manager hostage, shot at Terry and grazed him. Terry returned fire, and mortally wounded the robber.

Twenty-three people died in Killeen, where carrying a gun for self-defense was illegal. Twenty lives were saved, and only the two criminals died in Anniston, where self-defense permits are legal. Yet while Anniston never made the network news, Killeen did, and is used to this day as supposed proof of the need for severe gun controls. Precisely because lives are saved, instances of citizens using firearms carried on their persons to defend themselves and others rarely make the national news, even though such defensive acts occur with great frequency, as the research of Professors Kleck and Mauser demonstrates.

Emphasis on Gun Safety

Gun control, properly conceived, is not simply a matter of passing laws, or adding to the paperwork involved in retail gun purchases. Gun control needs to involve people control, or more precisely, helping people take control of their own actions. In this regard, the NRA's gun safety programs rank as America's most successful gun-control efforts.

The National Rifle Association was founded in 1871 by Union Army generals dismayed at the poor marksmanship displayed by Union forces during the recent war. The NRA always has placed heavy emphasis on its mission to train American citizens in responsible and effective firearms handling.

Happily, the fatal gun accident rate is now at an all-time low. In 1945, for every million Americans, there were about 350,000 firearms and 18 fatal gun accidents. Today, the per-million rate is 850,000 and 6 accidents. As the gun supply per capita more than doubled, fatal accidents fell by two-thirds.

NRA safety programs implemented by the 32,000

instructors and coaches who have earned NRA Instructor certification have played an important role in the accident drop, and will become even more important in coming years as more and more women choose to own handguns. Since women gun owners are more likely to own for protection, and less likely to have been initiated in sport shooting by an older male relative, safety training for these new gun owners is especially worthwhile, and the NRA has, accordingly, set up a program offering free safety training to women.

The number of fatal firearm accidents for children aged 0-14 has fallen from 550 in 1975 to 250 in 1988. While the NRA always has had junior shooting and hunting programs that emphasize the development of safe sporting gun use under adult supervision, in 1988 the organization launched a safety campaign aimed at the millions of children who never have any exposure to the shooting sports.

The NRA's Eddie Eagle Elementary Gun Safety Education Program is geared for children in pre-school through sixth grade. Using teacher-tested materials such as an animated video, cartoon workbooks, role-playing, and fun safety activities, Eddie Eagle teaches the simple lesson: "If you see a gun: Stop! Don't Touch. Leave the Area. Tell an Adult."

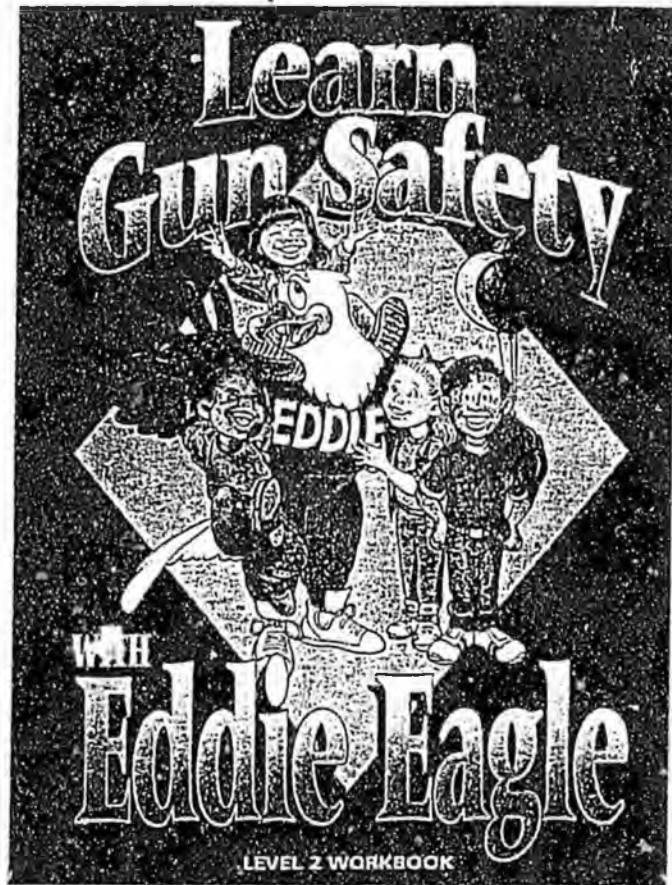
To date, the Eddie Eagle program has reached almost 4 million children and their parents through schools, law-enforcement programs, and a variety of youth programs. Unfortunately, it has been excluded from some urban schools by administrators who refuse to allow pupils to contact anything related to the NRA, even though the Eddie Eagle curriculum does not discuss political issues.

Controlling Criminals, Not Guns

The NRA's most controversial recent effort is the organization's CrimeStrike program, which takes aim at aspects of the criminal justice system that the NRA considers too lenient. In pushing for laws allowing greater pretrial detention of violent repeat offenders, the NRA adheres to its conservative roots, to the chagrin of some of its libertarian supporters, who are unwilling to protect the Second Amendment by weakening the Eighth Amendment right to bail.

Other aspects of CrimeStrike, such as support for victims' rights laws, cause no dissent within the pro-Second Amendment coalition, and offer an opportunity to improve a criminal justice bureaucracy that sometimes lets the desire to process cases overshadow the necessity to do justice to the criminal and the victim.


NRA CrimeStrike strategies, like NRA lobbying, rely heavily on grassroots pressure. In a recent Texas case, Charles Edward Bruton had been sentenced to two 10-year terms for shooting at a woman and for committing a heinous sexual assault against her 11-year old daughter.



Thanks to such gun-safety programs as the NRA's Eddie Eagle, fatal firearm accidents among children 14 and under have fallen from 550 in 1975 to 250 in 1988.

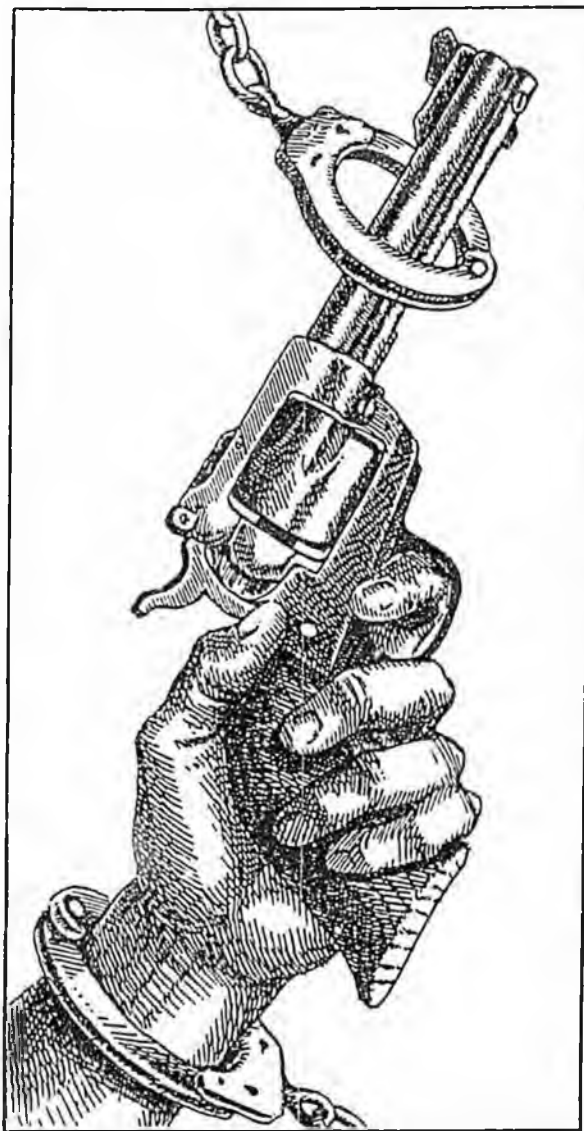
Having served only three years, Bruton was up for parole last September. After the shooting victim asked CrimeStrike for assistance, NRA members were notified through NRA magazines destined for Texas; the Texas Board of Pardons and Appeals was flooded with calls and letters; the parole was denied.

CrimeStrike will not single-handedly fix the criminal justice system, nor will safety education eliminate all accidents, nor will carry reform wipe out all street crime. But each of these efforts will improve public safety for all citizens, whether they own guns or not. Everyone benefits from a prison system that keeps violent felons off the streets; everyone benefits from reduced risks of gun accidents; and everyone benefits from street criminals facing increased odds of victims resisting successfully.

Today, rather than merely opposing poorly conceived gun-control legislation, right-to-keep-and-bear-arms supporters are working in positive ways. These efforts will enhance not only the rights of the 50 percent of American families who own guns, but also the safety of the 50 percent who do not. 

FORUM / LETTERS

Concealed weapons protect victims, not criminals



Let's get one thing straight at the beginning: Police don't protect. Period. In fact, they are required by law to react after a crime is either in progress or is over. Police retaliate.

The illusion of police protection is one of the great myths that I, as a self-defense for women instructor, have to overcome. One of the other myths is that if a woman pulls a gun on a bad guy, he will summarily take it away from her and use it on her. That doesn't happen either.

But back to the police. They have been very good at finding ways to protect themselves. The concern that C.E. Swackhammer, Ron Otte and Brian Porter have about HB 351 (the bill to allow concealed carry of firearms) is that the passage of this bill might make it more dangerous for police officers. It might, but it definitely would make it more dangerous for the criminals.

Supporters of this bill have pointed to the Florida experience as a way of demonstrating what the passage of this bill means.

In total, there are 13 states that allow concealed carry. To date, there has been no research on the effects of concealed carry that includes all of these states.

But information has been developed about the Florida experience by Florida State University criminologist Gary Kleck. According to his data, approximately 1 million times a year an armed citizen defends himself or his property. Ninety-six percent of the time, he merely brandishes the weapon or fires a warning shot. In 2 percent of cases, the citizen actually shoots the assailant. While defending themselves with firearms, the armed Florida citizen ended up killing between 2,000 to 3,000 criminals each year since 1987 when the law was enacted. This is three times the number killed by police during the same time-frame.

In a nationwide study, Kates found that about 2 percent of civilian shootings involved the



injury of an innocent citizen mistakenly identified as an assailant. The error rate for police, however, was 11 percent.

The difference in the "identification" problem is fairly easy to understand. If a citizen is standing at the bus stop of life and a bad guy comes up, pulls a knife and says, "Your money or your life," it is pretty obvious that a crime is in progress. Police, on the other hand, are usually not privy to that kind of exchange. They retaliate, after the fact, and try to sort out who did what to whom.

Self-defense laws, in general, favor protection of the police, the criminal justice system, and those who make their living off of those institutions. In short, if a citizen is going to act in self-defense, he must first try to run away. Failing that, he cannot escalate past what is being done to him (e.g., if the bad guy is unarmed, the good guy cannot start hitting the bad guy with a 2-by-4).

Then, once the bad guy is on the ground, the good guy must stop, wait for the bad guy to get up and present himself as a danger again before the good guy can act again. Additionally, the good guy can only use lethal force if he can prove to a jury that he was in fear of losing his life (or he was preventing another from losing his/her life).

If I had followed these guidelines as I fought my way through my early life, I wouldn't be alive today. Combat strategies that actually work will not fit neatly into those restrictive guidelines.

The fact is: Only the intended victim of a crime is in a position to: 1) establish that a crime is in progress, and 2) prevent that crime from occurring. No one else is in any position to do much of anything else except pick up the pieces — after the fact.

Another fact is: The handgun is the most powerful tool for prevention and protection there is. A woman, trained in the use of handgun, stands a good chance against the rapist, the estranged husband or boyfriend, the mugger, etc. FBI statistics say that in less than percent of the cases reported did the assailant take a woman's gun away from her and use it on her. Again, compared to police giving their gun away, the citizen did better.

What does happen is that women are full capable of defending themselves from violent attack:

- 92-year-old, wheelchair-bound Bessie Jones shot her assailants (USA Today, Nov. 10, 1993);
- After being blindfolded and raped, Madelin Morehouse reached the gun in her purse and held her rapist at gunpoint while she called the police (Seattle Times, May 13, 1993);
- "Woman Feeding Baby At Home Shoot Intruder" (San Antonio Express News, Aug. 10, 1993);
- "Widow of Police Chief Shoots Intruder" (Sacramento Bee, April 22, 1993).

The experience of the armed citizen is not that gun owners are homicidal, emotionally deranged, sub-human throwbacks who are just looking for an excuse to blow somebody away. They are, rather, decent, law-loving people who accept the fact that only they, the intended victims, can prevent crime.

└ Bruce Bibee is a seventh-degree black belt. He is the owner of Kung-Fu San Soo Center, and he has been teaching women's self-defense classes since 1976.

Move legislature to Wasilla

The new capital designation which is coming onto the ballot in the general election in



has been spent. Why not let those who misappropriated our money personally return it. Gov. Hickel, then-Attorney General Cole, Barnes, Halford and the rest of the legislature

SB

239

PETRO MARINE SERVICES

Petroleum Marketing to the Marine Industry

January 20, 1994

House Special Committee on Oil & Gas
Senate Special Committee on Oil & Gas

Subject: Direct access insurance for noncrude operators

Petro Marine Services is the largest Alaskan owned fuel distributor and specializes in marketing bulk fuel and packaged petroleum products to the marine industry. We operate seven bulk marine terminals and several harbor fuel facilities in Alaska. We have been trying unsuccessfully to obtain direct access insurance as a means of certifying financial responsibility. At this time we do not have any indication that such insurance is available to us in a form we can afford.

In the absence of any indications that such insurance is or soon will be available, the temporary law which permits ADEC to approve Certification of Financial Responsibility (COFR) without direct access should be permanently adopted. I encourage you to enact SB 239 and HB 384 thereby repealing the temporary nature of ADEC's authority to approve applications for COFR for noncrude operators. This action would assure that we could continue to operate without continually having to ask the legislature to reenact ADEC's authority to approve our COFR. I appreciate your attention and interest in eliminating this extra and unnecessary work.

Sincerely,

W. B. Schoephoester
Manager, Planning & Projects

Delta Western

ALASKA'S PETROLEUM DISTRIBUTOR

A Division of Western Pioneer, Inc.

ANCHORAGE
500 L Street, Suite 306
Post Office Box 102916
Anchorage, Alaska 99501
Toll-Free: (800) 478-2666
Tel: (907) 275-2688
Fax: (907) 275-3741

DILLINGHAM
Post Office Box 1209
Dillingham, Alaska 99576
Tel: (907) 842-5444
Fax: (907) 842-2697

DUTCH HARBOR
1577 E. P. Loop Rd.
Pouch 716
Dutch Harbor, Alaska 99692
Tel: (907) 581-1284
Fax: (907) 581-1764

JUNEAU
449 W. Willoughby
Juneau, Alaska 99801
Tel: (907) 585-2600
Fax: (907) 585-1276

NAKNEK
Post Office Box 209
Naknek, Alaska 99633
Tel: (907) 246-6174
Fax: (907) 246-6212

NIKISKI
53203 Nikiski Beach Road
Post Office Box 6069
Nikiski, Alaska 99635
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SEATTLE
4501 Shilshole Avenue N.W.
Post Office Box 70438
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Fax: (206) 784-8348

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SELKOVIA
219 Main Street, Drawer C
Selkovia, Alaska 99663
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Fax: (907) 234-7442

WRANGELL
Post Office Box 50
Wrangell, Alaska 99929
Tel: (907) 874-2366
Fax: (907) 874-3917

YAKUTAT
Post Office Box 29
Yakutat, Alaska 99689
Tel: (907) 784-3311
Fax: (907) 784-3409

January 24, 1994

House Special Committee on Oil & Gas
Senate Special Committee on Oil & Gas

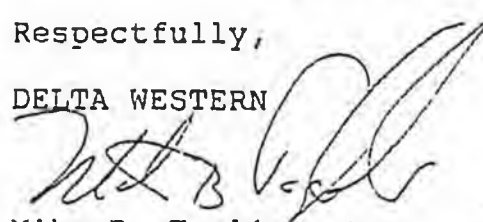
Subject: Direct access insurance for noncrude operators

Delta Western is one of the largest fuel distributors in the State of Alaska specializing in bulk fuels, Chevron lubricants and petroleum transportation services. We operate ten bulk fuel facilities and provide marine transportation throughout Southeast Alaska, Cook Inlet, the Alaska Peninsula, the Aleutian Chain, Bristol Bay and in the Kuskokwim and Yukon Rivers. Delta Western has been unsuccessful in its endeavors to obtain direct access insurance as a means of certifying financial responsibility. We have had no indication at this time that such insurance will be available to us in a form we can afford.

In the absence of any indications that such insurance is or soon will be available, the temporary law which permits ADEC to approve Certification of Financial Responsibility (COFR) without direct access should be permanently adopted. I encourage you to enact SB 239 and HB 384 thereby repealing the temporary nature of ADEC's authority to approve applications for COFR for noncrude operators. This action would assure that we could continue to operate without continually having to ask the legislature to reenact ADEC's authority to approve our COFR. I appreciate your attention and interest in eliminating this extra and unnecessary work.

Respectfully,

DELTA WESTERN


Mike B. Tagliavento
General Manager
Marketing/Operations



CROWLEY MARINE SERVICES, INC.

January 24, 1994

House Special Committee on Gas & Oil
Senate Special Committee on Gas & Oil

Subject: Direct access insurance for noncrude operators

Crowley Marine Services, Inc. ("Crowley") is a major tug and barge transporter of noncrude petroleum products in the State of Alaska. Crowley transports and delivers approximately 100 million gallons of bulk petroleum products annually to the Western Alaska region. Deliveries are performed to approximately 125 coastal and river communities. These communities are spread across some 4,000 miles of coastlines and rivers stretching from Kodiak Island to Barter Island. Virtually all of these villages are dependent on seasonal deliveries of fuel for their existence.

Our company has asked its insurance brokers to investigate the availability of direct access insurance. Direct access insurance is currently not available with the limits and extent of coverage provided by the P&I insurance in place for the Crowley fleet. Crowley presently has one billion dollars per occurrence P&I insurance coverage for pollution liability. Any limited direct access insurance would be in addition to our P&I insurance and a significant business cost with questionable benefit.

We ask that you enact SB 239 and HB 384 repealing the temporary nature of ADEC's authority to approve applications for Certification of Financial Responsibility (COFR) for noncrude operators. The temporary law which permits ADEC to approve COFR without direct access should be permanently adopted. We believe that the uncertainty of continued operations in Alaska by having to ask the legislature to reenact ACEC's authority to approve Crowley's COFR will be eliminated by this legislation.

I thank you for your interest and action in eliminating this confusing and unnecessary work.

Sincerely,

Charles F. Nalen
Vice President Environmental Affairs

SENATE SPECIAL COMMITTEE ON OIL & GAS
March 25, 1993
5:12 p.m.

MEMBERS PRESENT

Senator Loren Lemam, Chairman
Senator Judith Salo

MEMBERS ABSENT

Senator Rick Halford
Senator Bert Sharp
Senator Al Adams

COMMITTEE CALENDAR

Group Insurance Pooling

WITNESS REGISTER

Larry Eppenbach
Legislative Research Agency
130 Seward St. Suite 218
Juneau, Alaska 99801-2196

POSITION STATEMENT: Commented on Group Insurance Pooling.

Ray Gillespie
Association of Refined Fuel Distributors
9478 Riverbend Court
Juneau, Alaska 99801

POSITION STATEMENT: Commented on Direct Action Insurance.

James Cantor, Assistant Attorney General
Department of Law
1031 W. 4th, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Commented on Direct Action Insurance.

ACTION NARRATIVE

TAPE 93-11, SIDE A
Number 001

SENATOR LEMAN called the Special Committee on Oil and Gas meeting to order at 5:12 p.m. and announced they would discuss group insurance pooling.

LARRY EPPENBACH, Legislative Research, said his report grew out of SB 405 from last year which was remedial in nature. It solved the open ended liability insurance companies faced with uncertain coverage amounts that could have exceeded their

policies. SB 405 limited the policy amounts.

The Section of SB 405 addressed to non-crude operators waived a requirement for non-crude operators to pay for financial responsibility with insurance with a direct action clause.

The major findings in this report say that state or private pooling isn't likely to create a competitive insurance product, because there are not that many non-crude operators. There are about 72 in the state and 9 of those are exempt (because they're part of the federal government), 29 are quite large and self insure or are guaranteed by others. Thirty one of them purchase insurance. Six of those have insurance that successfully contains a direct action clause. The other 25 have been granted waivers by the DEC.

The most attractive alternative is for a private insurance product to be developed that would have a direct action clause. There are two ways that could occur, MR. EPPENBACH said. One, the clause could be directly in the insurance, and two, an umbrella policy could be written that provided direct action in addition to other insurance the operator might possess. Therefore, the package of the two might meet all the requirements.

Number 177

SENATOR LEMAN asked if the direct action clause would be secondary to the other insurance. MR. EPPENBACH answered almost certainly.

MR. CANTOR said some private entities are working to put together a package with Lloyd's of London that will solve Alaska's problems.

MR. EPPENBACH commented that it looked a lot like private insurance would be solving the insurance problem in the very immediate future and the delay suggested in the report was not unreasonable.

Number 244

RAY GILLESPIE, representing three refined product distributors, said direct action insurance has been consistently unavailable since the Exxon-Valdez incident. He said right now the companies have an indemnification policy underwritten by Lloyd's of London, which says if there is a judgement rendered against the company, they will come in and pay the judgement. Lloyd's of London has never agreed to be sued in any court in the United States.

MR. GILLESPIE said that the direct action requirement for

companies like the ones he represents is superfluous, because they have strong ties in Alaska and have assets large enough to cover any spill. He noted that California, Florida, Washington, and Virginia have dropped their direct action requirement. These states have in law a requirement for a bond. The bond is waived if the company meets certain conditions - that is substantial assets and a history of connections with the state.

Number 323

SENATOR SALO asked what our history was on lawsuits over direct action issues. MR. GILLESPIE said there had been maybe one at the most.

SENATOR SALO said she understood that Lloyd's of London was having financial difficulties and asked if that would affect their ability to write insurance for direct action.

MR. CANTOR explained that one part of Lloyd's was in trouble and possibly the Exxon Valdez incident was making it difficult to purchase this type of insurance.

Number 355

SENATOR LEMAN asked why other states were dropping the direct action provision. MR. CANTOR said that the realities of the insurance market have caused the other states to change their financial responsibility requirements.

SENATOR LEMAN thanked everyone for their participation and adjourned the meeting at 5:40 p.m.

8-LS1408E
Lauterbach
1/26/94

CS FOR SENATE BILL NO. 239(O&G)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE SPECIAL COMMITTEE ON OIL AND GAS

Offered:
Referred:

Sponsor(s): SENATE SPECIAL COMMITTEE ON OIL AND GAS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to evidence of financial responsibility provided by persons who
2 conduct oil operations; and providing for an effective date."

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

4 * Section 1. AS 46.04.040(b) is amended to read:

5 (b) A person may not cause or permit the operation of a pipeline or an
6 exploration or production facility in the state unless the person has furnished to the
7 department, and the department has approved, proof of financial ability to respond in
8 damages. Proof of financial responsibility required for

9 (1) a pipeline or an offshore exploration or production facility is
10 \$50,000,000 per incident;

11 (2) [~~PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR~~]
12 an onshore production facility is

13 (A) \$20,000,000 per incident if the facility produces over
14 10,000 barrels per day of oil;

1 (B) \$10,000,000 per incident if the facility produces over
2 5,000 barrels per day but not more than 10,000 barrels per day of oil:

3 (C) \$5,000,000 per incident if the facility produces over
4 2,500 barrels per day but not more than 5,000 barrels per day of oil:

5 (D) \$1,000,000 per incident if the facility produces 2,500
6 barrels per day or less of oil:

7 (3) [. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR]
8 an onshore exploration facility is \$1,000,000 [\$5,000,000] per incident.

9 * Sec. 2. Section 6, ch. 102, SLA 1992, is repealed.

10 * Sec. 3. If this Act takes effect after June 1, 1994, sec. 2 of this Act is retroactive to
11 June 1, 1994.

12 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. Senate Bill No. 239

Revision Date: _____
 Title: Financial Requirements: Noncrude
Oil Operations
 Sponsor: Senate Special Committee on Oil & Gas
 Requestor: Senate Special Committee on Oil & Gas

Department Affected: Environmental
Conservation
 BRU: Spill Prevention and Response
 Component: Industry Preparedness and Response

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MIITA						
Other: 1052 Oil/11az, "470" Fund	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ not applicable

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact anticipated.

Prepared by: Robert Poe, Director
 Division: Information and Administrative Services

Phone: 465-5010
 Date: 1/21/94

Approved by Commissioner: John Sandor, Commissioner
 Agency: Department of Environmental Conservation

Date: 1/21/94

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**Alaska Department of Environmental Conservation
Position Paper on Direct Action Insurance and Financial Responsibility**

January 24, 1994

Purpose of the Legislation: To give ADEC the continuing authority to grant waivers to those oil facilities which can get insurance, but whose insurance does not allow the insurer to be directly sued in Alaska.

Background of the Legislation: Under state law, owners of facilities that are oil spill threats are required to submit proof of financial responsibility in the case of a spill. Financial responsibility may be demonstrated by (1) self-insurance, (2) insurance, (3) surety, (4) guarantee, (5) letter of credit approved by the department, or (6) other proof of financial responsibility provided by a group of insureds who have agreed to cover pollutions risks of members of the group under terms the department may prescribe.

The law further provides that insurers or others providing financial responsibility coverage must agree to be sued in a state court (i.e., direct action.) Prior to the Exxon Valdez, this insurance was widely available. But when a similar "direct action" requirement was included in national law, under the Oil Pollution Act of 1990, many of the world's insurance providers stopped issuing coverage for this insurance.

Two years ago, the Alaska Legislature gave ADEC the authority to waive the direct action requirement if the person submitting insurance as a form of financial responsibility signed a quarterly affidavit that the direct action coverage was not available.

A House Bill pending now (HB 384) would extend ADEC's authority to grant a waiver to direct action permanently. The companion Senate version, SB 239, would extend the waiver authority just two years.

DEC's Position: The Department supports continuing this waiver provision, and making the waiver provision permanent. Without this provision, we may have to shut down facilities which provide fuel throughout Alaska. We are continuing to work with the insurance industry to make direct action coverage more readily available; there is a proposed product now under department review (with review also by the Department of Law) that would serve as a rider for insurance coverage that does not offer direct action. We believe the waiver provisions are strict enough (with a quarterly affidavit required and the Department's ability to deny waivers) that the provision may be made a permanent part of the law. Thus we support the House language as optimal.

SB 150

By: Senator Bert Sharp

State Comparisons of Financial Responsibility for Onshore
Exploration:

CALIFORNIA

\$1 million dollar minimum requirement only within 30 miles of
coastline. No requirement beyond 30 miles of coastline.

WASHINGTON

The state does not currently require onshore financial
responsibility.

TEXAS

There is no financial responsibility required in Texas.

LOUISIANA

Louisiana is currently withholding oil spill regulations.

FLORIDA

No state drilling is allowed on state onshore lands in Florida.

WYOMING

There are no requirements beyond P & A (Plugging and Abandonment).

MONTANA

Montana has P & A (Plugging & Abandonment) requirements only.

Alaska State Legislature

Legislative Research Agency




130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

April 5, 1993

MEMORANDUM

TO: Senator Bert Sharp

FROM: Lawrence C. Eppenbach 
Legislative Analyst

RE: **Financial Responsibility for Onshore Exploration**

You requested the financial responsibility requirements for onshore drilling in the states of Montana, Colorado, California, Louisiana and Texas. This agency recently prepared a report on this subject at the request of Senator Steve Frank (93.034). A copy of that report is attached.

Financial responsibility requirements of the state of Colorado were not specifically described in that report. We contacted Jim Kenney of the Colorado Oil and Gas Conservation Commission this morning and he provided us a current summary of Colorado's requirements.

Colorado Exploratory well drilling requirements:

1. \$75 dollar permit fee per well.
2. \$5,000. per well or \$30,000 (multiple well) plugging and abandonment bond. Either a surety bond or CD of this amount is required.

Additional Colorado Requirements:

In 1991, the Colorado Legislature created the "Oil and Gas Environmental Response Fund" to be used to mitigate environmental impacts statewide. Contributions into this fund were required to be made at the rate of one-tenth of one mil per barrel of oil produced until a balance of \$500,000 had been deposited in the fund. The fund is currently nearing that level of funding. I have attached a copy of the Colorado statute establishing this fund.

Senator Sharp
April 5, 1993
Page 2

Mr. Kenney knows of no other financial proofs or requirements imposed on drilling companies in Colorado.

I hope this information is of use to you. Please do not hesitate to contact us if you would like additional information on this, or any other topic.

Attachments

Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 213
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

December 14, 1992

MEMORANDUM

TO: Senator Steve Frank

FROM: Lawrence C. Eppembach *LE*
Legislative Analyst

RE: Financial Responsibility for Onshore Exploration Facilities
Research Request 93.034

You asked how the \$5 million proof of financial responsibility that Alaska law imposes on onshore oil exploration facilities compares with requirements of other states, what forms of payment are needed to satisfy it, and in general, what comparative information is available to gauge the relative level of Alaska's financial responsibility for all types of exploration, production and transportation facilities.

We gathered information for this request from past reports of this agency, reference and law libraries, Alaska state agencies and from direct contact with administrators in other states. This report contains information received as of December 1, 1992, and should be viewed as a snapshot of the still expanding set of statutes, regulations and interpretations triggered in part by the *Exxon Valdez* oil spill.

SUMMARY

Alaska's \$5 million requirement for onshore exploratory drilling is the highest financial responsibility requirement in the states we sampled, although two other coastal states have passed programs that are more comprehensive in scope, and one, Florida, has forbade onshore oil exploratory drilling altogether.

California requires proof of financial responsibility as a function of the volume of hazardous material that may be spilled, imposing a minimum of \$1 million and a maximum of \$100 million. Because exploratory drilling rigs are not connected to pipelines, the minimum \$1 million requirement would apply. In addition, only drilling within approximately 30 miles of the Pacific Ocean would be affected by these regulations.

Senator Frank
December 14, 1992
Page 2

Washington state has no exploratory drilling taking place nor are there any regulations relating to it. Furthermore, the state does not currently require onshore refineries and oil storage facilities to demonstrate financial responsibility. Regulations are pending to require amounts of \$5,000 per barrel for heavy crude and \$2,500 per barrel of light crude, but these are expected to be lowered before adoption.

Other coastal states, such as Texas and Louisiana, have recently passed oil spill legislation but are awaiting additional federal action prior to finalizing regulations. Federal action is now centered on U. S. Coast Guard regulations that do not directly effect onshore drilling.

In summary, Alaska's requirements have remained the most stringent in both dollar amount and effective scope of applicability. The laws and regulations advanced by many of the major producing states in the aftermath of the *Exxon Valdez* are being reconsidered.

It is beyond the scope of this report to analyze whether the higher financial requirements Alaska imposes are in direct proportion to the higher cleanup and recovery costs here. Clearly, spill recovery costs in Alaska are related to the sensitivity of the terrain, the equipment employed, and the often limited access to highways or other modes of transportation. The formulas contained in the regulations of some other states permit these factors to influence the size of the financial responsibility showing they require.

The first part of this report presents information on the current financial responsibility requirements for onshore drilling in several states, the second part describes the ways in which a drilling company can meet Alaska's \$5 million requirement.

COMPARISON of FINANCIAL RESPONSIBILITY LAWS

The Alaska Legislature passed HB 567 in 1990. This act amended AS 46.04.040 (Attachment A) and provided the following amount of financial responsibility on all onshore land, both public and private, in the state.

Onshore production facility	\$20 million
Onshore exploratory facility	\$ 5 million

Subsequent regulations enumerated various forms of acceptable payment, these are described in the second part of this report.

Prior to the passage of HB 567, Alaska did not require proof of financial responsibility for onshore drilling beyond that required by the Department of Natural Resources (DNR) as part of the well plugging and abandonment (P & A) program.¹

The federal law enacted following the *Exxon Valdez* oil spill, The Offshore Pollution Act of 1990 (OPA 90) imposed on states the requirements for oil spill contingency plans and statements of financial responsibility for oil facilities posing a hazard to their coastal waters. Onshore drilling sites in coastal states are generally covered by the resulting state laws and regulations only if near the coast or near water flowing to the coast.

The following, in approximate descending order of requirements, is a summary of the financial responsibility requirements which key coastal states, including Alaska, impose on onshore exploratory drilling:

Alaska

Amount Required: \$5 million of financial responsibility for each onshore drilling facility (\$50 million for offshore drilling facilities.)

Jurisdiction: The onshore requirement covers all onshore land in Alaska regardless of location or ownership status (i.e., private, state or federal). While there are no provisions in the regulations to differentiate areas with high cleanup costs from lower cost areas, there are incentives in the required spill contingency plans that recognize the value of training, on-site cleanup, equipment and planning.

California

Amount Required: Estimated at \$1 million per facility from regulations released August 15, 1991. These regulations require all facilities to show financial responsibility of between \$1

¹Plugging and abandonment bonds typically range from \$5,000 to \$100,000 per well with multiple-well bonds at twice the single rate. Attachment B summarizes the financial proofs required in the P & A programs of key states, all aimed at guaranteeing safe and proper abandonment of wells at the end of their useful life. This program in Alaska is administered by the Alaska Oil and Gas Conservation Commission and should not be confused with the oil spill contingency, cleanup and responsibility laws and regulations administered in this state by the Alaska Department of Environmental Conservation, which are the primary subjects of this report.

Senator Frank
December 14, 1992
Page 4

million and \$100 million as a function of a calculated number of barrels at risk of spilling multiplied by \$12,500 per barrel. With little storage capacity and no pipelines attached, employees of the California Department of Fish and Game have stated that exploratory drilling facilities likely need only post the minimum \$1 million bond. However, no such wells have been permitted and the \$12,500 figure, established prior to the *Exxon Valdez* oil spill, may be adjusted as additional studies are completed.

The jurisdiction of these spill regulations has not been established and may require another year to determine. Presently, for example, Huntington Beach and Signal Hill would appear to be covered, Bakersfield not covered, and the San Fernando Valley the dividing line.

Washington

Washington's spill prevention and financial responsibility requirements are aimed at offshore vessel operation and onshore refinery and oil terminal facilities. There are no regulations regarding financial responsibility for exploratory well drilling in Washington and no such drilling takes place. Draft regulations for other onshore facilities currently require a showing of \$5,000/barrel for heavy crude and \$2,500/barrel for light crude, but these amounts are expected to be lowered prior to implementation. Washington will permit a showing of financial responsibility, when required, to be by audited net worth, insurance or bond. As of today, however, there are no regulations in place requiring financial responsibility for any onshore oil facility.

Texas

The General Land Office has responsibility for administering the oil spill plan, but substantial jurisdictional issues remain unresolved between it and the Texas Railroad Commission, the traditional regulator of oil and gas activity in Texas. Recently, the jurisdiction of the General Land Office to regulate oil spills was reduced to a coastal strip only 300 feet wide on the average and no specific showing of financial responsibility pursuant to OPA 90 is currently required in Texas for drilling inland of this strip.

As part of its on-going P & A program, the Railroad Commission requires all new drilling companies demonstrate financial responsibility by posting a \$25,000 bond prior to drilling. Both agencies are awaiting federal action on oil spill financial requirements before proceeding.

Senator Frank
December 14, 1992
Page 5

Louisiana

Louisiana has withheld new oil spill regulations and will await federal action on regulations pursuant to OPA 90, the exception being offshore state lands. The Department of Natural Resources administers the P & A requirements and they have added a contingency fund, assessed at the rate of \$0.02 per barrel of oil produced, that will eventually total \$30 million from all companies.

Florida

Wetlands in Florida require Dredge and Spill permits fees (not bonds) and no state drilling is allowed on state onshore lands in any case.

Wyoming

There are no additional requirements beyond P & A bonds which uniquely include a \$50,000 bond for seismic work.

Montana

Only P & A requirements are currently in effect. These are being updated to 154 levels (see Attachment B).

PROVISIONS of SATISFYING ALASKA'S FINANCIAL RESPONSE REQUIREMENTS

Payment provisions for satisfying Alaska's \$5 million exploratory drilling financial are set out in 18 AAC 75.2 (Attachment C). These regulations provide that, in the case of exploration or production facilities, the operator or one or more of the lease holders apply to DEC for a "Certificate of Proof of Financial Responsibility." Any one or combination of the following is sufficient to enable DEC to issue this certificate:

1. Self-Insurance--audited working capital and net worth in the U.S.;
2. Insurance--a policy from an authorized company containing a "direct action clause" permitting a judgement to be enforced or executed in Alaska state courts for all damaged parties up to the limits of policy coverage;

Senator Frank
December 14, 1992
Page 6

3. Surety Bond--a contract of surety from an authorized surety company licensed to do business in Alaska;
4. Guaranty--a contract of guaranty from a company otherwise meeting the self-insurance test (1) above;
5. Letter of Credit--from any regulated bank, an irrevocable letter of credit made out to the state, not otherwise used as collateral, and payable upon presentation; or
6. Other Proofs--approved group insurance or contract of indemnity by a group agreeing to cover pollution risks of its members or contract of indemnity from a Protection and Indemnity (P&I) club or syndicate even if such P&I club or syndicate does not agree to "direct action" in Alaska.

Attachments D through F contain sources used for this memorandum. Attachment D lists publication sources; Attachment E contains telephone contacts; and Attachment F are copies of past Legislative Research Agency memorandums on this topic.

We hope this information is useful. If you have any questions, or want additional information, please contact this agency.

Attachments

SB

245

FISCAL NOTE

STATE OF ALASKA 1994 LEGISLATIVE SESSION

Version: SB 245
(S) Publish Date: 2-4-94

BII
Dept. Affected: Department of Revenue
BRU: APFC

Revision Date:
Title: "An Act relating to investments of the permanent fund involving equity interests in and debt obligations secured by mortgages on real estate; and providing for an effective date."

Component: APFC

Sponsor: Senate Rules Committee by Request of the LB&A Committee
Requestor: Senate State Affairs

COMPONENT SERIAL NO. 109

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL:	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	-0-	-0-	-0-	-0-	-0-	-0-
1003 GF Match	-0-	-0-	-0-	-0-	-0-	-0-
1004 GF	-0-	-0-	-0-	-0-	-0-	-0-
1005 GF/Program Receipts	-0-	-0-	-0-	-0-	-0-	-0-
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: \$ -0-

Changes in CSSB 245 (STA) have no fiscal impact. This fiscal note is appropriate.

2/4/94 date [Signature] Cmte Aide (Initial)

ANALYSIS: (Attach a separate page if necessary)

Prepared by: William H. Scott, Executive Director
Division: Alaska Permanent Fund Corporation
Approved by: Darrel J. Rexwinkel, Commissioner
Commissioner:
Agency: Department of Revenue

Phone: 465-2047
Date: January 31, 1994
Date: 1/31/94

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FISCAL NOTE

Alaska Permanent Fund Corporation

P.O. Box 25500 Juneau, Alaska 99802-5500

(907) 465-2047

MEMORANDUM

DATE: November 18, 1993

TO: Board of Trustees
Alaska Permanent Fund Corporation

FROM: Pete Jeans *PJ*
Real Estate Investment Officer

THROUGH: William H. Scott
Executive Director

SUBJECT: Recommended Legislative Changes, Real Estate

I am recommending a change to Title 37, Chapter 13, Section 37.13.120, the Alaska statute that authorizes the Fund's investments in real estate. The reference to real estate investment responsibilities of the Board of Trustees will be changed to read:

(g) 16) equity interest in, and debt obligations secured by mortgages granting a first lien on, real estate located in the United States.

(16)(A) deleted

(16)(B) deleted

(16)(B)(i) deleted

(16)(B)(ii) deleted

(16)(B)(iii) deleted

This change removes the 40% restriction on real estate acquisitions. The real estate "investment list" is stricken from the Statute and transfers to the Board of Trustees, the responsibility for establishing prudent investment standards and guidelines through the annual real estate resolution.

In order to justify this recommendation it is necessary to give a brief description of the Fund's real estate experience over the past ten years, along with my views on the changes that are taking place in the industry.

In 1983, the year the Alaska Permanent Fund Corporation made its first investment in real property, the Board of Trustees had allocated 6% of the \$3 billion Fund to real estate. The Board of Trustees hired a real estate consultant to assist

in selecting three real estate advisors. From 1983 through 1987, the Fund took a passive role in real estate investing and relied almost exclusively on the recommendations of the consultant and advisors. Additionally, the 40% co-investment requirement created a high comfort level for the Trustees. By co-investing with larger, more sophisticated pension funds and endowments, the Permanent Fund took advantage of their expertise and leadership in real estate investing. During this period, control and involvement in property decisions were not priorities for the APFC.

In the later part of the 80's, there was a turnover in Permanent Fund real estate staff. Soon after, the Fund employed new real estate consultants and attorneys, all of which resulted in a more directive approach to real estate investing. The Fund has become more involved in the real estate investment process, from requiring certain controls and buy-sell arrangements on each real estate transaction to initiating disposition activities. Even as a 40% player, the Fund has been able to negotiate either equal or favorable terms and receive coequal treatment from larger investors.

Historically, market conditions played an important role in negotiations for favorable terms. During the recent market decline in the industry, many pension funds sat on the side lines, offering little competition for deals. Now that the market has shown signs of recovery, pension funds are re-entering the markets. Like the APFC, our institutional partners are gaining knowledge and confidence in their abilities to control investments and they no longer allow us to participate as an equal partner in a 40/60 deal. The only way to secure the same level of control that the Fund historically obtained with past investments is to acquire an equal or majority interest.

~~Control is by far the greatest benefit of holding a majority position in an investment.~~ Timing of major capital events, such as a property sale or the funding of a mall redevelopment designed to head off new competition, is often crucial to enhancing returns on a property. The inertia of some institutional partners has caused numerous missed opportunities for the Permanent Fund in the past.

~~Other advantages also exist. The real estate asset allocation set by the Board of Trustees will be more easily attainable!~~ Unless a single deal is exceptionally large, the acquisition of a single property will not materially affect the diversification strategy. Through resolution, the Board of Trustees will continue to maintain control over the diversification goals.

~~Legal costs will be reduced substantially by eliminating or decreasing the negotiations over control issues in partnership agreements.~~ Complications in replacing investment advisors are directly correlated with the number of partners in a deal. The replacement process is simplified in a 50/50 to 100% investment.

Board of Trustees
November 18, 1993
Page 3

By ~~having the option~~ to take 100% of an investment, we anticipate an increase in ~~deal~~ flow. With only one or two investors involved, advisors will be more likely to propose acquisitions to us, particularly those with short closing time frames.

This proposed change to the Statute will give the Board of Trustees the flexibility to direct the real estate staff by board resolution. Attached is a letter from our legal counsel and real estate consultant recommending these changes.



Alaska Permanent Fund Corporation
 P.O. Box 25500 Juneau, Alaska 99802-5500
 (907) 465-2047

RESOLUTION OF THE BOARD OF TRUSTEES
 OF THE ALASKA PERMANENT FUND CORPORATION
 PERTAINING TO LEGISLATIVE CHANGES IN THE ALASKA STATUTES
 RELATING TO REAL ESTATE INVESTMENTS BY THE
 ALASKA PERMANENT FUND CORPORATION

RESOLUTION 93-11

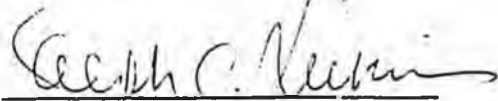
WHEREAS, the Fund is limited in directing business decisions on real estate investments as a 40% participant; and

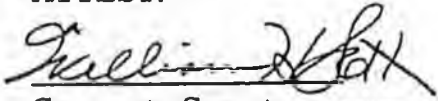
WHEREAS, the Alaska Permanent Fund Corporation is impaired in its ability to reach its targeted real estate asset allocation within current parameters; and

WHEREAS, the Alaska Permanent Fund Corporation has lost opportunities to acquire high return, low risk real estate investments;

NOW, THEREFORE, BE IT RESOLVED, THAT the Board of Trustees unanimously directs staff to seek legislative changes to provide for up to 100% ownership in real estate investments.

PASSED AND APPROVED by the Board of Trustees of the Alaska Permanent Fund Corporation, this 6th day of December, 1993.


 Chairman, Board of Trustees
 Alaska Permanent Fund Corporation

ATTEST:

 Corporate Secretary

PF CORP. RESOLUTION

RECEIVED

DEC 6 1993

ALASKA PERMANENT
FUND CORPORATION

SAYLOR PROPERTY CAPITAL, INC.

EIGHT PIEDMONT CENTER
SUITE 320
ATLANTA, GEORGIA 30305

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PAUL H. SAYLOR

November 9, 1993

Mr. Pete Jeans
Investment Officer
The Alaska Permanent Fund Corporation
801 West Tenth Street
Suite 302
Juneau, AK 99801

RE: Proposed Legislation

Dear Pete:

You have asked that I give a few thoughts why I am in favor of a legislative change to allow you to take up to a 100% interest in an investment.

1) *Control*

Although co-investment documentation is evolving to the point where a minority investor will not necessarily be disadvantaged as to influence or control, there is no such thing as a 40% gorilla. In other words, it would be preferable for the APFC to invest on a basis that would allow it to control major investment, management and divestment decisions in its own best economic interests, rather than be influenced by one or more investors which may, at least over time, have differing objectives.

While I believe the APFC has been advantaged by retaining discretion over major investment, management and divestment issues, it is currently required to be totally aligned with one or more partners in order for activities which best serve it to occur. Examples include the inability to close recent transactions because of (what I consider) minor differences with a 60% partner, and your lack of influence in matters associated with Boston Real Estate Counsel assets in a situation where at least one of your partners was lethargic and bureaucratically hamstrung from acting in all partners' best interests.

2) *Maximum New Opportunities*

As property markets turn back in favor of sellers, the APFC will receive

LETTER FROM
SAYLOR PROPERTY CAPITAL, INC.

increasingly fewer high quality investment opportunities, as investment managers will be less in need of the APFC's capital and wish to conclude transactions with either one investor or a commingled format over which they have discretion. Currently, it is relatively complicated for a transaction originator to identify an asset for the APFC with the condition the APFC will only pursue due diligence or the consummation of a transaction once a compatible investment partner has been identified. Recently, transactions have gone elsewhere to avoid this process.

Additionally, there are increasing concerns regarding potential incompatibility of APFC requirements with those of certain other active investors. Although the multi-asset co-investment opportunity which we have collectively pursued for the last several months will go a long way to establish levels of overall compatibility among several investors and standardized processes, sellers or transaction originators generally attempt to avoid the unknowns associated with due diligence and documentation requirements of multiple investors.

3) *Management Changes*

Since the APFC appropriately exercises rights of management oversight, it is more likely to recognize management program weaknesses and to move to correct them than most other institutional investors. Existing assets and portfolios need to be intensively managed in order to improve their performance and occasionally to position assets for sale. Managers who are ineffective should be replaced, and manager replacement is most difficult to accomplish for the APFC as a minority investor especially since most partners of the APFC are required to live with an "approved list" of investment managers.

I do not at all advocate that the APFC should only pursue acquisition of full interests in individual assets and portfolios, but I believe a change of legislation to allow you to do so is most important. It is my view that the immediate effect of such change will not be termination of your co-investment programs, but rather a gearing up of the process contemplated by your co-investor conference this past April. Your ability to be a major partner, rather than (always) a minor partner is most important to the achievement of your objectives set forth for the asset class of real estate and to your competitiveness in the marketplace.

Yours very truly,



Paul H. Saylor

CC: Llewellyn Lutchansky

THE INSTITUTIONAL REAL ESTATE LETTER

The Information Source For Industry Insiders

Volume 5, Number 7

ISSN 1044-1662

July 1993

PROSPECTUS

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SECURITIZATION

by Steve Bergsman

REITs On a Tear

Déjà Vu—Have We Been Here Before?

Real estate investment trusts have been on a tear. For the first quarter of 1993, REITs posted returns of 19.1 percent, easily outdistancing the S&P 500 which only managed a 4.3 percent return. This was an even faster start than in 1992 when REITs

blistered the market for a 20.7 percent return, again showing up the S&P 500 which only notched a decent 7.7 percent return.

It's not just the market performance of REITs that has caught the eye of the investor—last year, the REIT market raised \$6.6 billion, nearly \$2 billion greater than the previous record year of \$4.8 billion. More than half of that \$6.6 billion was raised by existing REITs which were extremely active in the real estate market, acquiring \$2 billion worth of properties. REITs suddenly became the Japanese of the Nineties. The paradox is, after mugging the U.S. real estate market with a seemingly inexhaustible supply of capital, the Japanese have disappeared. Will the same thing happen

Continued, Page 5

CO-INVESTMENT

by Steve Bergsman

The Dark Side

Co-Investment May Be Trendy, But It's Not All Wine and Roses

The concept of co-investing has been around for decades, but recently, it seems to have become the "in" thing to do.

Increasingly, over the past three years, investors and investment managers alike have been dressing their portfolios up with co-investments—the institutional investment community's analog of the "grunge" look.

The "grunge look"—ripped jeans and flannel shirts—may be popular in some circles today, but it certainly isn't for everyone. Neither is co-investment. Even if co-investment is particularly well-suited to the needs of your fund, there are numerous issues which must be considered to make sure your beneficiaries don't end up in rags and tags.

Like the grunge look, the trendsetter for co-investment came out of the Pacific Northwest. Since the mid-1980s, the **Alaska Permanent Fund**—a \$15 billion endowment organized for the benefit for

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ARTICLE FROM THE INSTITUTIONAL
REAL ESTATE LETTER

COVER STORY

Co-Investment

Trendy, But It's Not All Wine and Roses

Continued from page 1

all the citizens of Alaska and funded by taxes on mineral extraction revenues—has been the leader in the U.S. co-investment movement.

The reason? As always, necessity is the mother of invention. By statute, the maximum interest the Permanent Fund can hold in any single property is 40%. This means that, in order to make separate account investments work—and the Alaska Permanent Fund's Real Estate Investment Officer, **Pete Jeans**, very much wants his fund to be a separate account investor—the Fund has no choice but to co-invest (join with other tax-exempt funds to make a purchase).

As a result, for the last eight years, Jeans has made co-investment after co-investment, bringing into his real estate plays more than 100 pension fund investment partners. The approach has worked well for the Alaska Permanent Fund, and now Jeans has come south to spread his gospel throughout the "Lower 48." (More than 40 pension, foundation and endowment funds recently attended a private conference on co-investment in Dallas, sponsored by the Alaska Permanent Fund and its advisors.)

Obviously, Jeans is having some success spreading the word. He credits this success to the discontent so many pension plans have been feeling over the real estate investment programs in which they invested during the early to mid-1980s. During those formative years, Jeans explains, the institutional investor community enthusiastically embraced the concept of blind pool commingled fund investing. With this approach, a group of tax-exempt investors would invest their capital in a specified group trust, insurance company separate account or limited partnership organized and managed by an investment manager in order to enable those investors to acquire a diversified portfolio of real estate assets. The problem with these funds, says Jeans, is that investment decisions and management responsi-

bilities were left in the hands of a third party who had ultimate discretion over the funds—and who almost always had significant conflicts of interest. To make matters worse, when the real estate market collapsed, funds trying to escape the calamity discovered they were blocked by poorly-conceived exit strategies.

Today, pension plans, still tangled in the webs of commingled funds but anxious to get in on the buying opportunity of a lifetime, are looking for new paradigms—alternative forms of real estate investment that can offer greater control and liquidity. Of course, the ultimate control results when a pension fund acquires properties directly with no partners. Some funds are unable or disinclined to go that route, however, which, according to Jeans, is what makes co-investment so appealing today.

If one considers investment structures on a continuum, notes **Allen Andersen**, a Principal with the Dallas office of **Arthur Andersen Real Estate Service Group**, they will fall somewhere between sole ownership and commingled funds. Where on the continuum co-investment lies—especially in regards to the control issue—is still subject to debate. Andersen, for one, says he would place co-investment closer to commingled funds on the spectrum, rather than placing it squarely in the middle.

Of the many forms of co-investment, the least popular have been those which require advisors, operating partners or developers to put their own capital at risk alongside the investors. While some investors now require such arrangements, others shy away because of the obvious inherent conflicts of interest. (As **Bob Burke**, a Principal of **AMB Institutional Realty Advisors** likes to point

out, the investment management industry appears to have come full circle. The real estate investment management industry really took off, explains Burke, when the Employee Retirement Income Security Act of 1974 [remember ERISA?] mandated that pension funds interject a fiduciary between pension plan assets and deal promoters. Today, notes Burke, pension funds requiring their advisors to co-invest effectively are requiring them to become promoters—creating, once again, precisely the kinds of conflicts the provisions of ERISA sought to eliminate.)

An examination of many of these structures also will reveal that the advisor/developer/operator often stands to receive back in fees during the first few years of the investment, an amount equal to or exceeding the capital it generally committed to the partnership. In such cases, the pension fund's coinvestment "partner" may have little or no capital at risk after the first few years.

To make matters worse, warns Allen Andersen, when the other partner is not a tax-exempt fund there usually is a disproportionate level of investment. The tax-exempt investor typically funds something akin to 90-95% of the investment and the advisor, 5-10%. Those kinds of splits don't

Of the many forms of co-investment, the least popular have been those which require advisors, operating partners or developers to put their own capital at risk alongside the investors.

really do what the pension fund wants them to do.

When pension funds do require their investment managers to put their own capital at risk in the deal, adds **Jim Curtis**, a Principal with San Francisco-based workout specialist **The Bristol Group**, they typically are seeking to align the interests of their partners with their own. The hope, explains Curtis, is that, by having their capital at risk alongside the pension fund's capital, the operating partner will be more attentive to the management of the pension fund's investments. "That's the hope,"

Continued, Next Page

Continued from previous page

notes Curtis. "We've learned, however, that people can make equally as bad investment decisions with their own money as with somebody else's." Clearly, therefore, having capital at risk is no guarantee that things will go well.

Curtis also cautions that frequently the partner doesn't even have its own capital at risk. "They raise it from other sources or they borrow it. The problem is, when the capital contributed is non-recourse, the investment manager or promoter really isn't at risk at all. In such cases," warns Curtis, "all that these co-investment requirements really create is the *illusion* of comfort."

In addition, an incompatibility of incentives often exists in these types

of investments, according to **Ron Karp** of the Summit, NJ-based consulting firm **Ronald A. Karp & Associates**. Karp notes that there is a mismatch in the long-term stability and financial staying power of the pension plan versus the investment advisor or operating partner. "If the investment gets into trouble, who is going to fund the losses? Obviously, it's going to be the pension plan. And that is going to create a problem when it comes to decision-making."

... *co-investments ... are nothing more than a commingled fund warmed over.*

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The most popular form of co-investment, however, is between similar investors with similar objectives and resources, such as two or more pension plans. Even here, however, there are variations and concerns. One type of co-investment, for example, relies on an advisor who brings together investors with a common investment strategy. The advisor then executes transactions accordingly. A second type of co-investment occurs when investors unite under their own initiative—when the co-investment is investor-driven, rather than manager-driven.

The principal feature of every co-investment, however, is that it in-

volves more than one investor (the typical co-investment involved between three to five investors). Therein lies co-investment's strength—and its weakness.

For a smaller pension plan, co-investment offers the opportunity to participate in transactions larger than those the plan otherwise would be able to execute on its own. "Small funds may not be able to invest in large projects simply because their allocation is insufficient," explains **Terry Ahern**, a Principal with the Cleveland-based **Townsend Group**. It also enables a larger investor to achieve more diversification than otherwise would be possible by investing directly. According to its Chief Real Estate Investment Officer, Grayson Sanders, for example, the Ameritech Pension Trust has assembled a roughly \$1.2 billion real estate portfolio over the past ten years. Sanders notes, however, that because it has acquired much of that

portfolio by co-investing with other tax-exempt funds, Ameritech's \$1.2 billion position is covered by a portfolio of more than \$14 billion in real estate assets.

Investors who have done co-investments often say they like being involved with other participants with similar goals because there is a comfort with being associated with other entities that have the same investment strategy. Or, as **Andy Smith**, President of **L&B Real Estate Counsel Inc.** says, "There is a warm and cozy feeling about doing a large investment with others." Why? For one thing, there is a lot more due diligence, explains Smith. Each partner gets to scrutinize the deal; there are more checks and balances so it's less likely there will be any surprises.

Despite the lack of surprises, there also is going to be a lot more work—and fiduciary liability—for the co-investors. By co-investing rather than commingling, for example, tax-exempt investors not only have to review the potential investments, but also must participate in the decision to acquire. In addition, they must be

involved in decisions concerning the ongoing management of the property, and when and how eventually to divest. The problem is, without a third party fiduciary to share the risks, a pension fund subject to ERISA provisions must shoulder the fiduciary liability associated with making these decisions alone.

Despite the extra work and liabilities, however, this is precisely the kind of control that was lacking in the commingled funds, and precisely the kind of control that many tax-exempt investors now want. When investors were passively investing in commingled funds, advisors and managers made those decisions. When advisors became promoters, and began structuring funds as partnerships to avoid being subjected to fiduciary liability under ERISA, they still made the decisions, but investors no longer enjoyed any insulation from fiduciary liability. When investors realized they weren't going to receive any fiduciary insulation, they started questioning why they should give up control. This issue, and this issue alone, is the primary driving force behind the co-investment trend. "Investors were very concerned about the lack of control in commingled funds," explains Alaska's Pete Jeans. "They wanted to be part of the process. Co-investment gives the investor more control."

Or does it?

LESSONS LEARNED

The old axiom of real estate used to be "location, location, location." But, counters **Tim Getz**, Investment Officer with the **Ohio Public Employees Retirement System**, the axiom really should be "control, control, control. You're not going to get that control." warns Getz, "by sharing your decision-making power." Getz speaks from experience—his fund was a pioneer in both the early commingled fund and co-investment movements. "One of the lessons that we learned from commingled funds was that the investor didn't make portfolio decisions. The decisions were always being made by someone else. When things got difficult, it was impossible to achieve consensus." Getz warns that the problem is no different with co-investments, which he says are

"nothing more than a commingled fund warmed over."

As noted before, one of the strengths of co-investment is the added layer of scrutiny. This also is a weakness, however, because it often can be difficult if not impossible to get multiple parties to come to a decision. And, since co-investors don't always have equal shares, by definition, someone is bound to end up with a minority interest. Obviously, that can be a real problem if the majority investors have a different point of view than the minority investors.

"Co-investment complicates every single aspect of a transaction," says **Susan Hudson-Wilson**, Director of Portfolio Strategy for Boston-based **Aldrich, Eastman and Walth**. "All of a sudden there are two or more parties—very interested parties—that need and ought to be satisfied on every single aspect of the investment." As Hudson-Wilson points out, however, a hot button for one co-investor may not be so hot for another. This can make it extremely difficult to structure a transaction.

Once a co-investment has been completed, however, there essentially are five decisions upon which co-investors have to agree: leasing; capital improvement; budget; sale; and an exit strategy. In a co-investment, the way for the investors to feel their way through those processes, says L&B's Smith (who has been putting together co-investment deals since the 1970s) is to make sure that one participant never has more than 50 percent of the vote. To make a co-investment program work, explains Smith, a reasonable level of democracy must be established.

Michael Evans, National Director with **Ernst & Young's** Real Estate Advisory Services in San Francisco, counters that co-investment adds another, unneeded level to problem solving over the life of the asset. "When there are decisions to be made by different investors who have changing objectives and strategies, there is always going to be the potential for conflicts of interest."

Hudson-Wilson concedes that co-investment may be a great way for a small pension plan to participate in larger investments, but reiterates that, "there is true lack of control when you need it most." At the point when you

most need and want to do something big—like invest more or reduce the size of your investment—you discover that your options aren't much different than if you had invested in a commingled fund.

A FORMULA FOR SUCCESS

Co-investors typically try to avoid the problem of potential conflicts of interest by finding other investors with similar investment objectives. "The big key to success in co-investment is picking your partners," admits Jeans. "It does little good to find a partner who wants to hold properties for the long term, if you want to sell after three years."

Cab Grayson, Managing Director of **CB Commercial Realty Advisors**, feels that establishing a pre-existing association for co-investment can greatly enhance the success of the co-investment. "These associations of like-minded investors agree in advance to a defined real estate investment strategy, acquisition process, standardized contracts covering the decision-making powers of investors and transferability of interests, and pre-negotiated investment management fees that are performance-based and aligned with the investors' interests. The associations and the predefined process allow the investment manager to move quickly and to better negotiate with the seller." CB completed its first co-investment in 1981 and has created an active co-investment association of like-minded investors. **Scott Tracy**, Grayson's partner at CB Commercial, adds that, "The association prompts the co-investors to address most of the issues beforehand, and minimizes the difficulties in gaining consensus. Investors agree that, once the initial acquisition decision has been made, the advisor is given a defined level of discretion on operating decisions, thereby reducing disputes.

When constructing the co-investment, it is critical that the rights of the co-investors be stated clearly and definitively. "You must have a mechanism for resolving disputes among the participants," warns **Jim Snyder**, President of **Kennedy Associates Real Estate Counsel**, a Seattle-based advisor that has been putting together co-investments for the past 15 years.

Snyder explains that the problem-solving process among the co-investors should be formalized as a general part of the co-investment agreement. Sometimes the process could be as simple as a majority vote among the co-investors, but it also should include a way to allow an unhappy investor to exit the co-investment. As noted, liquidity is one reason why pension plans are looking at co-investment. Investors, therefore, need to be assured that there is an easy out if they want to leave.

"Our experience," says Jeans, "has been that, if we're having a problem or disagreement with a partner, we call a meeting and sit down together face-to-face. Ninety-nine percent of the time we can solve the problem. In those few instances where it absolutely doesn't work out, the partner can leave." According to Jeans, that usually means the other partners will buy out the disgruntled party.

The **New York State Teachers Retirement System** also has been involved in co-investment transactions in the past, but none recently. "We're not saying we won't do anymore, but when we have a choice, we prefer to invest on our own," notes **Jim Campbell**, Assistant Real Estate Officer at NYSTRS. The Fund wants to control its own destiny, Campbell explains, and it is tougher to do that when hooked into other investors. "It can be frustrating to be in a deal with an investor who has a shorter term horizon or is handicapped by political decision-making processes."

The bottom line is, co-investment is a little like "the Force"—that wonderful source of power that Luke Skywalker discovers in George Lucas' *Star Wars*. Like the Force, co-investment can be either of great benefit, or great harm to the user—depending on how you approach it. And, as with all sources of power, investors must not forget that co-investment has its dark side. ❖

Steve Bergsman is a freelance real estate writer in Mesa, Arizona.

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November 16, 1993

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VIA FACSIMILE

Mr. Pete Jeans
Real Estate Investment Officer
Alaska Permanent Fund Corporation
P.O. Box 25500
Juneau, Alaska 99802-5500

Dear Pete:

You have asked us to review the proposed legislative amendments to Section 37.13.120(g) of the Alaska Statutes in the context of our experience as investment counsel for the Alaska Permanent Fund Corporation (the "APFC"). We understand that the legislative amendment to be reviewed by the Board would modify subsection (g)(16) of Section 37.13.120 to provide:

(g) Subject to the limitations contained in this section, the board may invest fund assets at the competitive national market rates or prices that are applicable to each investment only in

...
(16) Equity interests in, and debt obligations secured by mortgages granted a first lien on, real estate located in the United States.

We believe that this proposed amendment would be beneficial in carrying out the investment policies of the APFC for several reasons. First, it would allow the APFC to effect real estate investments that fulfill its investment objectives without imposing legal constraints that may not be relevant to ensuring that the investments are prudent. Second, the existing provisions of Section 37.13.120 that would remain unchanged by this legislative proposal ensure that sufficient fiduciary safeguards are present in connection with the acquisition of real estate by the APFC. Third, and perhaps most significantly, the proposed

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amendment would allow the APFC to invest in real estate on terms that are comparable to the terms available to ERISA-regulated corporate and Taft-Hartley (union) retirement plans and a majority of governmental retirement systems. By adopting the standards utilized by most tax-exempt institutional investors, the APFC will be poised to compete more effectively with such investors for real estate opportunities and to exert the degree of control that many of such investors have viewed as conducive to maximizing return and minimizing risk in their real estate portfolio investments.

The current provisions of Section 37.13.120(g)(16) include specific limitations that mandate, among other requirements, that the APFC not hold greater than a 40 percent beneficial ownership interest in a real estate investment at the time of acquisition, that the real estate investment is improved by completed buildings and that such buildings are substantially leased. These types of restrictions are typically referred to as "legal list" statutes and were commonly used in state statutes applicable to public and private retirement plan investments prior to 1974.

The enactment of the federal ERISA statute in 1974 eliminated the applicability of these legal list statutes to private corporate and union retirement plans. ERISA imposed general fiduciary standards applicable to all types of investments. The foundation of these fiduciary standards is the prudence and diversification rules of Section 404 of ERISA. These rules are incorporated into Sections 37.13.120(a) and (c) of the Alaska Statutes and are fully applicable to the APFC's real estate investments.

The drafters of ERISA abandoned the legal list statutes in favor of general rules of prudence and diversification for two reasons. First, to the extent that a restriction found in a legal list is a restriction appropriate to effecting a prudent and diversified investment, the legal list restriction is merely duplicative with the general fiduciary standards. Moreover, to the extent that the restriction was unnecessary to ensuring that appropriate fiduciary caution was exercised in effecting an investment, the legal list restriction was viewed as impeding the plan's ability to pursue prudent acquisition opportunities.

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Since the enactment of ERISA, a majority of public retirement systems have adopted legislative changes that substitute general fiduciary standards for legal list statutory restrictions. The rationale underlying these changes has been similar to the legislative intent of Congress in enacting ERISA, that the legal list restrictions are either duplicative with the general standards of prudence and diversification, are obsolete interpretations of such standards or are general examples of such standards that may not be appropriate in specialized investment contexts.

It would be beneficial to the APFC to pursue investment opportunities in real estate under standards similar to the fiduciary standards applicable to the majority of institutional investors competing for these investment opportunities. Because the APFC will be fully obligated to pursue real estate investments that satisfy the prudence, diversification and other standards applicable under Section 37.13.120, to the extent that the legal list restrictions of current subsection (g)(16) are appropriate to ensure prudence or diversification, these restrictions will still apply to real estate investments of the APFC. Thus, for example, if a purchase of more than forty percent of the beneficial ownership of a particular real estate investment would not be consistent with the standard of maintaining a reasonable diversification among investments, the "forty percent rule" would continue to apply. If, however, it was not only prudent and consistent with diversification standards to invest in a larger percentage of a particular real estate investment, but would allow greater controls with respect to operating budgets, leasing decisions and other control features determined relevant to enhance the APFC's investment return, the forty percent rule would operate to limit potential investment returns in the APFC real estate portfolio.

In summary, the legal list restrictions of subsection (g)(16) are generally redundant with the prudence and diversification standards of sections (a) and (c) of Section 37.13.120. In those instances where these restrictions do not duplicate the general standards, but provide more onerous restrictions, it is difficult to justify rules that do not further the standards of prudent real estate acquisitions or may impede such acquisitions.

It is widely recognized that the current real estate acquisitions market demands a greater scrutiny of

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current income opportunities than was the case in years where capital appreciation in real estate could be more easily projected. It is significant to note that the APFC's ability to control decisions that are economically relevant to both income and potential capital appreciation is limited by its current inability to acquire a majority interest in its real estate investments. By allowing the board and, to the extent delegated by the board, the APFC staff, the ability to balance the economic benefits of control against the costs of such a percentage acquisition, the APFC will be able to maximize its investment objectives in a context relevant to each particular investment opportunity it reviews for potential acquisition.

Please contact me if we can be of further assistance in this matter.

Very truly yours,

Rachel Markun pmd

Rachel Markun

RM:pmd

SB

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RESEARCH ON PORNOGRAPHY: THE EVIDENCE OF HARM

from the

NATIONAL COALITION
AGAINST PORNOGRAPHY

PORNOGRAPHY'S RELATIONSHIP TO CHILD SEXUAL EXPLOITATION AND ABUSE



STAND TOGETHER OPPOSING PORNOGRAPHY®

0904

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PORNOGRAPHY'S RELATIONSHIP TO CHILD SEXUAL EXPLOITATION AND ABUSE

THE PROBLEM

The National Coalition for Children's Justice (Ken Wooden)

Between 1981 and 1985, child sexual abuse rose by 175%. Child molestation cases in the home in 1986 were 216,216.

In Chattanooga, 60% of 539 children of elementary, junior and senior high school age interviewed had seen X-rated movies, knew names and scenes.

In Reading, PA 70% of 700 elementary students, 65% of junior high students, and nearly 100% of high school students interviewed had seen X-rated movies, and knew names and scenes.

The same pattern was true in Fort McClellan, Alabama; North Adams, Massachusetts; and Cincinnati, Ohio.

Abelson (1970)

1 in 5 boys and 1 in 10 girls had first exposure to pornography by age 12.

National Center of Child Abuse and Neglect, Children's Bureau, U.S. Department of Health and Human Services: Study of National Incidence and Prevalence of Child Abuse and Neglect (1988) (NIS-2)

"A study to assess the current (1986) national incidence of child abuse and neglect, and to determine how the severity, frequency, and character of child maltreatment changed since the last study in 1980."

The numbers reported reflect cases reported to the Child Protective Services (a state program) accepted for investigation, investigated, and substantiated, based upon consistent operational definitions of maltreatment.

- An estimated 1,678,600 children nationwide experienced abuse or neglect in 1986. These children had experienced demonstrable harm or were endangered and at risk of harm.
- There were 675,000 abused children in 1986.
- There has been a significant increase (74%) in the incidence of abuse between 1980 and 1986.
- Although more professionals (in major community institutions such as schools, hospitals, day care centers, social service agencies and mental health centers, etc.) are recognizing child maltreatment, they are not necessarily reporting it to Child Protective Services.
- A substantial majority (54%) of children who are recognized as abused or neglected by community professionals are not reported to Child Protective Services. Reporting rates are remarkably low. National estimates of the number of cases of abused or neglected children not reported (852,400) far exceeds estimates of the number of cases which are reported (732,300).
- Many suspected cases, reported to Child Protective Services, cannot be substantiated upon investigation.
- Child sexual abuse in 1986 increased progressively, but not significantly by successive age groups, beginning with children aged three. In other words, children of all ages from 3-17 are sexually abused in about equal numbers. When compared to 1980, however, the increased incidence of sexual abuse occurred disproportionately among the older children—especially children aged 10-17.
- Child sexual abuse is 5 times more frequent for children from lower income families (i.e., <\$15,000).

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- The increased child sexual abuse from 1980 to 1986 occurred disproportionately in more urban counties.
- Among the abuse cases there were significant rises in the incidence of physical and sexual abuse:
 - physical abuse increased by 58% over 1980
 - child sexual abuse occurred in 1986 at more than triple the rate of 1980
- There were 138,000 children abused sexually in 1986, and another 17,900 in danger and at risk of being sexually abused.
- Female children were sexually abused almost four times as often as males.
- Male children were emotionally abused more than twice as often as they were sexually abused.
- Female children were equally likely to be sexually abused or emotionally abused.
- Female children experienced more abuse overall than did male children. This reflected primarily their greater susceptibility to being sexually abused.

American Association for Protecting Children (American Humane Association)

They noted a 10-fold increase in the number of children reported to be sexual abuse victims from 1976 to 1983. They summarized numbers of child sexual abuse reported to and investigated by the Child Protective Services. AHA reported that 1,928,000 children had been reported to Child Protective Services in 1985.

National Obscenity Enforcement Unit

"Review of recent law enforcement statistics and studies, as well as scientific research, reveals the devastating effect obscenity and child pornography are having on our nation. Between 1981-1985 reported child sexual abuse rose by 175%. The rape rate has climbed 43% in the last decade alone and, tragically, the highest incidence of rape victims are teenagers between 16-19."

Report of the U. S. Congress Permanent Subcommittee on Investigations on Child Pornography and Pedophilia (1986)

"A 1985 report by the New York-based Child Welfare League of America said child sexual abuse reports rose 59 percent from 1983 to 1984. In Delaware and Idaho reports nearly doubled from 1983 to 1984; in Oregon they rose 129 percent; and in Wisconsin, they went up by 132 percent. In Houston, police received 1,600 reports of child sexual assaults in 1985, more than double the total in 1983. There is wide agreement that even these are conservative figures."

Check (1985)

Adolescents aged 12-17 (as a group) report most frequent exposure to pornography (compared to other groups). This was found to be true by the 1970 Commission as well.

Gene Abel (1987)

"It is surprising to note the very high percentage of total child molestations committed by those who target children outside the home." Many sex crimes are not reported, so arrest records are an incomplete picture.

U.S. Department of Justice, Network News, Fall Edition (1985)

"One in three females and one in ten males will be sexually molested before the age of 18. Four million child molesters reside in this country."

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Tony Samstag, "Throwaway Children," THE SPECTATOR (June 25, 1988)

"In some cases, the authorities of several countries have tried to sum up the extent of sexual abuse of children. These numbers have one thing in common. They are very much lower than those which some private organizations have found out on their own. Defence for Children International believes that official estimates as to the number of child prostitutes in any given city seem to bear no relationship to the actual numbers of children involved but rather to the seriousness with which the politicians view the problem. The global traffic in child pornography and prostitution does appear to be vast, probably worth billions in any unit of currency.

"There appears to be a strong connection between commercial child abuse and incest. Sexual abuse at home seems to be one of the most common reasons for very young children to run away—or to be thrown out. Once on the streets, they will seek affection (or cash) in the ways to which they have become habituated, or they will simply become easy meat because they are so helpless."

Silbert & Pines (1984)

They interviewed 200 juvenile and adult street prostitutes. In 193 cases of rape: about 25% reported, without being asked, the assailants' reference (allusion) to pornographic materials. 12% told the rapists that they were prostitutes, only to be assaulted after forced vaginal penetration, in ways the rapists "claimed they had seen prostitutes enjoy in the pornographic literature they cited." In 178 cases of rape: 22% reported, without being asked, "the use of pornographic materials by the adult prior to the sexual act."

THE NATURE AND EXTENT OF THE PROBLEM

Abel (1985)

A study of 411 non-incarcerated sex offenders (sexual deviants or paraphiliacs) showed that sex offenders attempted an average of 581 sex offenses each, completed an average of 533 offenses, and victimized 336 people each over a 12 year period. This includes pedophiles (child molesters).

Abel, et al (1987)

"The frequency of self-reported crimes" (for the non-incarcerated sex offenders they studied) "was vastly greater than the number of crimes for which they had been arrested. The ratio of arrest to commission of the more violent crimes such as rape and child molestation was approximately 1:30.

Faller, 1988 (Presented at the National Association of Social Workers Annual Conference, 11/11/88)

"The number of women who sexually abuse children may be two to three times higher than previously thought. In a clinical study of 308 abuse cases studied over a period of ten years, Faller found that women were the abusers in almost fourteen percent of the cases. 'Our findings also suggest that women are not the initiators (of the abuse), but that they are persuaded, coerced, or otherwise drawn into sexual abuse by men.' About 60 percent of the women in the study had sexually abused more than one child. Almost three out of four women in the study engaged in incestuous family situations, which involved two abusers and at least two victims."

Report of the U. S. Congress Permanent Subcommittee on Investigations on Child Pornography and Pedophilia (1986)

"No single characteristic of pedophilia is more pervasive than the obsession with child pornography. The fascination of pedophiles with child pornography and child abuse has been documented in many studies and has been established by hundreds of sexually explicit materials involving children.

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*Report of the U. S. Congress Permanent Subcommittee on Investigations on
Child Pornography and Pedophilia, 1986 (continued)*

"Detective William Dworin of the Los Angeles Police Department estimates that of the 700 child molesters in whose arrest he has participated during the last ten years, more than half had child pornography in their possession. About 80 percent owned either child or adult pornography.

"Each convicted child molester interviewed by the Subcommittee either collected or produced child pornography, or both. Most said they had used the material to lower the inhibitions of children or to coach them into posing for photographs.

"It is not unusual for pedophiles to possess collections containing several thousand photographs, slides, films, videotapes and magazines depicting nude children and children engaged in a variety of sexual activities.

"The maintenance and growth of [the pedophile's] collections [of items related to children] becomes one of the most important things in their life.' (Special Agent Kenneth Lanning, FBI)"

"Messages have appeared on computer bulletin boards offering to buy, sell or trade child pornography, establish correspondence about sexual interests, trade names of 'available' children and even propose sexual liaisons. The bulletin boards actually are an electronic form of the classified ads that appear in sexually-oriented magazines throughout the country. The bulletin board users, who normally use aliases, now have virtually complete anonymity because police are not authorized under current federal law to intercept computer conversations without a warrant based on probable cause. 'We've seen that the (bulletin board) ads tend to be a bit more explicit, because they (the senders) have a sense of anonymity or security. There's a likelihood they'll never be caught' (Sergeant William Brown, Houston Police Department).

"The largest bulletin board accessed by Sergeant Brown was called 'Lambda' and was based in San Francisco. Many of the systems indicate how many calls have come into the network, and Brown reported that he never saw one with fewer than 20,000 calls."

Fortunately, the obscenity provisions of the 1988 drug law have closed many of the loopholes in past legislation that have allowed this type of networking to continue.

"Based on the information obtained during its investigation, the Subcommittee has reached the following general conclusions:

- Child pornography plays a central role in child molestations by pedophiles, serving to justify their conduct, assist them in seducing their victims, and provide a means to blackmail the children they have molested in order to prevent exposure.
- The vast majority of child pornography in the United States constitutes a small portion of the overall pornography market and is deeply underground. Unlike the adult pornography industry, it is not significantly influenced by organized crime.
- It is extremely difficult, if not impossible in some cities, to purchase true child pornography at adult bookstores. The overwhelming majority of child pornography seized in arrests made in the United States has not been produced or distributed for profit.
- The seizure by the U.S. Customs Service of imported child pornography, especially from Denmark and the Netherlands, has declined dramatically since late 1984 due to increased diplomatic and law enforcement pressure, American news media reports and increased caution shown by American child pornography customers.

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*Report of the U. S. Congress Permanent Subcommittee on Investigations on
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- The membership of known pedophile-support groups in the United States is probably less than 2,000. While many of the groups' members have been convicted for child sex crimes, the groups themselves are not involved actively in large-scale criminal conspiracies, such as commercial child pornography rings.
- So-called 'child sex rings' do exist, however, and it is these un-organized groups, and the individuals who participate in them, which pose the most serious threat to children.
- The Child Protection Act of 1984, which made illegal all distribution of sexually explicit material involving children, has been highly successful, leading to a substantial increase in federal prosecutions and the placing of higher priorities on such investigations. Since passage of the law, the Department of Justice has won 164 convictions on child pornography violations; in the previous six and one-half years, there were only 64.
- While the awareness of many police agencies about child sexual exploitation has improved greatly, many still do not have the training, staff or inclination to recognize promptly and investigate potential leads to crimes involving child pornography or child sexual abuse.
- Computers are providing pedophiles with a virtually untraceable means of exchanging information, including the names of potential victims. While the Subcommittee is mindful of the Constitutional safeguards against interference with free speech, a need clearly exists for additional legislation in this area." (The obscenity provisions of the 1988 drug law have closed many of the loopholes in past legislation that have allowed this type of networking to continue.)

*Eli Coleman, Psychologist at Golden Valley Health Center; University of Minnesota
Medical School*

There is no question that sexual addiction exists. While not addictive in the chemical or physiological sense, "these behavior patterns are pathological (i.e., caused) and self-defeating. These individuals display hypersexuality in response to feelings of anxiety, depression, or loneliness. Many describe a sexual act as a "fix" to some very negative feeling. But this relief is short-lived and negative feelings recur. Some (therapists) view this as a psychiatric condition and treat it with medications. Others treat it with psychoanalytic or behavioral therapy. Others adopted the methods of treating alcohol addiction."

Abel (1986)

He studied 240 child molesters (pedophiles). They averaged 30 (homosexual or same-sex) to 60 (heterosexual) victims before being caught. The typical child molester will sexually abuse 380 children in a lifetime.

Abel et al (1987)

"Pedophiles (child molesters) involved with children outside the home will occasionally return to the same victim, especially men who molest young boys. As expected, incestuous pedophiles (child molesters who molest their relatives) repeatedly molest the same child, from an average of 36.7 molestations per boy victim to 45.2 molestations per girl victim."

"The number of acts reported by child molesters was from 23 to 282 acts per offender." This is a marked contrast to an earlier study by Gebhard et al (1965) which "reported that, on the average, pedophiles had been found guilty of fewer than 3 paraphilic acts per offender."

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Diagnostic and Statistical Manual of Mental Disorders, III (Revised 1987)

"Because of the highly repetitive nature of paraphilic (sexually deviant) behavior, a large percentage of the population has been victimized by people with paraphillias (sexual deviations)."

"The more deviant the sexual pattern is from the norm, the fewer instances there need to be of the behavior to indicate psychopathology. Being turned on by ladies' underwear (Fetishism) a few times may not mean much, but once with a corpse (Necrophilia) is too much."

David Duncan (1988) Southern Illinois University

He did a content analysis of twenty-five years of homosexual pornographic magazines sold in adult bookstores of two major US cities. Dr. Duncan found "the frequency with which clearly underage models appeared in such legally available magazines has declined to zero, due to the recent legislation prohibiting child pornography. Suggestions of child pornography remained, however, in the frequent use in porno magazine titles of such words as 'boy,' 'young' and 'teen' although the models were no longer adolescents. Youthful appearing models achieved star billing in what the Attorney General's Commission on Pornography has named 'pseudo-child pornography.'"

"Most of the child models appearing in such pornography are likely to be incest victims being exploited by their parents or other adults."

The earlier decline may have been simply market adjustment with the marketers of gay pornography shifting the emphasis in their product as they became more aware of what sold best to their consumers.

"The demand for homosexual child pornography probably proved to be much smaller than marketers expected during the 'porno boom' of the 1960's. But the fact that there is a demand for such material is clearly indicated by the continued presence of the new pseudo-child pornography."

Carter et al (1984)

The Los Angeles Police Department reported that most child molesters were themselves molested as children. They tend to seek out victims of the age they were when first molested. One study reported that 57% of molesters studied had been victims of child molestation themselves.

Diagnostic and Statistical Manual of Mental Disorders III (Revised)

Pedophiles target pre-pubescent children; the age of the females preferred by child molesters is 8-10; boys slightly older.

"The recidivism rate (the likelihood of the crime or offense being repeated) for those sexual deviants (paraphiliacs) who are attracted to the same sex is TWICE that of those attracted to children of the opposite sex."

Pierce (1984)

Sexually exploited children involved in the pornography industry are usually recruited among run-aways, although some may use neighborhood children or their own children.

Burgess (1984) (A study in Jefferson County, Kentucky)

"The study was an outgrowth of community interest and was an attempt to examine systematically a group of self-identified juvenile prostitutes compared with a group of other juveniles who were non prostitutes.

"Of the prostitute group, 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.

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Burgess (continued)

"Concerning the incidences of Intrafamily sex, 23% of the prostitute group related that they had sex with family members, while the non prostitute group answered in a like manner only 3 percent of the time. Intrafamily sex abuse victims often become extrafamily sexual exploitation victims.

"37% of the prostitute group admitted to having been involved in pornography; only 18% of the non prostitute group reported involvement in pornography. 38% of the runaways were involved in prostitution, and 15% of the runaways were involved in pornography.

"The age of first sexual intercourse for these children was 12, with the greatest frequency occurring between 10 and 13 years of age, the lowest age being 3.

"Major overlaps between exploited children and criminal activity have been discovered; therefore there are dramatic intelligence benefits to law enforcement and prosecutorial agencies from working with and for exploited children.

"Research suggests that the vast majority of violent sex offenders (rapists, sex murderers) and child molesters have themselves been the victims, as children, of physical or sexual abuse. Certainly the combined efforts of local task forces can, by focusing on victimized children, help break this pattern.

"Identifying and tracking missing children is vital to curbing the victimization of children. Over 86% of Jefferson County children involved in child prostitution and pornography were, at the time of those activities, runaways or missing.

"Data developed on the first 200 children of the missing child program of Jefferson County, Kentucky indicate that approximately 10% of the missing youth are exploited while missing, with 90% of those exploited falling into the 'unusual circumstances' categories developed.

"The ability of child molesters to avoid exposure and prosecution by maintaining mobility across the county is well documented."

Report for Catholic Bishops (1985) [The Plain Dealer, 11/15/87]

"Effects of child molesting by adults are long-lasting, it said, and if the abuse is by a priest, "This will no doubt have a profound effect on the faith life of the victims, their families and others in the community."

The victim's capacity to develop trusting relationships with adult clergy will be impaired, the report said. "Sexual abuse of a child by a cleric, especially a priest, can have a devastating effect on the child's short and long-term perception of the church and its clergy."

DOES PORNOGRAPHY PROMOTE ABUSE?*June 24, 1986 Surgeon General's Workshop on Pornography*

19 nationally and internationally recognized clinicians and researchers achieved consensus on the statement that "children and adolescents who participate in the production of pornography experience adverse enduring effects."

Dr. William Marshall (1983)

87% of girl child molesters and 77% of boy child molesters studied admitted to regular use of hard core adult pornography. The obscene material was used by these sex offenders for three reasons: (1) to stimulate themselves; (2) to destroy the consciences and lower the inhibitions and resistance to sexual activity in their intended child victims; and (3) as teaching tools for the child to imitate or model in their real life sexual encounter with the adult.

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John Rabun, Exploited and Missing Children Unit of Louisville, KY

"The Police/Social work team of the Exploited and Missing Child Unit (EMCU) of Louisville, KY investigated 1,400 cases of children suspected of being victims of sexual exploitation. Over 40 major cases involved the successful prosecution of adults involved with over 12 children each. One case involved 320 children. At the time of the arrest of and/or service of search warrants, all 40 of these adult predators were found with various forms of adult pornography, and in most cases child nudes and/or child pornography were also found.

"Over four years, the EMCU team learned to expect to always find adult pornography since it was used for: 1) the offender's own arousal; 2) self-validation of their own sex deviations; 3) extortion of child victims or other adults; and 4) deliberate and planned lowering of inhibitions of child victims."

The National Obscenity Enforcement Unit

They now teach their investigators at all of their seminars "to look for pornography at the scene of sexual crimes involving children. It is beyond debate that molestation of children is, in part, caused by consumption of pornography."

"The National Obscenity Enforcement Unit has been most successful in its efforts. Prosecutions for child pornography are up by 80% in the last fiscal year (1987) and obscenity prosecutions are up by 800%."

*Ann Burgess, Professor at the University of Pennsylvania :
(Federal grant to study child pornography).*

Pornography depicting children is used by child molesters to convince children that deviant sex acts (which all child sex abuse is) are normal—thereby breaking down their resistance. Her later study (1987) found that victims of child sexual abuse have symptoms of chronic or delayed posttraumatic stress. It causes multiple psychological problems.

As an example of the cost of treatment, one Southwest Ohio mental health center reported that the cost of treatment for children who are molested (especially if the home is a negative environment) is very high, because problems are more entrenched: Private sessions average \$85.00/hour and public sessions are 65.00/hour. Most children need between 40 and 50 hours of treatment to alleviate debilitating symptoms. The more dysfunctional the family, the more treatment is needed. Parent groups are also recommended for families of molested children, and these add to the social cost.

This sample County Mental Health Center treats approximately 70 cases of child molestation per year. There are 4-6 new cases per month.

David A. Scott (In Pornography: A Human Tragedy, 1987)

"Judith Reisman (1985) found that from the first issue of *Playboy* in 1954, children in cartoons (or photographs of adults dressed to suggest children) have appeared in sexual contact with adults, and the frequency and intensity of these contacts has increased through the years. The dominant impression was that child/adult sex is glamorous, thereby enhancing the impression that these activities are harmless. Magazines can escape the letter of child pornography laws while still implying that sex with children is desirable and readily available. And these magazines, of course, are sold in the open."

Don Feder, Boston Herald (1988)

"Pornographers protest their innocence while facilitating the victimization of our children."

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The Badgley Report (1984)

The report found that almost 60% of both male and female juvenile prostitutes had been asked to be the subject of sexually explicit films or photographs; 12% of the girls and 20% of the boys had actually been used in making pornography; juvenile prostitutes are a high-risk group in regard to being exploited by pornographers.

Two smaller American studies (Burgess: 755 of youth hustlers had participated in pornography; John Rabun: 37% had participated) emphatically confirm this finding.

The 1982 URSA Study: 27% of the young male prostitutes had been photographed by a "john"; of the 54 young male hustlers for whom information was available, 9 had been photographed for commercial pornographic magazines. In the face of that evidence it seems impossible to deny the existence of a significant link between the exploitation of minors in prostitution and in pornography.

Extant studies of juvenile prostitutes showed less incidence of participation in pornography than is the real case because by its very nature one item of pornography can be viewed contemporaneously by many patrons and for repeated sittings. The demand for pornographic performers will always be a tiny fraction of the demand for prostitutes.

Silbert and Pines (1984)

A detailed content analysis of 193 cases of rape and of 178 cases of juvenile sexual abuse revealed a clear relationship between violent pornography and sexual abuse.

Diagnostic and Statistical Manual of Mental Disorders III-R

Pedophiles who act on their urges with children commonly develop excuses or rationalizations about their illegal sexual activities toward the children:

- 1) that they have "educational value" for the child
- 2) that the child derives "sexual pleasure" from them
- 3) that the child was "sexually provocative" toward them—led them on

These three rationalizations are "themes that are also common in pedophilic pornography." p.284.

In other words, pornography teaches three myths that pedophiles believe, and act on, when they molest children.

Southern California Child Exploitation Task Force (1988)

It is the longest existing task force in the U.S. and has prosecuted all the child pornography and Federal child abuse cases in the Central District of California during the past 10 years.

- "According to the U.S. Customs Service, a conservative estimate of the number of pedophiles in the U.S. is 15,000. It is impossible to determine accurately the number, because pedophiles do everything possible to avoid detection."
- "We have frequently gone into homes with search warrants for child pornography and discovered children living in the home who have been molested by the person who is the target of our child-pornography investigation."
- "We have discovered photographs of the pedophiles molesting children."
- "We have found convicted child molesters as well as individuals who were providing children to molesters."

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Southern California Child Exploitation Task Force (continued)

- "One of the men we prosecuted had 50,000 photographs of noncommercial child pornography in a storage locker. He admitted molesting several hundred children following his release from a state hospital for a child molestation conviction. He even maintained a ledger listing those molestations. He taught swimming and tennis to youngsters, some of whom became his victims."
- "A convicted child molester who was the subject of one of our investigations was found, after he had ordered materials, to have homemade child pornography in his house—including a video tape depicting him molesting a child who was clearly under the influence of drugs or alcohol."
- Some articles written in pornographic magazines call attention to a few cases in which individuals (who claimed neither to be sexually active with children nor to possess child pornography) were the subjects of search warrants after they ordered child pornography from undercover Government agents. While Government operations occasionally identify individuals who are not suitable for prosecution, those cases are the exception, not the rule.

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CHILD PORNOGRAPHY

THE PROBLEM

The National Coalition for Children's Justice (Ken Wooden)

Between 1981 and 1985, child sexual abuse (including having pictures taken pornographically) rose by 175%.

The National Obscenity Enforcement Unit

(Testimony before the Senate Judiciary Committee, June, 1988)

"Review of recent law enforcement statistics and studies, as well as scientific research, reveals the devastating effect obscenity and child pornography are having on our nation.

Ann Burgess, Professor at the University of Pennsylvania *(Federal grant to study child pornography).*

Pornography depicting children is used by child molesters to convince children that deviant sex acts (which all child sex abuse is) are normal—thereby breaking down their resistance. Her later study (1987) found that victims of child sexual abuse have symptoms of chronic or delayed posttraumatic stress. It causes multiple psychological problems which may take years to resolve.

Pierce (1984)

Sexually exploited children involved in the pornography industry are usually recruited among run-aways, although some may use neighborhood children or their own children.

THE NATURE AND THE EXTENT OF THE PROBLEM

Report of the U. S. Congress Permanent Subcommittee on Investigations on *Child Pornography and Pedophilia (1986)*

"No single characteristic of pedophilia is more pervasive than the obsession with child pornography. The fascination of pedophiles with child pornography and child abuse has been documented in many studies and has been established by hundreds of sexually explicit materials involving children.

"Detective William Dworin of the Los Angeles Police Department estimates that of the 700 child molesters in whose arrest he has participated during the last ten years, more than half had child pornography in their possession. About 80% owned either child or adult pornography.

"Each convicted child molester interviewed by the Subcommittee either collected or produced child pornography, or both. Most said they had used the material to lower the inhibitions of children or to coach them into posing for photographs.

"It is not unusual for pedophiles to possess collections containing several thousand photographs, slides, films, videotapes and magazines depicting nude children and children engaged in a variety of sexual activities.

"The maintenance and growth of [the pedophile's] collections [of items related to children] becomes one of the most important things in their life. Child pornography exists primarily for the consumption of pedophiles—adults whose sexual preference and attraction is to prepubescent children. If there were no pedophiles, there would be little child pornography other than that involving adolescent children." (Special Agent Kenneth Lanning, FBI)"

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"Based on the information obtained during its investigation, the Subcommittee has reached the following general conclusions:

- Child pornography plays a central role in child molestations by pedophiles, serving to justify their conduct, assist them in seducing their victims, and provide a means to blackmail the children they have molested in order to prevent exposure.
- The vast majority of child pornography in the United States constitutes a small portion of the overall pornography market and is deeply underground. Unlike the adult pornography industry, it is not significantly influenced by organized crime.
- It is extremely difficult, if not impossible in some cities, to purchase true child pornography at adult bookstores. The overwhelming majority of child pornography seized in arrests made in the U.S. has not been produced or distributed for profit.
- The seizure by the U.S. Customs Service of imported child pornography, especially from Denmark and the Netherlands, has declined dramatically since late 1984 due to increased diplomatic and law enforcement pressure, American news media reports and increased caution shown by American child pornography customers.
- The membership of known pedophile-support groups in the United States is probably less than 2,000. While many of the groups' members have been convicted for child sex crimes, the groups themselves are not involved actively in large-scale criminal conspiracies, such as commercial child pornography rings.
- The Child Protection Act of 1984, which made illegal all distribution of sexually explicit material involving children, has been highly successful, leading to a substantial increase in federal prosecutions and the placing of higher priorities on such investigations. Since passage of the law two years ago, the Department of Justice has won 164 convictions on child pornography violations; in the previous six and one-half years, there were only 64.
- While the awareness of many police agencies about child sexual exploitation has improved greatly, many still do not have the training, staff or inclination to recognize promptly and investigate potential leads to crimes involving child pornography or child sexual abuse."

Southern California Child Exploitation Task Force

It is "dangerously inaccurate" to presume that "because there is not widespread commercial distribution of child pornography in the U.S.," that therefore "significant law-enforcement effort in the area of child exploitation is not warranted. The threat imposed on our children has little to do with [that] aspect of the child pornography business."

Burgess (1984) (A study in Jefferson County, Kentucky)

"37% of the prostitute group admitted to having been involved in pornography; only 18% of the non prostitute group reported involvement in pornography. 38% of the runaways were involved in prostitution, and 15% of the runaways were involved in pornography.

"Identifying and tracking missing children is vital to curbing the victimization of children. Over 86% of Jefferson County children involved in child prostitution and pornography were, at the time of those activities, runaways or missing.

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The National Obscenity Enforcement Unit

"It has been most successful in its efforts. Prosecutions for child pornography are up by 80% in the last fiscal year (1987) and obscenity prosecutions are up by 800%."

David Duncan (1988) Southern Illinois University

He did a content analysis of twenty-five years of homosexual pornographic magazines sold in adult bookstores of two major US cities. Dr. Duncan found the frequency with which clearly underage models appeared in such legally available magazines has declined to zero, due to the recent legislation prohibiting child pornography. Suggestions of child pornography remained, however, in the frequent use in porno magazine titles of such words as 'boy,' 'young' and 'teen' although the models were no longer adolescents. Youthful appearing models achieved star billing in what the Attorney General's Commission on Pornography has named 'pseudo-child pornography.'

"The final decline (of child pornography) in the late seventies may have been in response to the pressures building against child pornography which led eventually to that legislation. To a large extent it probably reflects the impact of child abuse programs emerging in the seventies, since most of the child models appearing in such pornography are likely to be incest victims being exploited by their parents or other adults."

BUT THE FACT THAT THERE IS A DEMAND FOR SUCH MATERIAL IS CLEARLY INDICATED BY THE CONTINUED PRESENCE OF THE NEW PSEUDO-CHILD PORNOGRAPHY.

PSEUDO-CHILD PORNOGRAPHY*Judith Reisman (1987)*

"A content analysis of Playboy, Penthouse, and Hustler magazines, December 1953 to December 1984, yielded 6,004 child images. Newsstand available child imagery in the context of erotica/pornography increased nearly 2,600% from 1954-1984. 80% of the children were actively involved in all scenes; and each magazine portrayed children as unharmed and/or benefited by adult-child sex."

David A. Scott (In Pornography: A Human Tragedy, 1987)

"Judith Reisman (1985) found that from the first issue of Playboy in 1954, children in cartoons (or photographs of adults dressed to suggest children) have appeared in sexual contact with adults, and the frequency and intensity of these contacts has increased through the years. The dominant impression was that child/adult sex is glamorous, thereby enhancing the impression that these activities are harmless. Magazines can escape the letter of child pornography laws while still implying that sex with children is desirable and readily available. And these magazines, of course, are sold in the open."

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Feder (Boston Herald, 10/27/83)

"The October issue of *Playboy* contains a five-page rebuttal to the so-called Reisman report. Odd that a publication with a circulation of 3.5 million would devote so much space to answering what it assures us is preposterous stuff. Some experts believe [pseudo-child pornography] encourages sexual abuse, both by excluding perverted participants and fostering the belief that the child actually is an eager participant in the act."

"Pornographers protest their innocence, while facilitating the victimization of our children."

DOES PORNOGRAPHY PROMOTE ABUSE?

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The Badgley Report (1984)

The report found that almost 60% of both male and female juvenile prostitutes had been asked to be the subject of sexually explicit films or photographs; 12% of the girls and 20% of the boys had actually been used in making pornography; juvenile prostitutes are a high-risk group in regard to being exploited by pornographers.

Two smaller American studies emphatically confirm this finding (Burgess: 75% of youth hustlers had participated in pornography; John Rabun: 37% had participated).

The 1982 LRSA Study: concluded that there exists a "slight" relationship between juvenile prostitution and pornography. There, 27% of the young male prostitutes had been photographed by a "john"; of the 54 young male hustlers for whom information was available, 9 had been photographed for commercial pornographic magazines. In the face of that evidence it seems impossible to deny the existence of a significant link between the exploitation of minors in prostitution and in pornography.

Extant studies of juvenile prostitutes showed less incidence of participation in pornography than is the real case because by its very nature one item of pornography can be viewed contemporaneously by many patrons and for repeated sittings. The demand for pornographic performers will always be a tiny fraction of the demand for prostitutes.

Surgeon General's Workshop on Pornography (June 24, 1986)

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"Enough is Enough!"

A monthly newsletter to educate, motivate, and activate women to break pornography's chain of abuse.

Together, We *Can* Stomp Out Hard-Core Pornography!

I believe that women united behind a just cause have immeasurable influence and power.

I think of Candi Lightner, a mother whose child was tragically killed one night in a car crash by a drunk driver. Her personal tragedy compelled her to establish Mothers Against Drunk Drivers (MADD).

One woman's passion and justifiable anger united other women, and together they launched a powerful campaign. In only 11 years, they not only strengthened the nation's laws governing drinking and driving, they totally changed the way we view drunk driving.

If women work together, I know the same thing can happen in the campaign against hard-core, illegal pornography.

I believe women speak with a special authority in the battle against pornography. We are its primary victims — we, our children, and our families.

When I speak to women across the country about pornography's harmful effects, I see a groundswell of indignation and outrage rising. Liberal and conservative women, religious and nonreligious women, old and young, businesswomen and homemakers are ready to fight to remove illegal pornography from their neighborhoods. We don't have to agree on a lot of other issues to come together in this common cause.

The shocking images of child pornography, incest, bestiality, rape, and mutilation that pass today as "adult" entertainment are demeaning and harmful to us as women, to our children, and to men as well. As pornography's chief victims, we have the special motivation — we have the urgent obligation — to demand that the degradation and exploitation stop.

That's what "Enough is Enough!" is all about. This secular, nonpartisan campaign encourages and equips women in the battle against illegal pornography. It is directed by women, staffed by women, and most of its financial support comes from women. We are not creating a new organization. We are initiating a movement.

I'm convinced that the women of America can make the difference on this issue. We can get the laws against illegal pornography enforced. We can get legislation passed where it is needed. We can change the way America thinks about pornography!

We are working to mobilize hundreds of thousands, eventually millions, of women to stand with us and say, "Enough is Enough!"

I urge you to join us in this important war.

Dee Jepsen



Dee Jepsen
National Campaign
Director

"I believe women speak with a special authority in the battle against pornography. We are its primary victims — we, our children, and our families."

First Lady Encourages "Enough is Enough!" Condemns Hard-Core Pornography

First Lady Hillary Rodham Clinton recently encouraged the "Enough is Enough!" campaign.

In a letter sent to director Dee Jepsen, Mrs. Clinton wrote, "I applaud your group's efforts to eliminate child pornography and illegal pornography and appreciate your willingness to take a stand for the children of the nation.

"I know that you have an enormous and challenging task before you, but this is a pressing issue that must be addressed."

Former First Lady Barbara Bush has also written a letter giving her support to the campaign. ♦

In an interview conducted by Dotson Rader, published in Parade Magazine on April 11th, Mrs. Clinton came down hard on pornography:

Parade: In homes with cable TV, very young children can turn on channels showing R-rated and even X-rated films containing extremely graphic sex and violence — films that it is illegal for them to pay to see in a theater. How can you defend the culture of a country that allows a child access to hard-core pornography and extreme violence?

Reprinted with permission from Parade, copyright © 1993

Mrs. Clinton: I can't defend it! I wouldn't defend it! It's wrong, and I wish it would go away, because I think it's so destructive to children and adults to have that kind of material shown. I don't think there's anything wrong with parents' groups or other groups calling for people to boycott certain kinds of entertainment. That's advocacy, education, and choice.

Tell the truth about illegal pornography!

- ✓ Over 80 percent of child molesters admit to regularly using pornography, often imitating actual scenes during molestations.
- ✓ There are more hard-core pornography outlets in this country than McDonald's restaurants.
- ✓ The typical serial child molester has from 360 to 380 victims in his lifetime. Both adult and child pornography is often used as an aid during the crime.
- ✓ 1 in 3 girls and 1 in 7 boys will be molested before the time they are 18 years old.

Hard-core pornography. It's not what you think.

The "Enough is Enough!" campaign is another voice of the National Coalition Against Pornography.

Gramps Isn't Craziiness

I am outraged by the recommendation made by a task force of the American Psychiatric Association that severe PMS (premenstrual syndrome) be categorized as a psychiatric disorder ("Is It Sadness or Madness?" *MEDICINE*, March 15). If a man has hyperthyroidism and becomes hyperactive, loses weight and becomes irritable, should he go to a psychiatrist for help? Or should he seek help for his hyperactive thyroid? If severe PMS is recategorized, half the population is in danger of being called mentally ill based on changes that occur in every woman's monthly cycle.

MARY R. HOLLIDAY
Aurora, Colo.

Bosnia's Pain

Naida Zecevic should be commended for her *MY TURN* essay "Will I Ever Go Home Again?" (March 8). Like Naida, members of my husband's immediate family are stranded in Sarajevo. My heart goes out to her. I know how she feels—worrying, wondering if her family will survive, if she will see them again. As an American-born citizen, I'm appalled that the world has allowed this tragedy to occur, mislabeling it an ethnic conflict. Strong steps should have

been taken to stop the aggressor and end the fighting in Bosnia, just as strong steps were taken to stop the aggressor in Kuwait. Peace talks have failed; a beautiful country has been destroyed. Innocent victims have suffered. The world should listen to Naida.

MARGARET E. PRLJACA
Newark, Dela.

Zecevic suggests that the U.S. military could end the bloodshed in Bosnia. What makes her think it is America's responsibility to end her country's war? This is what's wrong with our country: everyone says it's our job to fix other countries' problems and we're naive enough to believe it. We can't even take care of ourselves.

C. A. SMITH
New York, N. Y.

Don't Kill This Cow

We were disappointed in "Sparing Those Sacred Cows" (*NATIONAL AFFAIRS*, March 1), your discussion of the Superconducting Super Collider (SSC), in which you state that the "project epitomizes quark-barrel politics." Moreover, your *Conventional Wisdom Watch* (*PERISCOPE*) puts the project on the same footing as "ketchup-measuring bureaucrats." These remarks do a disservice not only to the project but to science

In general. The SSC is directed at science of the most fundamental nature: investigating the structure of the smallest building blocks of matter and the nature of the forces that operate between them. Completing the accelerator and particle detectors will also generate important technical advances. More than 100 research universities across the nation are already working on the project. While there is clearly room for serious discussion about the SSC's place in our national priorities, your remarks do nothing to illuminate this question. Unhappily, they ridicule an area of fundamental science at a time when we are trying to educate young people about the importance of science to the nation.

JEROME I. FRIEDMAN
HENRY W. KENDALL
1990 Nobel Laureates in Physics
Cambridge, Mass.

Doctors in the Cross Hairs

After the murder of Dr. David Gunn by a pro-lifer with a history of violence at a demonstration organized by a Rescue America boss with past ties to the Ku Klux Klan, where are the outraged voices of the "moderate" pro-life movement ("The Death of Doctor Gunn," *NATIONAL AFFAIRS*, March 22)? The president of Feminists for



1 in 3 American girls will be sexually molested by age 18.

Isn't it time we got rid of the instruction manual?

An 8-year-old girl is led into a room and told to undress. As cameras click and flash, two men abuse her sexually. The resulting photos are then printed and distributed throughout America.

Those pictures—actual crime scene photos of grossly illegal activity—then become virtual instruction manuals for thousands of other sex offenders. In fact, over 80% of convicted child molesters admit to regular use of pornography, often imitating the graphic pictures during their crimes.

The Supreme Court ruled in 1990 that states can outlaw the possession of child pornography. Why, then, at a time when sexual harassment of adults understandably causes national outrage, is possession of child pornography still legal in many states—and rarely prosecuted in most?

And how can it be that in America there are far more outlets for

hard-core pornography than there are McDonald's restaurants? Let's be clear about this: We are talking about the graphic depiction of women and children being exploited and degraded through rape, bondage, group sex, torture, incest, and bestiality.

American women say
"Enough is Enough!"

The "Enough is Enough!" Campaign is committed to eliminating child pornography and removing hard-core/illegal pornography from the marketplace. Women from all walks of life—homemakers and businesswomen, liberals and conservatives, Democrats and Republicans—are united on this issue. Already, many governors' wives and other women of influence are stepping forward to support the "Enough is Enough!" Campaign aimed at stopping the abuse.

There's no better time for you to join us than now, during National

Child Abuse Prevention Month. Help eliminate sexual violence. You can make a difference!

Hard-core pornography.
It's not what you think.
"Enough is Enough!"

I want to help stop the abuse of children and women. Here's my tax-deductible gift to help end the epidemic of hard-core, illegal pornography.

\$25 \$50 \$100 Other \$ _____

I want to learn more. Please send information.

NAME _____
(Please print)

ADDRESS _____

CITY _____

STATE _____ ZIP _____

Please make checks payable to "Enough is Enough!" and send coupon to "Enough is Enough!" Campaign, P.O. Box 888, Fairfax, VA 22030

*The Campaign is a project of the National Coalition Against Pornography. NCAP is a 501(c)(3) nonprofit organization. Get a tax deduction as allowed by law. WW

aped "interview" with Wanda wearing a new blond hairstyle but the same bone-chilling self-assurance.

Yet the film is more than just a clever satire of media overkill. Ritchie assembles a vivid, sharply drawn gallery of small-town characters: Beau Bridges as Wanda's unwilling co-conspirator, a hardhat burdened with a messy past and a loony wife (Swoosie Kurtz); Elizabeth Ruscio as the rival mom, no less competitive but not as imaginative; and Matt Frewer as Wanda's drudge of a lawyer. All that and a bouncy country score by Lucy Simon too. True or not, it's positively terrific. ■

BOOKS

Medicine Woman

TITLE: *CHARMS FOR THE EASY LIFE*

AUTHOR: KAYE GIBBONS

PUBLISHER: PUTNAM; 254 PAGES; \$19.95

THE BOTTOM LINE: *Three generations of Carolina women, one better than the next, are told by a fourth, the best yet.*

By AMELIA WEISS

SOME PEOPLE MIGHT GIVE UP their second-horn to write as well as Kaye Gibbons, so graceful and spirited are her fictional histories of North Carolina women. In her fourth novel, *Charms for the Easy Life*, Gibbons presents Charlie Kate Birch, a midwife and self-proclaimed doctor who meets her ferryman husband as she crosses the Pasquotank River to deliver babies, nurse the sick and lay out the dead. Her granddaughter Margaret, narrator of the book, imagines, "Between my grandmother, her green eyes . . . and the big-cookie moon low over the Pasquotank, it must have been all my granddather could do to deposit her on the other side of the river."

That's the first and last romantic view of Charlie Kate, a blunt and righteous woman who eats garlic on toast for breakfast, smells of mothballs and ties her "resolute shoes" with 30-year-old laces soaked every Sunday in linseed oil ("My shoestrings," she says, "have lasted years longer than most people can stand each other"). An eccentric who knows as much about Thomas Hardy's novels as she does about cirrhosis of the liver, Charlie Kate is in fact a healing genius who uses herbal cures like evening primrose and Saint-John's-Wort, as well as all the modern medicine she can get.

1 in 3 American girls will be sexually molested by age 18.



Isn't it time we got rid of the instruction manual?

An 8-year-old girl is led into a room and told to undress. As cameras click and flash, two men abuse her sexually. The resulting photos are then printed and distributed throughout America.

Those pictures—actual crime scene photos of grossly illegal activity—then become virtual instruction manuals for thousands of other sex offenders. In fact, over 80% of convicted child molesters admit to regular use of pornography, often imitating the graphic pictures during their crimes.

The Supreme Court ruled in 1990 that states can outlaw the possession of child pornography. Why, then, at a time when sexual harassment of adults understandably causes national outrage, is possession of child pornography still legal in many states—and rarely prosecuted in most?

And how can it be that in America there are far more outlets for *hard-core pornography* than there are McDonalds restaurants? Let's be clear about this: We are talking about the graphic depiction of women and children being exploited and degraded through rape, bondage, group sex, torture, incest, and bestiality.

American women say "Enough is Enough!"

The "Enough is Enough!" Campaign is committed to eliminating child pornography and removing hard-core/illegal pornography

from the marketplace. Women from all walks of life—homemakers and businesswomen, liberals and conservatives, Democrats and Republicans—are united on this issue. Already, many governors' wives and other women of influence are stepping forward to support the "Enough is Enough!" Campaign aimed at stopping the abuse.

There's no better time for you to join us than now. Help the National Child Abuse Prevention Council. Help eliminate sexual violence. *You can make a difference!*

**Hard-core pornography.
It's not what you think.**

"Enough is Enough!"

I want to help stop the abuse of America's children and women. Here's my tax-deductible gift to help end the epidemic of hard-core, illegal pornography.

\$25 \$50 \$100 Other \$ _____

I want to learn more. Please send me information.

NAME (Please print) _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

Please make checks payable to "Enough is Enough!" and send coupon to "Enough is Enough!" Campaign, P.O. Box 888, Falls Church, VA 22030.

*The Campaign is a project of the National Coalition Against Pornography, N-CAP, is a 501(c)(3) nonprofit organization. Gifts are tax-deductible as allowed by law.

Workshops Train Women to Combat Illegal Porn in Their Own Neighborhoods

The "Enough is Enough!" campaign will hold training workshops throughout the country this year to give women and men all the factual, legal, and logistical tools they need to wage successful campaigns against illegal pornography in their neighborhoods.

Workshop attendees learn practical ways to effectively fight illegal pornography at the local level, and they return home fully equipped to take the battle to their own communities.

Designed as basic training courses, the workshops focus on just what constitutes illegal

pornography and on the high price society pays for its existence.

Most Americans are confused about what kind of materials are protected by the Constitution. Illegal pornography is illegal. The Supreme Court clearly prohibits obscenity, child pornography, material that is harmful to minors, and indecent material. The workshops give attendees a clear understanding of the law as it relates specifically to pornography.

Attendees also learn how illegal pornography threatens public health and safety. Studies conducted around the country unmistakably document the deleterious impact that illegal pornography has on society, particularly on women and children.

The studies have revealed alarming facts —

✓ The majority of child molesters in this country are users of hard-core pornography.

✓ The overwhelming majority of convicted rapists admit that they regularly used hard-core pornography.

✓ Hard-core pornography is addictive for some men who ultimately act out the material.

"The workshop gave me hard facts on just how harmful pornography is and showed me how I can fight it in my community and win."

— Gina Zimmerman, Warsaw, Indiana

✓ Hard-core pornography encourages and facilitates the transmission of sexually transmitted diseases.

✓ Because one of the largest consumer groups of pornography is 12 to 17-year-old males, illegal pornography is distorting the values and attitudes of a large portion of our society.

Workshop leaders systematically debunk the myths associated with illegal pornography, particularly the myth that it is a victimless crime.

Each workshop includes time for at least one victim to share her story with attendees, putting a face on the facts and statistics.

Workshops are scheduled during May and June in California, Ohio, and Washington, DC, with others to be announced for later in the year. For information on a seminar near you, call 703-278-8343. ♦

"Enough is Enough!" Training Seminars

May 26th and 27th
Countryside inn
Newport Beach, CA
Call Monique at 714-435-9056

June 12th
Cincinnati Marriott
Cincinnati, OH
Call Barb at 513-521-6227

June 19th
Grand Hyatt, Washington, DC
Call Sonia at 703-278-8343

Registration is \$55 per person. Fee includes registration materials, EIE's "Take Action Manual," "Empty Embrace" video, and meals.

Hard-Core Pornography and Sexual Crimes Against Children

This Insidious, Silent Relationship is Too Often Overlooked



The typical child molester will abuse from 30 to 60 children before he is ever caught, according to an Emory University study. Over his lifetime, a molester is likely to abuse more than 360 children.

Ed Savitz, a wealthy Philadelphia pedophile who died of AIDS just weeks ago, used to invite young boys to his upscale apartment to take sexually explicit pictures of them, to have sex with them, and to buy their dirty underwear and even their excrement. Neighbors in the building said that boys ranging in age from 10 to 16 years would come in and out of Savitz's apartment every day at all hours of the day and night. Over a 20-year period, before he was arrested by the Philadelphia police in March 1992, officials estimate that "Uncle Eddy" sexually molested hundreds of teenage and pre-pubescent boys, knowingly infecting many of them with the HIV virus.

On talk shows in Philadelphia, several of the young victims admitted to being the second generation of boys in their family to pose for sexually explicit pornographic sessions with Uncle Eddy. Ed Savitz was called an "insatiable collector of kiddie porn photos" by Lynne Abraham, district attorney of Philadelphia. Estimates of the size

of his illegal porn collection ranged from 3,500 to 5,000 photos.

Pornography is a common element — often unmentioned, certainly unheralded — in the majority of sexual crimes committed today. In a study done at Kingston Penitentiary in Canada, 77 percent of those who were convicted of molesting boys and 27 percent of those who were convicted of molesting girls admitted that they regularly used hard-core pornography.

Yet the presence of pornography as a consistent factor in sexual crimes is often overlooked in the media coverage of these cases. Most people are completely unaware of the significant role that pornography plays in sexual crimes, particularly in crimes against children.

Judge Gene Malpas, senior attorney with the National Law Center for Children and Families, first became aware of the link between pornography and child molestation when he served as state prosecutor in Florida. Almost every case of child molestation that he

"A molester uses it [pornography] in three ways — to stimulate himself, to lower the inhibitions of the child, and to educate the child about what to do."

— Judge Gene Malpas, senior attorney
National Law Center for Children and Families

"Enough is Enough!"

A monthly newsletter to educate, motivate, and activate women to break pornography's chain of abuse

Pornography's Victims Rarely Have a Choice

I recently had someone tell me, "Pornography is simply a matter of choice. If you don't like it, if it bothers you so much, well then, don't buy it."

Is hard-core pornography simply a matter of choice?

Tell *that* to the woman who was sexually abused by her older brother when she was too young and small to fight him off and get away. For years, he used her to act out scenes he saw in pornographic magazines.

What choice did she have?

What about the two girls, aged 7 and 12, who were forced to watch X-rated movies before, during, and after they were horribly sexually abused by a neighbor. The doctor who later examined them said they will never have a normal sexual relationship.

What choice did they have?

What about the young children who were sexually abused by their babysitter after he spent the afternoon watching sexually explicit material with his buddies.

What choice did they have?

Hard-core pornography is just

like pollution in this respect: often the people who do the polluting are not the people who are hurt by it.

Believe me, the victims rarely have a choice.

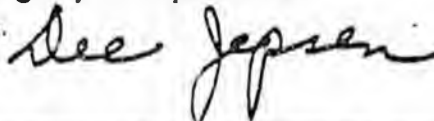
Every day, the tragic stories of sexual abuse of women, young boys and girls, and small children reach me by letter, by phone, on radio talk shows, and after speaking engagements.

When do we stop looking the other way? How can we continue to silently tolerate an entire class of material that results in the explicit degradation, abuse, and humiliation of women and children?

Fighting hard-core pornography is a dirty and distasteful job, but it is time for women in America to stand up and face the challenge. The "Enough is Enough!" campaign is a call to courage. It is a call to battle.

America's women have the courage to answer the call to battle. They are working tirelessly across the country to protect the innocent.

I'm glad you are part of this team.



Dee Jepsen
National Campaign Director

"Pornography is just like pollution in this respect: often the people who do the polluting are not the people who are hurt by it."

Best-Selling Author/Therapist Endorses "Enough is Enough!"



Dr. Barbara De Angelis

Best-selling author and counselling therapist Barbara De Angelis, Ph.D., recently endorsed the "Enough is Enough!" campaign and has added her name to the group's diverse National Committee of Support.

"I strongly support the 'Enough is Enough!' campaign in its efforts to speak out against sexual exploitation in all forms," De Angelis said.

De Angelis is author of three best-selling books — *How to Make Love All the Time*, *Are You the One for Me?*, and *Secrets*

About Men Every Woman Should Know.

"As a professional therapist, I have personally witnessed the damaging effects pornography has on society as a whole and on personal relationships more specifically," De Angelis said.

"Sexual compulsion and addiction destroy intimacy because, by definition, they introduce a third element into your relationship

I strongly doubt that hard-core pornography creates more intimacy. What it does create is more eroticism, which many couples mistake for intimacy." ♦

Olympic Gold Medalist Joins Campaign

Olympic gold medalist Madeline Manning Mims has joined the "Enough is Enough!" campaign. Mims is the well-known athlete who pioneered the 800-meter run for the United States in 1968. She was (and still is) the only woman to bring back a gold medal in this event, along with the American record. At the time she also set a new Olympic record and the World record.

"I grew up in the ghetto in Cleveland, and I've worked closely with young people for the past 17 years. I see what hard-core pornography is doing to destroy young people, families, and relationships," Mims said.

Now an international speaker



Madeline Manning Mims is featured (third from left) in the "Enough is Enough!" billboard.

and an accomplished recording vocalist, Mims has just released a new album whose title song was inspired by the campaign to fight illegal pornography. The lyrics say in part, "We can't let things go on this way. We've got to stand Enough is enough!" ♦

Watch for our next issue!

We'll update you on "Enough is Enough!" training seminars, feature a story about the educational briefing held in Washington, D.C., for business and professional women, tell you about the fashion show benefit held in Chicago sponsored by Liz Claiborne, Inc., and the Chicago Hilton Hotel, and talk about other "Enough is Enough!" activities.

saw involved pornography, he said.

"Pornography is dangerous to children because it is used to facilitate the crime. A molester uses it in three ways — to stimulate himself, to lower the inhibitions of the child, and to educate the child about what to do," Malpas said.

Perhaps the best known study linking pornography and sex crimes against children is one conducted by the Los Angeles Police Department. The study looked at adult arrests for extrafamilial sex crimes against children over a ten-year period. Of the 320 arrests made by the LAPD Sexually Exploited Child Unit from 1980 to 1989, 199 arrests — over 62 percent — involved pornography. This meant that pornography was either used to facilitate the crime or was produced during the victimization of the child. Crimes included child molestation, oral copulation, sodomy, unlawful sex, rape, insertion of a foreign object, and misdemeanor child annoying.

"Pornography is used quite extensively to lower the inhibitions of the children involved and to get them to do what is wanted," said Detective Gary T. Lyon of the LAPD Sexually Exploited Child Unit.

Lt. Jim Wintergerst of the Crimes Against Children Unit in Louisville, Kentucky, corroborated the link between child sexual abuse and pornography. "When we investigate a case," he said, "we will almost always find pornography. It is used to ease the children into sexual activity."

Police officers, social workers,

lawyers, judges, and others who investigate reported instances of child molestation clearly see pornography as an insidious "teaching tool" in the hands of

a correlation."

Many perpetrators admit that pornography plays a key role in the sexual crimes they commit.

"The explicit material put the

"When we investigate a case, we will almost always find pornography."

— Lt. Jim Wintergerst, Louisville Crimes Against Children Unit

those who sexually prey on children.

"When I am dealing with a victim of abuse and I ask them probing questions, I find that pornography was present in the home many, many times," said Deb Hambright, a social worker in Warsaw, Indiana. "My experience shows that there is

thought [of the crime] into my mind. I was around pornography and used it so much that it became an addiction," said a 32-year-old male inmate serving time for molesting an 11-year-old girl. "If I could do it over again, I would never have looked at pornography." ♦

You can help.

Many reporters, and even some law enforcement officials, are unaware of the link between sexual crimes and hard-core pornography. Here's how you can help change that fact:

- 1** Watch your newspapers for stories about sexual crimes in your area, particularly crimes against women and children.
- 2** If a story makes no mention of pornography's involvement, call the main number at the paper and ask for the reporter by name.
- 3** Tell the reporter that you saw the story and that you understand that pornography plays a role in most sex crimes. Ask if the police report indicated that pornography was found in the suspect's possession. You don't need to get into a lengthy discussion, and *please* do not argue with the reporter — you are simply drawing his or her attention to the issue.
- 4** If the reporter wants to know more about hard-core pornography's link to sexual abuse, tell him or her to call us (703-278-8343) for materials.
- 5** Send us articles on sexual crimes in your area, regardless of whether or not they mention pornography. We'll make calls to reporters from our office, too. ♦

"Enough is Enough!"

A monthly newsletter to educate, motivate, and activate women to break pornography's chain of abuse

Together, We Can Stomp Out Hard-Core Pornography!

I believe that women united behind a just cause have immeasurable influence and power.

I think of Candī Lightner, a mother whose child was tragically killed one night in a car crash by a drunk driver. Her personal tragedy compelled her to establish Mothers Against Drunk Drivers (MADD).

One woman's passion and justifiable anger united other women, and together they launched a powerful campaign. In only 11 years, they not only strengthened the nation's laws governing drinking and driving, they totally changed the way we view drunk driving.

If women work together, I know the same thing can happen in the campaign against hard-core, illegal pornography.

I believe women speak with a special authority in the battle against pornography. We are its primary victims — we, our children, and our families.

When I speak to women across the country about pornography's harmful effects, I see a groundswell of indignation and outrage rising. Liberal and conservative women, religious and nonreligious women, old and young, businesswomen and homemakers are ready to fight to remove illegal pornography from their neighborhoods. We don't have to agree on a lot of other issues to come together in this common cause.

The shocking images of child pornography, incest, bestiality, rape, and mutilation that pass today as "adult" entertainment are demeaning and harmful to us as women, to our children, and to men as well. As pornography's chief victims, we have the special motivation — we have the urgent obligation — to demand that the degradation and exploitation stop.

That's what "Enough is Enough!" is all about. This secular, nonpartisan campaign encourages and equips women in the battle against illegal pornography. It is directed by women, staffed by women, and most of its financial support comes from women. We are not creating a new organization. We are initiating a movement.

I'm convinced that the women of America can make the difference on this issue. We can get the laws against illegal pornography enforced. We can get legislation passed where it is needed. We can change the way America thinks about pornography!

We are working to mobilize hundreds of thousands, eventually millions, of women to stand with us and say, "Enough is Enough!"

I urge you to join us in this important war.

Dee Jepsen



Dee Jepsen
National Campaign
Director

"I believe women speak with a special authority in the battle against pornography. We are its primary victims — we, our children, and our families."

First Lady Encourages "Enough is Enough!" Condemns Hard-Core Pornography

First Lady Hillary Rodham Clinton recently encouraged the "Enough is Enough!" campaign.

In a letter sent to director Dee Jepsen, Mrs. Clinton wrote, "I applaud your group's efforts to eliminate child pornography and illegal pornography and appreciate your willingness to take a stand for the children of the nation.

"I know that you have an enormous and challenging task before you, but this is a pressing issue that must be addressed."

Former First Lady Barbara Bush has also written a letter giving her support to the campaign. ♦

In an interview conducted by Dotson Rader, published in Parade Magazine on April 11th, Mrs. Clinton came down hard on pornography:

Parade: In homes with cable TV, very young children can turn on channels showing R-rated and even X-rated films containing extremely graphic sex and violence — films that it is illegal for them to pay to see in a theater. How can you defend the culture of a country that allows a child access to hard-core pornography and extreme violence?

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Mrs. Clinton: I can't defend it! I wouldn't defend it! It's wrong, and I wish it would go away, because I think it's so destructive to children and adults to have that kind of material shown. I don't think there's anything wrong with parents' groups or other groups calling for people to boycott certain kinds of entertainment. That's advocacy, education, and choice.

Tell the truth about illegal pornography!

- ✓ Over 80 percent of child molesters admit to regularly using pornography, often imitating actual scenes during molestations.
- ✓ There are more hard-core pornography outlets in this country than McDonald's restaurants.
- ✓ The typical serial child molester has from 360 to 380 victims in his lifetime. Both adult and child pornography is often used as an aid during the crime.
- ✓ 1 in 3 girls and 1 in 7 boys will be molested before the time they are 18 years old.

Hard-core pornography. It's not what you think.

The "Enough is Enough!" campaign is another voice of the National Coalition Against Pornography.

IMPORTANT MANUAL UPDATE

Child Pornography Laws, State by State

(As of December 1, 1992)

On pages 23-27 of your Take Action Manual, an action item entitled "Strengthen Child Pornography Laws in all 50 States, describes what you need to do to strengthen your state's child pornography law.

Since the initial publication of the Take Action Manual, the "Enough is Enough!" Campaign has received updated information of the status of a number of state child pornography laws. The updated listing of state laws below should be substituted for the listing of states on pages 23-25. State laws in this important area have changed frequently since 1990 and we will continue our attempts to provide the most accurate information available.

The laws regarding the possession of child pornography also vary greatly from state to state. The age in parentheses indicates the age of majority in that state for the purposes of determining what is considered child pornography. For instance, in California it is illegal to possess pornography involving children if they are thirteen years old or younger - however, if the children involved in pornographic scenes are fourteen years or older, the material is not considered child pornography. "F" indicates possession is a felony; "M" indicates possession is a misdemeanor.

States which have no laws dealing with possession of child pornography:

Connecticut
Hawaii
Mississippi

Montana
Rhode Island
Vermont

Wyoming

States in which the the possession of child pornography with the intent to distribute and/or for commercial purposes is illegal:

Alaska	F (18)	Massachusetts	F (18)	New Mexico	F (16)
Maine	F (18)	Nebraska	F (18)	New York	F (16)*
Maryland	F (18)	New Hampshire	F (16)	Virginia	F (16)

The mere possession of child pornography is illegal in the following states:

Alabama	F (17)	Kansas	F (16)	Ohio	M (18)
Arizona	F/M (15/18)	Kentucky	M (16)	Oklahoma	F (18)
Arkansas	F (16)	Louisiana	F (17)	Oregon	F (18)
California	M (14)	Maryland	M (16)	Pennsylvania	F (17)
Colorado	M (18)	Michigan	M (18)	S. Carolina	F (18)
Delaware	M (18)	Minnesota	M (18)	S. Dakota	M (18)
Florida	F (18)	Missouri	M (18)	Tennessee	F (18)
Georgia	M (18)	Nevada	M (16)	Texas	F (17)
Idaho	F (18)	New Hampshire	M (16)	Utah	F (18)
Illinois	F (18)	New Jersey	F (16)	Washington	F (16)
Indiana	M (16)	N. Carolina	F (18)	W. Virginia	F (18)
Iowa	M (18)	N. Dakota	M (18)	Wisconsin	F (18)

**Promote or procure" was interpreted under case law as "receipt, acquisition or to obtain."*

REC-D. C. 1855914553 P. 03

New legal efforts on state child pornography statutes are sorely needed for the well-being of this nation's children. Child pornography laws require five essential components to offer adequate protection for children: 1) prohibition of "mere possession," 2) a uniform age of majority of 18 years, 3) felony status for *all* child pornography offenses, 4) mandatory minimum jail sentences with lengthy probationary periods, and 5) strict enforcement and commitment of significant law enforcement resources. If your state does not possess all five of these components, more work is needed and you can make a big difference.

Important Note: DUE TO THE AVALANCHE OF NEW LEGISLATION SINCE 1990, YOU SHOULD CHECK WITH YOUR STATE ATTORNEY GENERAL FOR THE SPECIFICS OF EACH STATE LAW AND WHETHER IT HAS BEEN UPDATED.

would grant certiorari and vacate the death sentence in this case.

No. 89-7146. Darryl Eugene Freeman, Petitioner v Alabama

496 US 912, 110 L Ed 2d 284, 110 S Ct 2604, reh den (US) 111 L Ed 2d 823, 111 S Ct 8.

June 4, 1990. Petition for writ of certiorari to the Supreme Court of Alabama denied.

Same case below, 555 So 2d 215.

Justice Brennan and Justice Marshall, dissenting.

Adhering to our views that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v Georgia*, 428 US 153, 227, 231, 49 L Ed 2d 859, 96 S Ct 2909 (1976), we would grant certiorari and vacate the death sentence in this case.

No. 89-7423. In Re Kwasi Seitu, Petitioner

496 US 903, 110 L Ed 2d 284, 110 S Ct 2604, reh den (US) 111 L Ed 2d 825, 111 S Ct 10.

June 4, 1990. The petition for writ of habeas corpus is denied.

No. 89-7452. In Re Gareth Wilson, Petitioner

496 US 903, 110 L Ed 2d 284, 110 S Ct 2604.

June 4, 1990. The petition for writ of habeas corpus is denied.

No. 89-7008. In Re Arthur W. Carson, Petitioner

496 US 904, 110 L Ed 2d 284, 110 S Ct 2604.

June 4, 1990. The petition for writ of mandamus is denied.

No. 89-7350. In Re Raymond Swentek, Petitioner

496 US 904, 110 L Ed 2d 284, 110 S Ct 2604, reh den (US) 111 L Ed 2d 833, 111 S Ct 20.

June 4, 1990. The petition for writ of mandamus is denied.

No. 89-6889. In Re Ralph McFadden, Petitioner

496 US 904, 110 L Ed 2d 284, 110 S Ct 2604, reh den (US) 111 L Ed 2d 823, 111 S Ct 7 and reh den (US) 111 L Ed 2d 822, 111 S Ct 7.

June 4, 1990. The petition for writ of mandamus and/or prohibition is denied.

No. 87-6927. Alexis Hamilton, as Natural Mother and Next Friend of James Edward Smith, Petitioner v Texas

496 US 913, 110 L Ed 2d 284, 110 S Ct 2605.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 495 US 923, 109 L Ed 2d 320, 110 S Ct 1958.

MEMORANDUM CASES

No. 88-1213. Employment Division, Department of Human Resources of Oregon, et al., Petitioners v Alfred L. Smith, et al.

496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 872, 108 L Ed 2d 876, 110 S Ct 1595.

No. 89-1341. Maria Graciela Ramirez, Petitioner v Transamerican Natural Gas Corp., et al.

496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 1081, 108 L Ed 2d 942, 110 S Ct 1811.

No. 88-5986. Clyde Osborne, Appellant v Ohio

496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 495 US 103, 109 L Ed 2d 98, 110 S Ct 1691.

No. 89-1382. In Re James Freed, Petitioner

496 US 913, 110 L Ed 2d 285, 110 S Ct 2606.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 1077, 108 L Ed 2d 935, 110 S Ct 1839.

No. 89-1319. Mark Tarka, Petitioner v G. Charles Franklin, et al.

496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 1080, 108 L Ed 2d 940, 110 S Ct 1809.

No. 89-5737. Charles Troy Coleman, Petitioner v James Saffle, Warden, et al.

496 US 913, 110 L Ed 2d 285, 110 S Ct 2606.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 1090, 108 L Ed 2d 964, 110 S Ct 1835.

No. 89-1334. Jerome B. Rosenthal, Petitioner v J. M. Young, et al.

496 US 913, 110 L Ed 2d 285, 110 S Ct 2605.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 1080, 108 L Ed 2d 941, 110 S Ct 1811.

No. 89-6302. Harold G. Williams, Petitioner v Ralph Kemp, Warden

496 US 913, 110 L Ed 2d 285, 110 S Ct 2606.

June 4, 1990. The petition for rehearing is denied.

Former Decision, 494 US 1090, 108 L Ed 2d 965, 110 S Ct 1836.

[495 US 103]
 CLYDE OSBORNE, Appellant

v

OHIO

495 US 103, 109 L Ed 2d 98, 110 S Ct 1691, reh den (US) 110 L Ed 2d 285,
 110 S Ct 2605

[No. 88-5986]

Argued December 5, 1989. Decided April 18, 1990.

Decision: Ohio held permitted, under Federal Constitution's First Amendment, to ban possession and viewing of child pornography; remand held necessary to insure proof of each element of offense.

SUMMARY

An Ohio statute which was designed to combat child pornography made it a crime for a person to possess or view any material or performance that shows a minor who is not the person's child or ward in a state of nudity, except under specified circumstances. A person in Ohio was accused of violating the statute after he was found to possess in his home four photographs, each of which depicted a nude male adolescent posed in a sexually explicit position. The accused's counsel, moving to dismiss the case before trial, alleged that the statute was overbroad, in that it criminalized conduct that was protected under the Federal Constitution. The trial court overruled the motion to dismiss and subsequently gave the jury instructions to which the accused's counsel made no objection. The accused was found guilty as charged, and his conviction was affirmed by an Ohio appellate court. The Supreme Court of Ohio, affirming in turn, held that (1) the Federal Constitution's First Amendment does not prohibit states from proscribing the private possession of child pornography; (2) the statute was not overbroad, because it was to be construed as (a) applying to only a depiction of nudity that "constitutes a lewd exhibition or involves a graphic focus on the genitals," and (b) including scienter as an essential element of the offense; (3) the accused, by failing to make a timely objection to the jury instructions as given, waived any claim that the trial court erred in failing to instruct the jury that the term "nudity" referred to a lewd exhibition of the genitals; and (4) the instructions as given were not plainly erroneous (37 Ohio St 3d 249, 525 NE2d 1363). The Ohio Supreme

Briefs of Counsel, p 809, *infra*.

OSBORNE v OHIO

(1990) 495 US 103, 109 L Ed 2d 98, 110 S Ct 1691

Court denied a motion for rehearing and granted a stay pending appeal to the United States Supreme Court.

On appeal, the United States Supreme Court reversed and remanded. In an opinion by WHITE, J., joined by REINQUIST, CH. J., and BLACKMUN, O'CONNOR, SCALIA, and KENNEDY, JJ., it was held that (1) Ohio's proscription of the possession and viewing of child pornography was permitted under the First Amendment because (a) Ohio did not rely on a paternalistic interest in regulating a person's mind, but rather sought to serve a compelling state interest in protecting the victims of child pornography, and (b) it was reasonable for the state to conclude that such proscriptions were necessary in order to decrease the production of child pornography; (2) the statute, as construed by the Ohio Supreme Court to include the elements of scienter and lewd exhibition, was not unconstitutionally overbroad; (3) the Ohio Supreme Court properly applied its narrowed construction of the statute to the accused's conduct, since the accused had had notice that his conduct was proscribed; (4) the United States Supreme Court was precluded from reaching a due process claim involving the trial court's failure to instruct the jury as to scienter, because the failure of the accused's counsel to comply with a state procedural rule requiring a timely objection to the jury instructions constituted an independent state-law ground adequate to support the result below; (5) the United States Supreme Court was not precluded from reaching a due process claim involving the trial court's failure to instruct the jury as to the lewdness element of the offense, because counsel had pressed the issue of the prosecution's failure of proof on lewdness before the trial court, and, under the circumstances, nothing would be gained by requiring counsel to object a second time, specifically to the jury instructions; and accordingly (6) it was necessary to remand the case for a new trial in order to insure that the conviction stemmed from a finding that the prosecution had proved each of the elements of the offense.

BLACKMUN, J., concurring, joined the court's opinion and expressed the view that the United States Supreme Court's ability to entertain the accused's due process claim which was premised on the trial court's failure to charge the "lewd exhibition" and "graphic focus" elements of the offense did not depend on the accused's objection to this failure at trial.

BRENNAN, J., joined by MARSHALL and STEVENS, JJ., dissenting, expressed the view that (1) the accused's conviction should be reversed, but Ohio should not be free on remand to retry him under the statute; (2) the statute, even as construed by the Ohio Supreme Court, was fatally overbroad because (a) the construction focused on "lewd exhibitions of nudity" rather than "lewd exhibitions of the genitals" in the context of sexual conduct, and (b) the "graphic focus" test was unduly vague; (3) even if the statute was not overbroad, Ohio could not criminalize the accused's possession of the photographs at issue, and (4) the accused's due process challenges arising from the Ohio Supreme Court's addition of the scienter element, as well as his claim stemming from the creation of the "lewd exhibition" and "graphic focus" tests, were properly before the United States Supreme Court, because