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CHILD PORNOGRAPHY

Although laws against pornography have been singularly ineffective since the late 1960s, our nation may be recouping both its will and its ability to deal with this criminal deviation at least when it impacts on children. The Child Protection Act of 1983 has passed both Houses of Congress and is now in conference committee where a few minor details are being ironed out.

Child pornography is the use of children in pictures, books or films to perform sex acts, or to pose in lewd positions or circumstances. It is a perversion so heinous that it should be absolutely prohibited, and the 400-1 vote in the House shows the political power of this issue when it gets to a vote.

The new Child Protection Act will, according to Cong. William Hughes (D-NJ), the sponsor along with Senator Chuck Grassley (R-IA) in the Senate, "enable us to better identify, prosecute and punish these despicable child molesters." The bill would raise the fine for a first offense from $10,000 to $100,000 and from $15,000 to $200,000 for subsequent offenses.

Far more important than the raising of the penalties, however, is the way the new bill eliminates the reason why, for the last 15 years, police have seldom bothered to arrest porn-peddlers, and prosecuting attorneys have seldom bothered to prosecute. That reason has been their belief that their work will be for naught because the courts will reverse all convictions after the porn lawyers wrap the smut-peddlers in the sacred mantle of the First Amendment.

Beginning in the mid-1960s, the Supreme Court tied the hands of the police and the prosecutors by requiring any conviction to meet a highly-contrived and almost impossible definition of obscenity. Under the Supreme Court rulings, nothing could be judged "obscene" unless it was "utterly without redeeming social value."

So, the high-priced porn lawyers outdid themselves in arguing that a shred of "social value" on a half-page of a book, or in fleeting episodes in a movie, should justify a

full-length book or movie of shocking depravity. If the porn lawyers could argue that the material had one iota of "serious" literary, artistic or political content, then the pornography and its peddlers would be protected by the First Amendment.

On July 2, 1982, the Supreme Court opened up a real opportunity for effective prosecution and conviction. In New York v. Ferber, the Court held that the prevention of the sexual abuse of children is "a governmental objective of surpassing importance" and that child pornography is not protected by the First Amendment.

The New York law upheld in the Ferber decision prohibits any pictures of children under age 16 in sexual conduct or in lewd positions or circumstances. To obtain a conviction, prosecuting attorneys now need show only that the materials portray under-age children in sexual poses.

At the time of the decision, only 20 states had the strong New York-type law upheld in the Ferber case. The remaining 30 states and the Federal Government had weaker laws that were virtually unenforceable; they usually required proof that the child pornography met the difficult legal definition of "obscenity."

Once the Supreme Court gave the green light, strong child porn bills began to be passed in many state legislatures, city councils, and Congress. The public demand was overwhelming; 7,000 letters poured into the Senate Committee handling the bill.

One of the most interesting features of this national debate over the last years is the line-up of players in the legislative battles to pass stronger laws. Contrary to what one might expect, the chief witnesses against the child pornography bill were not the pornographers (they were hiding under a rock somewhere), but the American Civil Liberties Union (which always litigates in behalf of a radical interpretation of the First Amendment) and the librarians.

Strangely, many of the state laws against child pornography exempt librarians, and the librarians want to protect their specially privileged status to put any book on the shelves and make it available without any "age discrimination."

The sexploitation of children is such a hideous variety of child abuse that the strongest laws against child pornography should be written and enforced against everyone, including bookstores, theaters, schools, and libraries. The selling or displaying of children in sexual acts or lewd positions cannot be tolerated by a civilized society.