

OCEANFRONT BATTLEGROUND

BY RICK HENDERSON

Elected officials in Santa Monica, California, make a point of being Politically Correct. At the weekly meetings of the city's rent control board, three of the five members refuse to recite the Pledge of Allegiance; instead, they observe a moment of silence as a protest against U.S. policy in El Salvador. During the March 29 meeting, a member of the American Civil Liberties Union gave a 15-minute presentation opposing capital punishment. The board later issued a proclamation asking Gov. George Deukmejian to grant clemency to murderer Robert Alton Harris.

The board may soon find that it has little more influence over rents in Santa Monica than it does over U.S. foreign policy or the criminal justice system. Eleven years after successfully backing some of the strictest rent laws in the nation, the Santa Monica rent-control coalition faces a fight for its life. Frustrated landlords threaten to take as many as 20 percent of the city's rental units off the market within three years. And the next court challenge to Santa Monica's rent control charter might invalidate it.

These challenges to rent control reflect a nationwide trend. Syndicated columnist Neal R. Pierce, writing in *National Journal*, reports that rent control may be illegal in as many as 45 states by year's end. An early draft of the U.S. Senate's omnibus housing bill (sponsored by California Democrat Alan Cranston) would have withheld federal housing funds from rent-controlled cities unless the cities could prove that their laws don't harm the housing market.

Santa Monica's rent control law, passed in 1979, differs from most around the country because it doesn't even allow landlords to increase rents when a tenant moves out. (By contrast, the rent control laws in surrounding Los Angeles County do permit such "vacancy decontrol.")



Threats to close Sea Castle Apartments drove a wedge into the rent-control coalition.

Santa Monica's law limits annual rent increases to two-thirds of the Consumer Price Index, in a market where housing and land prices are going up far faster than the CPI. And, when enacted, it rolled back rents by 10 percent. As a result, rents are far below market value: 25 percent lower, estimated a 1987 study by the Los Angeles Planning Group, a consulting firm.

Until 1986, Santa Monica also made it nearly impossible for anyone to get out of the rental business. That year, however, the state legislature gave landlords a legal escape hatch with the Ellis Act. The act lets property owners go out of business if they convert apartments into condominiums, tear down the apartments and build single-family dwellings, or use the property for noncommercial purposes.

Since Ellis became law, nearly 1,000 of the city's 33,000 rent-controlled apartments have disappeared from the marketplace.

One event in late January signaled a crisis for rent-control advocates: the "El-

lising" of the oceanfront Sea Castle Apartments. Sea Castle's owner threatened to use the Ellis Act to close the 278-unit structure and evict its 400 tenants. Residents panicked; Mayor Dennis Zane and rent board chairwoman Susan Packer Davis vowed to pressure the legislature into altering or repealing the Ellis Act.

But a new phenomenon emerged from the Sea Castle announcement. The once-solid bonds among "tenants' rights" activists began to dissolve.

About 80 percent of the city's 96,000 residents are renters. A three-pronged coalition originally pushed Santa Monica into its strict rent-control position: left-liberals, led by Tom Hayden's Campaign for Economic Democracy; longtime residents who objected to property developers and to the multifamily housing that had replaced beachfront cottages; and

tenants concerned about the annual double-digit increases in their rents. This mixture of ideology and pragmatism held together for nearly a dozen years.

The Sea Castle crisis widened an existing rift between leftist ideologues and Santa Monicans for Renters' Rights, the powerful 5,000-member tenant group that once hand-picked the city's elected officials. In the past, SMRR consistently opposed property owners; now the group tosses aside ideology when it conflicts with the self-interest of members.

SMRR is trying to cut a deal that protects rent control for current tenants while keeping apartments on the market. Recent proposals include partial vacancy decontrol, permission for property owners to pass maintenance and renovation costs along to tenants, and the optional use of binding arbitration to settle landlord/tenant disputes.

Some rent board actions have antagonized tenants. Last fall, a plan devised by rent commissioner Wayne

RENTCONTROL

Bauer offered landlords the opportunity to increase rent on two-thirds of their vacant units if they set aside the other third for low-income tenants. A NIMBY (Not In My Back Yard) effect set in: Tenants opposed both the rent hikes and the prospect of sharing their buildings with welfare families. Landlords didn't flock to the plan because they wanted to negotiate a better deal.

SMRR's recent maneuvers have sent local politicians scrambling. Rent commissioners Davis, Bauer, and Eileen Lipson will not seek reelection this fall. Bauer says SMRR is dominated by "yuppies" who don't care about low-income tenants; he threatens to campaign against its slate of candidates in November. Davis blames SMRR for making a series of "bad compromises," and refuses to "preside over a dying system." But Mayor Zane, a founder of SMRR, cautions that tenants "must be willing to consider things [they] would have rejected five years ago."

Attorney Carl Lambert, a property owner and spokesperson for the landlord group Action, says this deal cutting is "too little, too late." Action plans to place a vacancy-decontrol initiative on the November ballot. Without full decontrol, Lambert contends, landlords will pull between 5,000 and 10,000 of the city's rent-controlled apartments from the market within two years. Even with new commissioners, Action believes that the rent board will try to consolidate its power; under partial decontrol, the board would continue to regulate rent increases. Lambert hopes tenants and property owners will unite to throw out the most draconian aspects of rent control.

A final specter haunts Santa Monica's rent control: legal challenges. In 1986, the U.S. Supreme Court upheld the rent control charter as a legitimate exercise of the city's "police power." But recent court decisions, especially *Nollan v. California Coastal Commission* (U.S. Supreme

Court, 1987) and *Seawall Associates v. City of New York* (New York Court of Appeals, 1989), may serve as precedents for challenging the charter as an unjustified taking of private property for public use. The city has avoided major court cases since *Seawall*, and the rent board relies heavily on its legal staff to prevent any changes in regulations that may inspire lawsuits. At the March 29 meeting, Chairwoman Davis repeatedly said, "We want to stay out of court."

Both landlords and tenants believe that rent control will soon wear a different face. The Rent Control Board will have a new majority while tenants confront a rapidly shrinking rental market. "Santa Monica may continue to have the strictest rent control laws in the country," attorney Lambert concludes, "but both tenants won't be too happy about it."

Rick Henderson is researcher/reporter for REASON.

REASON PAPERS

A Journal of Interdisciplinary Normative Studies

No. 8 (Summer 1982) (\$5)

- *"Four Kinds of Equality" by A. Flew
- *G. Harman & J. Kekes on the nature of philosophy
- *J. H. Ahrens & F. D. Miller, Jr., on individuals rights and the minimal state

No. 9 (Winter 1983) (\$5)

- *N. Capaldi on Mill's libertarianism
- *"A Physical Definition of Rights" by M. D. Rogers and A. Weiss
- *"Self-Love and Benevolence" by D. J. Den Uyl
- *Chris Morris on natural rights
- *I. Lomasky reviews Nozick's *Philosophical Explanations*

No. 10 (Spring 1985) (\$5)

- *Jack High on Ethics and Economics
- *"Choice and Rationality" by Antony Flew
- *D.L. Norton on the ethics of 'flourishing'
- *N. Capaldi reviews J. N. Gray's *Mill on Liberty: A Defence and Hayek and Liberty*

No. 11 (Spring 1986) (\$5)

- *"Community without Coercion" by Hannes H. Gissurarson
- *S. Rappaport on Milton Friedman's methodology of economics
- *"Troubles with Flourishing" by G. Harman
- *L. Lomasky reviews Derek Parfit's *Reason and Persons*

No. 12 (Spring 1987) (\$5)

- *"Marxism as Pseudo-Science" by E. van den Haag
- *Liberty, Virtue and Self-development: A Eudaimonistic Perspective" by D. L. Norton
- *John Ahrens on exploitation
- *R. Dipert reviews D. Kelley's *The Evidence of the Senses*

NO. 13 (Spring 1988) (\$10)

A Festschrift for John Hospers

- *Marry Sirridge
- *Randall Dipert
- *Randy Barnett
- *Eric Mack
- *Fred D. Miller, Jr.
- *Jeffrey Paul
- *Douglas Rasmussen
- *John Hospers
- *Tom Regan
- *D. J. Uyl reviews Allan Bloom's *Closing of the American Mind*
- *et. al.

No. 14 (Spring 1989) (\$11)

Special Lomasky Symposium

- *Tibor Machan
- *Douglas Rasmussen
- *Eric Mack
- *Chris Morris
- *Loren Lomasky
- *S. Yates and Wm. Davis discuss Rorty's anti-foundationalism
- *Stuart Warner on John Locke
- *M. Scott Arnold on radical social critiques

Back Issues content samples

REASON PAPERS is published at the Department of Philosophy, Auburn University, AL 36849. Send orders (\$12.00 per copy in US and Canada, \$13.00 elsewhere; make checks payable to *Reason Papers*) to Professor Tibor R. Machan, *Reason Papers*, Department of Philosophy, Auburn University, AL 36849. Manuscripts should be accompanied with return postage and envelope. Copyright 1989 by the Department of Philosophy, Auburn University. All rights reserved.

THE NEW THALIDOMIDE

BY STANTON PEELE

A growing number of pregnant women in the United States avoid alcohol as if it were thalidomide. The pronouncements of government officials, journalists, and other professional alarmists have convinced them that drinking any amount of alcohol during pregnancy endangers the fetus. This new conventional wisdom is embodied in the federal warning that now appears on every bottle of wine, beer, and liquor manufactured for sale in this country: "According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects."

The horrible effects of fetal alcohol syndrome—which include mental retardation, cardiac defects, and facial deformities—were publicized throughout the 1980s. More recently, *The Broken Cord*, Michael Dorris's account of his experiences in raising an adopted Native American child suffering from FAS, has renewed the storm of anxiety about alcohol consumption during pregnancy. Dorris's book warns people that the danger of drinking by pregnant women has been vastly underestimated. The news media have been eager to amplify that view.

The success of the campaign against drinking during pregnancy demonstrates that any attacks on alcohol, no matter how far-fetched, misleading, or counter-productive, are nowadays immune from criticism. By blurring important distinctions, reports on FAS have generated needless worry among occasional or moderate drinkers while distracting attention from the real problems of prenatal care.

People have long recognized that heavy alcohol consumption is a risky behavior for pregnant women. But U.S. researchers first used the term *fetal alcohol*



syndrome in the early 1970s to describe severe abnormalities in the newborn children of alcoholic mothers, including brain damage and readily observable physical deformities.

Such children are quite rare, however, even among heavy drinkers. In their 1984 book *Alcohol and the Fetus*, based on a comprehensive survey of the research, Dr. Henry Rosett and Lyn Weiner of Boston University reported that studies find FAS occurs in only 2 percent to 10 percent of children born to alcohol abusers. Furthermore, they reported that in every one of the 400 FAS cases described in the scientific literature, the mother "was a chronic alcoholic who drank heavily during pregnancy."

The infrequency of FAS has prompted researchers to expand their focus beyond the severe birth defects sometimes caused by heavy drinking. Hence "fetal alcohol effect," which refers to more-subtle impairment that might ordinarily escape attention. Closely tied to the rather vague notion of fetal alcohol effect is the suggestion that light or moderate drinking might also be dangerous. Warnings about FAS, fetal alcohol effect, and the alleged risks of any drinking during preg-

nancy get tossed together in the news media.

A February article by Dr. Elisabeth Rosenthal in *The New York Times Magazine*, "When a Pregnant Woman Drinks," begins with a horrific tale of an FAS victim. In this case, not only did the 8-year-old girl have FAS, but so did her siblings and her mother. Immediately following this extreme example, the article describes how Dr. Claire Coles, an FAS expert, has begun to "see the survivors of drinking pregnancies everywhere." For example, upon visiting a reform school Coles observed, "My God, half these kids look alcohol affected."

The bait-and-switch juxtaposition of Coles's observation with the severe FAS case creates the false impression that such alcohol-related birth defects are common. *Alcohol affected*, the term used by Coles, is generally applied to infants who have problems that fall short of FAS, such as irritability, attention deficits, hyperactivity, or developmental delays. The condition cannot be discerned simply by looking at a child. But for those who see fetal alcohol effect "everywhere," even criminal behavior may be the result of a mother's drinking. (Attorneys representing condemned California murderer Robert Alton Harris offered such an argument.)

Increasingly, problems such as delinquency and learning disabilities are being attributed to maternal drinking. Combined with warnings about moderate alcohol consumption, this tendency is likely to cause irrational guilt among many parents. The mother of a child who gets into trouble or has difficulty in school will start to wonder if this has anything to do with the wine she occasionally drank during her pregnancy.

Weiner, co-author of *Alcohol and the Fetus*, has described the anxiety caused by exaggeration of the danger from drink-