

Testimony of Rachel Weintraub
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Before the
U.S. Consumer Product Safety Commission
Field Hearing on All-Terrain Vehicle Safety

Morgantown, West Virginia

June 5, 2003

Chairman Stratton, Commissioner Gall and Commissioner Moore, thank you for the opportunity to speak today and thank you for holding this important hearing today. We are appreciative of your efforts to hear from those of us who are concerned about the current state of ATV safety in the United States. My name is Rachel Weintraub; I am assistant General Counsel at Consumer Federation of America (“CFA”). CFA is a non-profit organization association of 300 consumer groups, with a combined membership of more than 50 million people. CFA was founded in 1968 to advance the consumers’ interest through advocacy and education. CFA has been working on ATV safety issues for many years. This past August, Consumer Federation of America and eight other medical, consumer, and conservation groups also filed a petition with CPSC calling on CPSC to ban the sale of adult size ATVs for use by children and to refund consumers for adult-size ATVs bought for use by children under 16. The CPSC agreed to docket the issue of banning the sale of four-wheel adult size ATVs for use by children under 16.

My main message to you today is that the history of ATVs in the United States proves that the current approach-- the industry’s self-regulating approach-- to safety is not working. Self-regulation by the ATV industry has led to larger and faster ATVs and more children being killed and injured. The number of deaths and injuries is approaching those of the 1980s, when the ATV industry was forced to stop manufacturing three-wheel ATVs, after CPSC initiated a lawsuit against them. CPSC’s own data illustrates that CPSC and the states must act to end this hidden epidemic by moving aggressively to protect young children from the dangers posed by adult-size ATVs and to pass mandatory safety standards.

I. History:

Faced with increasing rates of injury and death to all consumers and especially children in ATV- related incidents, CPSC took a two-tiered approach: in 1985 it initiated rulemaking, which it abandoned without success in 1991, and in 1987 it filed a lawsuit against ATV manufacturers. CPSC asked a federal court to declare ATVs to be “imminently dangerous consumer products,” and sought to require that manufacturers:

- 1) end production of three-wheel ATVs,
- 2) repurchase all three-wheel ATVs from dealer stocks,
- 3) offer financial incentives to owners of three-wheel ATVs to return them, and
- 4) provide safety education.

The lawsuit was settled on the day it was filed by a consent decree that proved ineffective. While manufacturers discontinued production of three-wheel ATVs, one of the most important elements of the original lawsuit -- the requirement that manufacturers offer financial incentives to encourage owners of three-wheel ATVs to return them to dealers -- was not included. This loophole has allowed three-wheel ATVs still in use to pose significant hazards to consumers. In fact, in 2001, 14 years after production of three-wheel ATVs ceased, there were 10,000 injuries caused by those vehicles.

When the consent decree expired in 1998, the Commission and the major manufacturers entered into voluntary, company-specific agreements, known generally as “ATV Action Plans.” These agreements, in place today, merely recommend that children under sixteen not ride adult-size ATVs, require warning labels, describe information to be

included in owner's manuals, and reiterate that training will be available to purchasers of new ATVs. However, the "Action Plans" have proven inadequate to curb the rising rates of death and injuries to children. In fact, CPSC's own data shows a striking increase in the number of injuries since the consent decree expired.

The history of ATVs demonstrates the ineffectiveness of the voluntary approach and compels new action by CPSC, the states, and the industry. The ban on the new production of three-wheel ATVs, while a partial inroad to safety, has led to the misconception that the ATV safety crisis had been solved. Tragically four-wheel ATVs have proven to be as unsafe as their three-wheel predecessors.

II. CPSC Data Consistently Shows that ATV- Related Injuries and Deaths are Increasing

Between 1982 and 2001, at least 4,541 adults and children were killed in ATV accidents. Between 1993 and 2001, the number of injuries caused by ATVs more than doubled. In 2001 alone, 111,700 people were injured seriously enough by ATVs to require emergency room treatment. Between 1993 and 2001, the number of injuries involving four-wheel ATVs increased by 211 percent to nearly 100,000.

Tragically, the CPSC data show that children under 16 are most at risk.

Between 1982 and 2001, 1,714 children under the age of 16 – or 38 percent of the total number of fatalities – were killed in ATV accidents. Of those, 799 were children under

age 12. Between 1993 and 2001, ATV-related injuries suffered by children under 16 increased 94 percent to 34,800.

There have been statistically significant increases in ATV injuries from 1997 to 2001. Injury rates for four-wheel ATVs have increased -- for example in 1993 there were 164.7 injuries per 10,000 vehicles while in 2001 there were 261.8 injuries per 10,000 vehicles.

The statistical evidence on injuries and the follow-up surveys with those injured by ATVs necessitating emergency room treatment demonstrates that the voluntary system has failed to protect the public, especially with respect to children. Relying on the ATV industry to communicate safety information to consumers has resulted in an ill-informed public lacking training about the operation and driving of ATVs. Children under 16 are injured almost exclusively by adult-size ATVs even though the industry claims that it does not sell them for use by children. The result of this scenario is that people are being injured in record numbers. I have attached several exhibits to my testimony that graphically demonstrate the general trends, but others testifying today will provide the detailed discussion.

Injuries caused by driving or riding ATVs have risen dramatically since the consent decree was replaced with the voluntary "ATV Action Plans" in 1998 (see Exhibit 1). In 2001 injuries were at a record level, exceeding 100,000 for the first time since 1986. Injuries in accidents involving 4-wheel ATVs alone have risen to almost 100,000.

Although the data necessary to calculate injury rates with precision has been withheld, based on our estimate of seven million ATVs in use, we believe that the per vehicle accident rate has increased for the first time in almost 20 years. Moreover, the magnitude of the problem is so large that even if the per vehicle accident rate were constant, the number of injuries has grown so large that it poses a major public health problem.

The banning of the production of three-wheel ATVs has not solved the problem (see Exhibit 2). In 2001 there were almost 100,000 injuries on 4-wheel ATVs. The injury rate to children under sixteen have been increasing since the 1980's. Virtually all of the children injured were operating ATVs that are larger than the size limitation recommended for their age group (see Exhibit 3). The average size of vehicles operated by children is now approximately 240 cc, even though industry and CPSC "recommends" that no child under 16 operate a vehicle larger than 90 cc.

That children are being injured on vehicles that are too large should come as no surprise, since voluntary efforts to better inform and better train the public have failed. Only a small percentage of the public is aware of the recommended size limitation for child operation (see Exhibit 4). Only 13 percent of the injured ATV riders who responded to the CPSC's special survey of a representative sample of those injured in ATV accidents, were aware of a warning label about vehicle size for children under 12 and only 38 percent were aware of a warning label for children under 16.

Awareness of warnings is not greater among owners of more recently purchased vehicles, which presumably have labels to which dealers are supposed to be directing the public's attention as part of the voluntary "ATV Action Plans" (see Exhibit 5). On the critical issue of the recommended size of vehicles for a particular age group, awareness of the age limitation on the warning label has declined slightly.

The extent of formal training, from an organized program or a dealer, has not been boosted by the voluntary program (see Exhibit 6). In 1997 only 3.6 percent of the injured ATV operators received formal training. In 2001, the number was virtually identical, 3.7 percent. Children do not receive formal training to a significantly greater extent. Only 5.4 percent of injured children receive such formal training. Children are more likely to receive training from a friend or relative (see Exhibit 7). However, with so few riders receiving formal safety training over a period of many years, this group is unlikely to possess the skills and knowledge necessary to ensure effective training.

With the ineffectiveness of education and training, we would expect that ATV operators are engaging in behaviors that put them at risk of injury and death. We have already noted the prevalence of one critically important behavioral failure -- the fact that virtually all injured children were operating vehicles that are too large. The other risky behaviors are also in evidence.

Over one-third (37 percent) of the children injured were carrying a passenger, considerably more than the one-fifth of adults (see Exhibit 8). When asked whether the

children carry passengers as a matter of general operating practice, almost half (47 percent) said that they do. This is only slightly more than the adults (44 percent).

The other behavioral variable that is important is the protective clothing that the operators were wearing. Unfortunately, they were not well protected at all (see Exhibit 9). Just over half of the children (53 percent) and just under half of the adults (48 percent) were wearing helmets at the time of the accident. For other safety apparel, the portion wearing goggles, gloves and boots falls in the range of one-fifth to one-quarter.

When asked about the general practice of wearing a helmet, the responses are just as discouraging (see Exhibit 10). Helmets are reported to be worn by 42 percent of the children all of the time, while for adults it is 41 percent. About one-third of the children wear a helmet part of the time and a quarter never wear one at all. One-third of the injured adults do not wear a helmet any time.

It is hard to imagine a more striking picture of the failure of an industry's voluntary program to protect the public, especially children. A program that is supposed to rely on education and training is failing to deliver the message. To put the matter bluntly from the point of view of children injured in ATV accidents:

- * 95 percent of the children operating ATVs are not receiving the organized training that is recommended;
- * 95 percent are driving vehicles that are larger than they should be;
- * between two-thirds and nine-tenths are unaware of the warning labels spelling out the "do's and don'ts" for operating ATVs; and

* half are not wearing the proper protective apparel that is recommended.

This is not only an accident waiting to happen; it is an accident that is happening, tens of thousands of times, resulting in a record number of injuries. The injuries associated with ATVs are a public health problem that demands action by CPSC and state governments.

III. Children Should Not Operate Adult Size ATVs

The Commission, as well as experts in child health, has concluded over the years, that ATVs are inherently difficult to operate for adults and beyond the development capability of children to control.

Driving an ATV requires the rider to make instantaneous decisions and adjustments. According to CPSC, drivers of ATVs must make complex split-second decisions:

If the ATV hits a bump, the driver has to determine almost instantaneously, the throttle setting, steering angle, and position of his/her body on the ATV. Such information can only be processed so fast and if the occurrence of the circumstances exceeds the ability of the driver to react appropriately, an incident will likely occur.¹

Children do not have the physical or mental abilities to make these complex, split-second decisions.

Medical researchers also challenge the safety records of four-wheel ATVs. One set of doctors conclude that “[D]ata are available stating both types lack appropriate lateral stability . . . our data reveal that these vehicles [four-wheel ATVs] may be extraordinarily difficult to control even with smaller engines and age-specific engine recommendations.”²

A 1998 study of neurological injuries associated with ATVs reached a similar conclusion. “Although manufacturers have touted the four-wheel vehicles as being safer than the three-wheel variety, the relative increase in safety is negligible, especially considering the criteria that led to the recall [sic] of three-wheel ATVs. Injuries sustained in accidents involving four-wheel ATVs are just as severe as those incurred with three-wheel ATVs.”³ This study further questioned whether the safety had actually improved under the consent decree based on the fact that four-wheel ATVs were involved in 74 percent of fatal ATV accidents. By 2000, four-wheel ATVs were involved in more than 90 percent of fatalities. The authors conclude their analysis as follows: “To use a familiar phrase, ATVs are unsafe at any speed for children and adolescents.”⁴

The American Academy of Pediatrics (AAP), which represents 57,000 primary care pediatricians, pediatric specialists and surgeons, issued its first formal policy

¹ U.S. Consumer Product Safety Commission, *Briefing Package on All-Terrain Vehicles*, March 1991, p. 19.

² Lynch JM, Gardner MJ, Worsley J, *The Continuing Problem of All-Terrain Vehicle Injuries in Children*, *Journal of Pediatric Surgery*, 1998, 33(2): 331.

³ Russell A, Boop FA, Cherny WB, Ligon BL, *Neurological injuries associated with all-terrain vehicles and recommendations for protective measures for the pediatric population*, *Pediatric Emergency Care*. 1998; 14(1): 31-35.

⁴ *Id.* at 35.

concerning use of ATVs by children in 1987. In June 2000, the AAP updated and strengthened its recommendation that children younger than 16 not be allowed to operate ATVs regardless of size. In making this recommendation, the Academy concludes: “[O]ff-road vehicles are particularly dangerous to children younger than 16 years who may have immature judgment and motor skills An automobile driver’s license, and preferably some additional certification in ATV use, should be required to operate an ATV. The safe use of ATVs requires the same or greater skill, judgment and experience as needed to operate an automobile.”⁵

The American Academy of Orthopaedic Surgeons (AAOS), the world’s largest medical association for musculoskeletal specialists, has also issued a formal Position Statement on ATVs. The Association states “[I]n light of statistics that show an inordinate number of injuries and deaths resulting from the use of ATVs, the American Academy of Orthopaedic Surgeons considers ATVs to be a significant public health risk.”⁶ The Academy highlights the multitude of factors that make ATVs particularly unsafe for children: “Children under age 12 generally possess neither the body size or strength, nor the motor skills or coordination necessary for the safe handling of an ATV. Children under age 16 generally have not developed the perceptual abilities or judgment required for the safe use of highly powerful vehicles.”⁷

Doctors at Children’s Hospital Medical Center in Cincinnati, who studied ATV-related injuries to children for nearly a decade state:

⁵ American Academy of Pediatrics, *All-Terrain Vehicle Injury Prevention: Two-, Three-, and Four-Wheeled Unlicensed Motor Vehicles*, *Pediatrics*, 2000; 105(6): 1352-1354.

⁶ American Academy of Orthopedic Surgeons, *Position Statement; All-Terrain Vehicles*, 1999.

⁷ *Id.*

“It is unfathomable that it is illegal for children to drive automobiles until they are 16 years of age, pass a driver’s training class, and obtain a valid driver’s license, yet we permit even younger children to ride ATVs without helmets, safety gear, formal training, parental supervision, or licenses. ATVs are in fact more dangerous than automobiles since the rider’s body is fully exposed and not protected by the car’s frame and body.”⁸

While there seems to be almost universal agreement among experts that children should not be riding adult-size ATVs, no mechanisms are in place to ensure that this does not happen. All of the data demonstrate, however, that this is happening and that too many children are getting killed and injured when they drive vehicles that are too large for them.

IV. CFA’s Recommendations for A New Approach

Based upon a history that has failed to curb an increasing number of deaths and injuries to ATV riders, especially children, CFA, recommends that:

* The Consumer Product Safety Commission (CPSC) should prohibit the sale of adult-size ATVs for use by children under 16 years old. In our petition, filed with eight other groups including the American Academy of Pediatrics, American Academy of Emergency Physicians, National Association of Orthopaedic Nurses, Center for Injury Research and Policy, U.S. PIRG, Kids in Danger, Danny Foundation, and Bluewater

Network, we petitioned CPSC urging it to ban the sale of adult-size four-wheel ATVs for use by children under 16. CPSC's granting of our petition will have the desired effect of limiting ATV death and injuries especially to children:

1) This is not a radical approach. This will make mandatory what is voluntary now, but which has been failing American consumers. The industry espouses the "golden rule" that children under 16 should not be riding adult-size ATVs but the data shows that this "golden rule" is not being complied with by ATV dealers. Not only are children riding ATVs that are too big for them, but also that they are getting killed and injured at higher rates than adults, when riding these adult-size machines. Making this "golden rule" mandatory will have important life saving impacts.

2) A regulatory ban on sales of adult-size ATVs for use by children will give CPSC a remedy against dealers who fail to comply with the "age recommendations" of the ATV action plans. A regulatory ban will fill that void, since the penalty provisions of the CPSC's statutes, which apply directly to dealers, make it unlawful to "manufacture for sale, offer for sale, distribute in commerce, or import into the United States" a consumer product that does not conform to an applicable standard, including a regulatory ban. In reality, a ban will act as an incentive to dealers and manufacturers to comply with age restrictions.

3) A regulatory ban would accomplish what the "age recommendation" of the consent decree and the ATV Action Plans have failed to do: send a powerful message to

⁸ Brown R, Koepflinger M, Mehlman C, Gittelman M, Garcia V, *All-Terrain Vehicle and Bicycle Crashes*

parents about how dangerous large ATVs are for children. As the situation now stands, by failing to prohibit the sale of ATVs for children, but permitting their sale with accompanying warning labels of age recommendations, the CPSC has sent a mixed message to parents and their children: although ATVs are dangerous, a child may nevertheless be able to operate one if given the appropriate supervision.

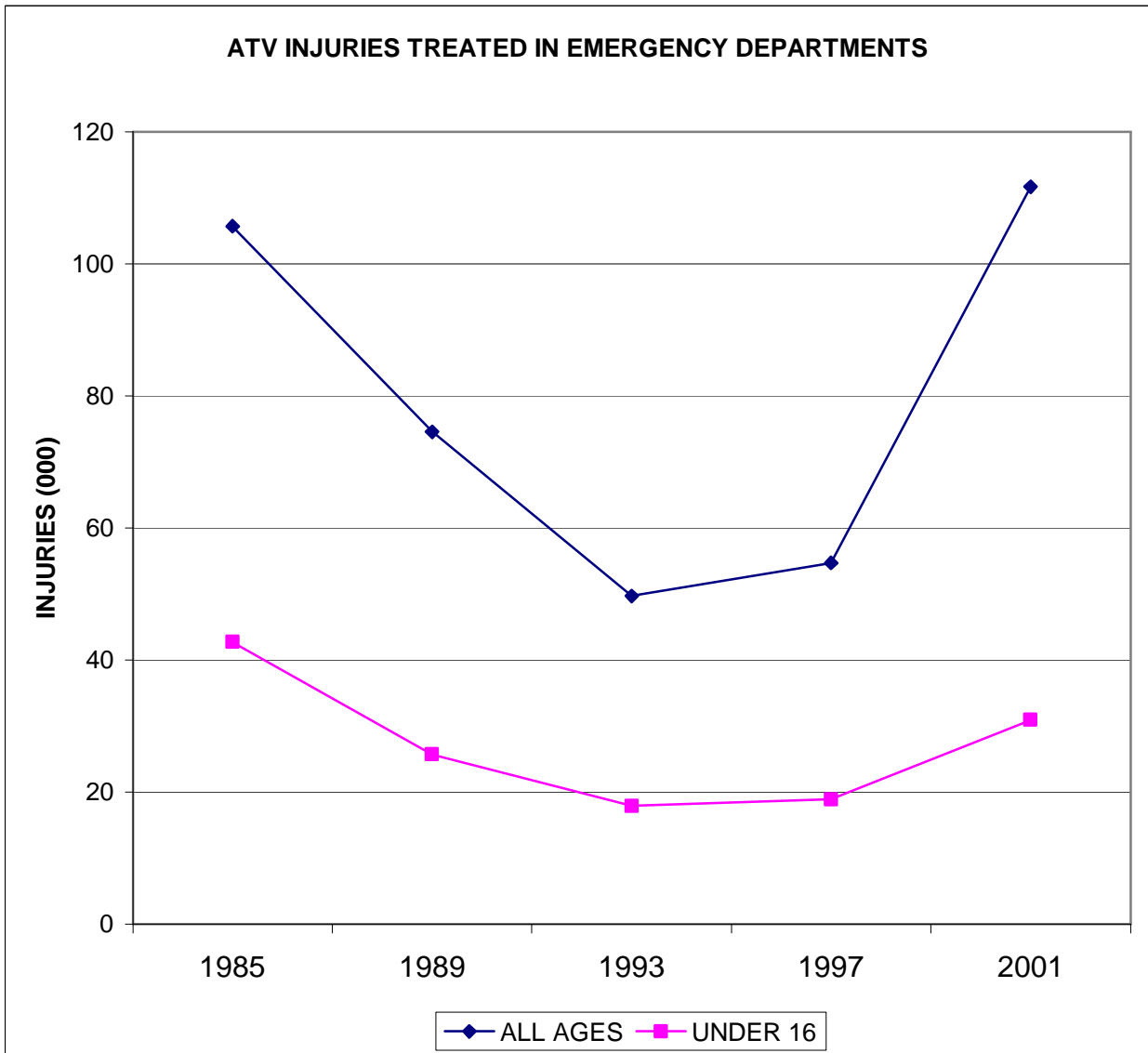
4) A regulatory ban would also make clear that the “age recommendations” are not merely warning labels devised by the ATV industry to protect itself against personal injury lawsuits. For the first time since CPSC began to work on this issue, an unequivocal message would be sent to manufacturers, dealers and consumers that no child can operate any adult-size ATV under any circumstances. In other words, for parents, the ban will have the effect of a strong warning.

5) Parents who are told that the Federal Government prohibits the sale of adult-size ATVs for use by children will likely not want to purposely expose their children to the risk of death and injury from this product. Too many parents of children who have been killed or seriously injured while riding adult-size ATVs have told me that if they only knew of the dangers associated with these vehicles, that they would never have bought nor allowed their children to ride these vehicles. Tragically, now parents are not being told about the dangers of children riding adult-size ATVs. However, if CPSC were to ban the sale of adult-size ATVs for use by children under 16, many more parents would hear of the potential dangers.

* We recognize that CPSC does not have the authority to take every action necessary to solve the problems currently caused by ATVs. While CPSC can ban the sale of adult-size ATVs for use by children under 16, we urge CPSC and industry to support state efforts to set licensing requirements, set training requirements for riders of ATVs, prohibit riders from carrying passengers, and require ATV riders to wear helmets and other protective equipment. We urge the off-road vehicle industry to join physicians, consumer advocates and conservation organizations in working to adopt state laws to require these other important aspects of ATV safety.

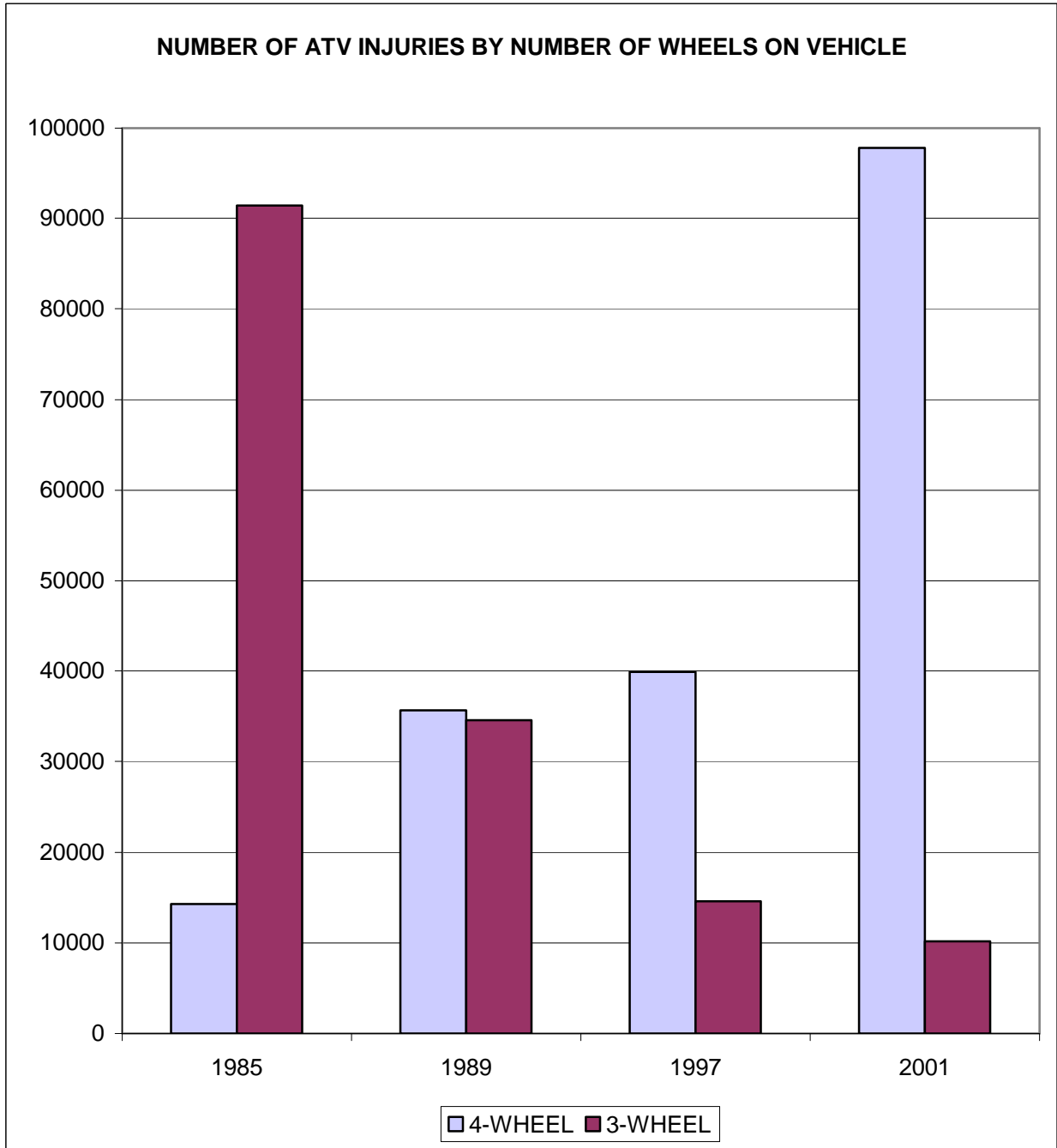
The death and injury data, and the failure of the voluntary approach have brought consumer groups, physicians, and conservation groups together to take collective steps to reduce the hazards posed to children by adult-size four wheel ATVs. We hope that CPSC will not wait for the numbers of deaths and injuries to climb even higher, but instead will act soon to protect children from the well documented hazards of riding adult-size ATVs. Thank you.

EXHIBIT 1



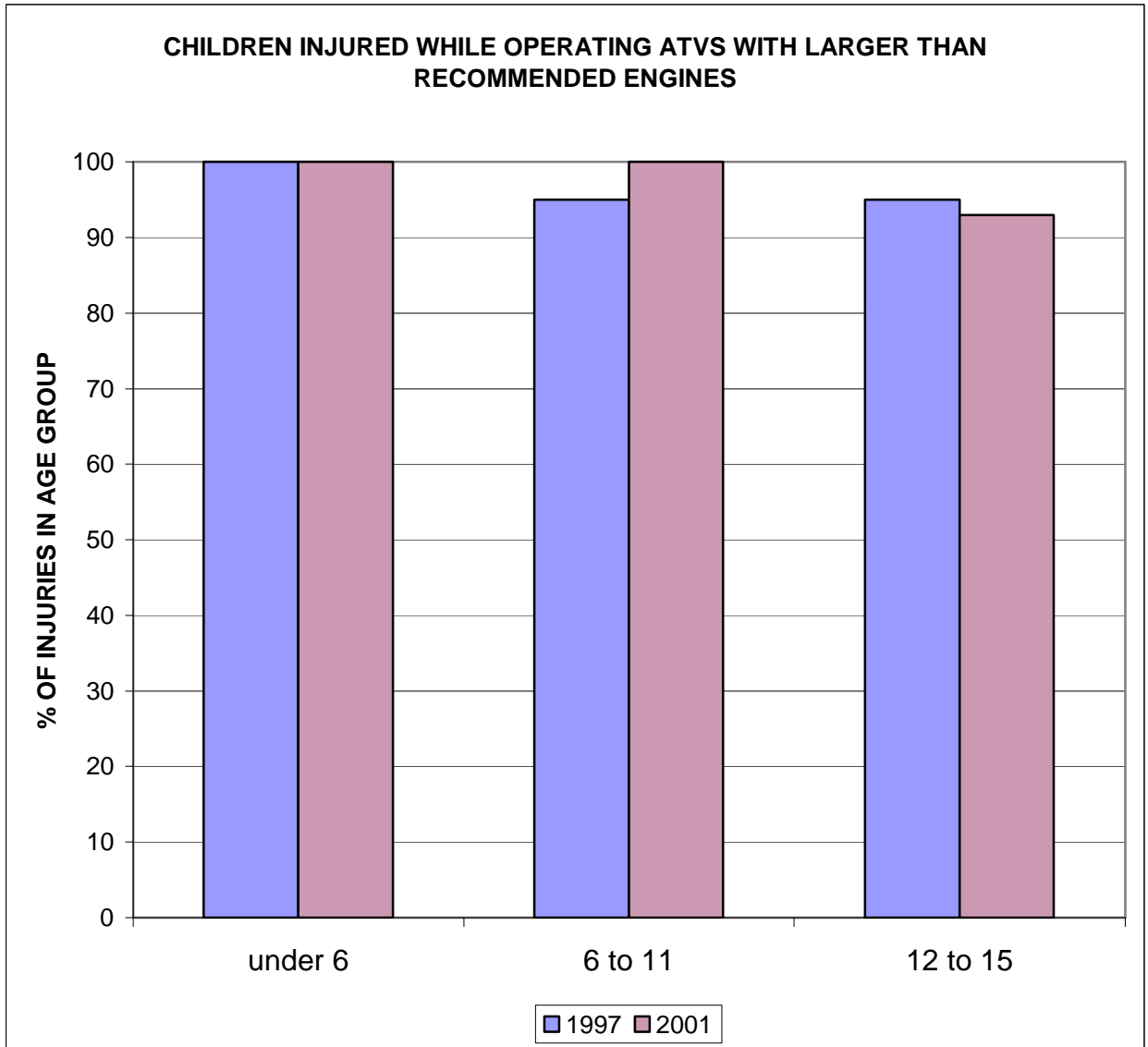
Source: Kyle, Susan B. and Prowpit W. Adler, *Part II: Report on 1997 ATV Injury Survey* (U.S. Consumer Product Safety Commission, April 1998), Figure 1 for 1985 – 1993. “U.S. Injuries by ATV Engine Size and Driver Age,” provided as Attachment 3 to Consumer Product Safety Commission response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, dated February 11, 2003, for 1997 and 2001.

EXHIBIT 2



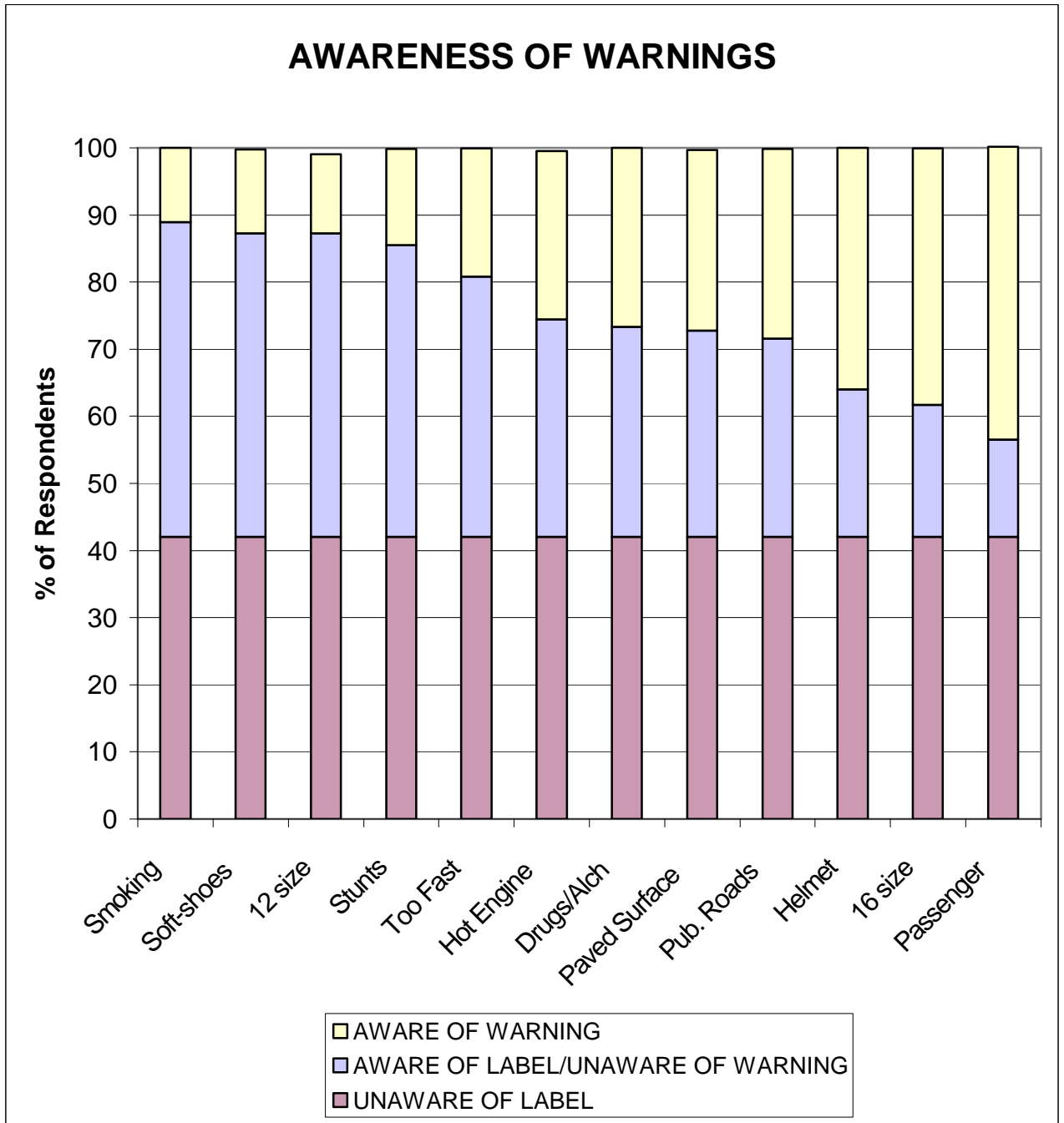
Source: Kyle, Susan B. and Prowpit W. Adler, *Part II: Report on 1997 ATV Injury Survey* (U.S. Consumer Product Safety Commission, April 1998), Table 1 for 1985 – 1997. Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003, for 2001.

EXHIBIT 3



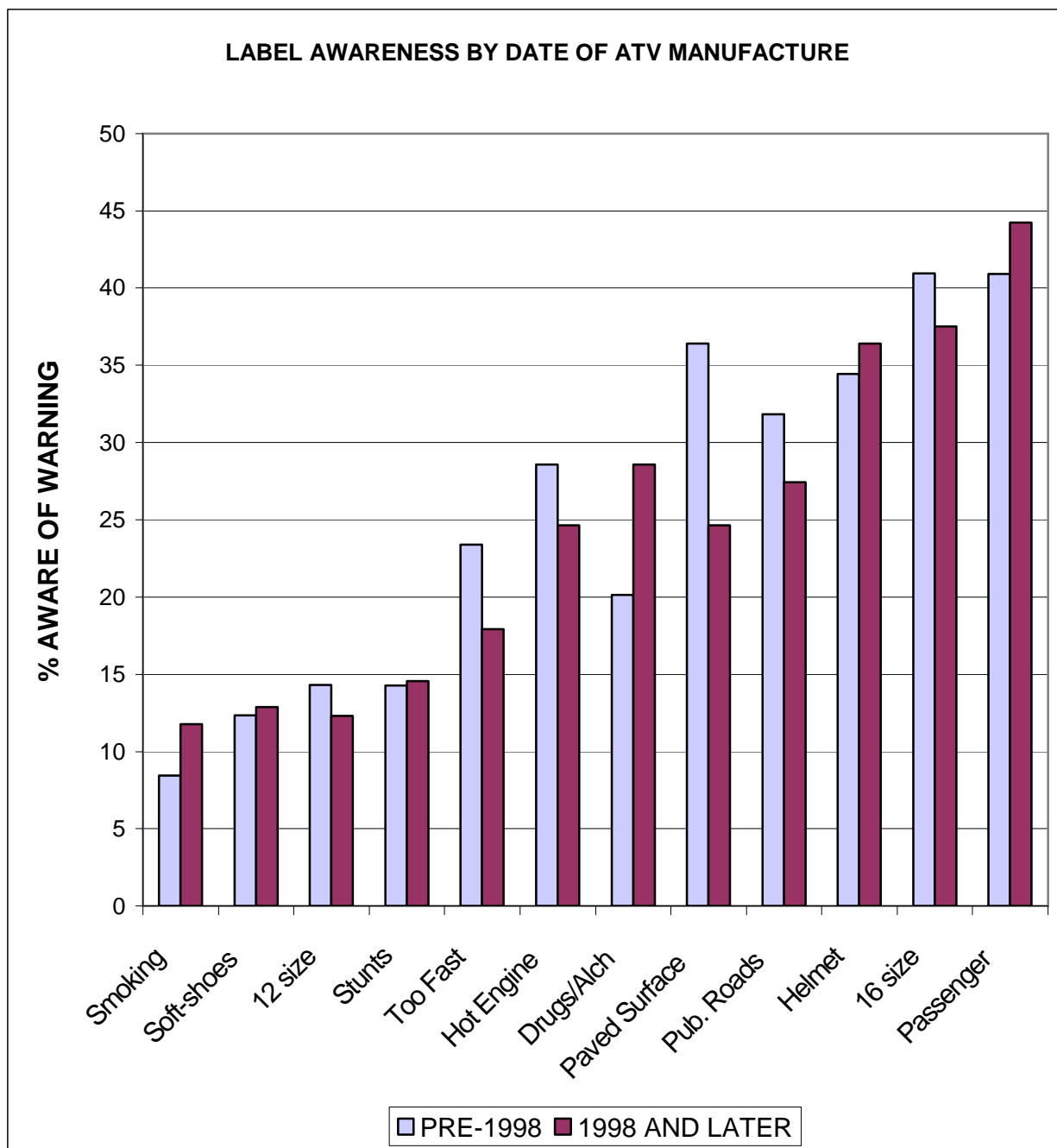
Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003, for 1997 and 2001.

EXHIBIT 4



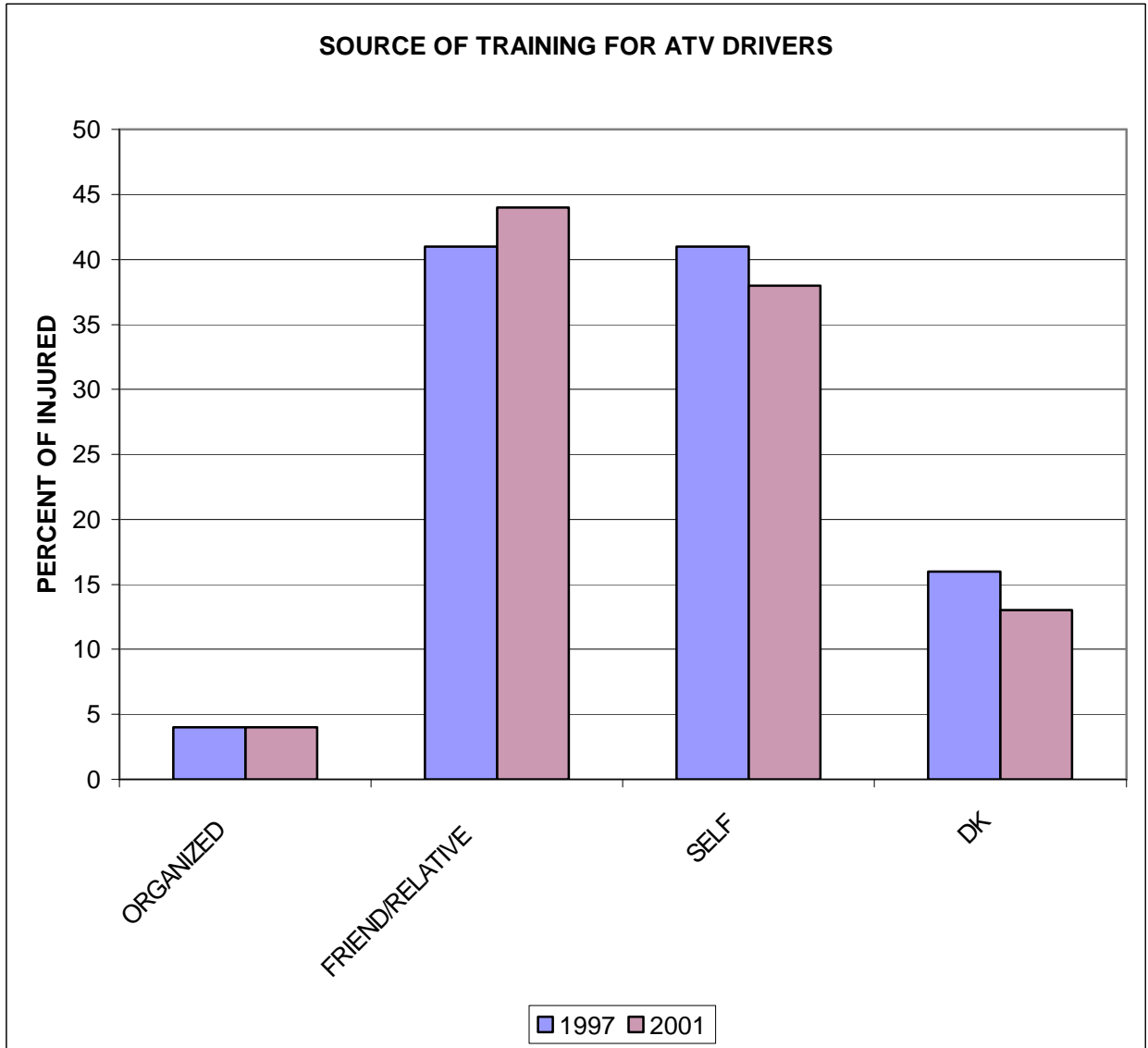
Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003.

EXHIBIT 5



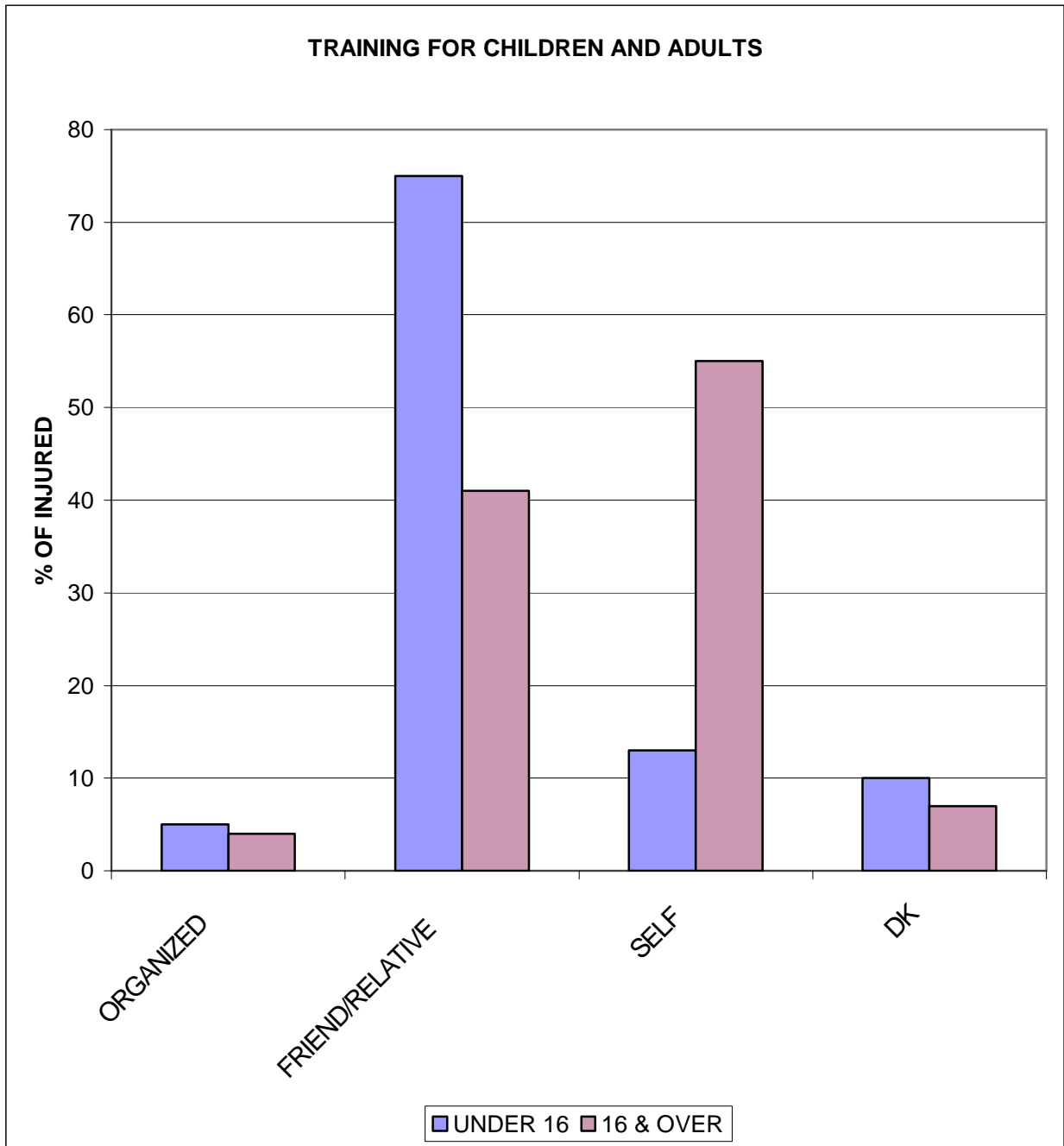
Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003.

EXHIBIT 6



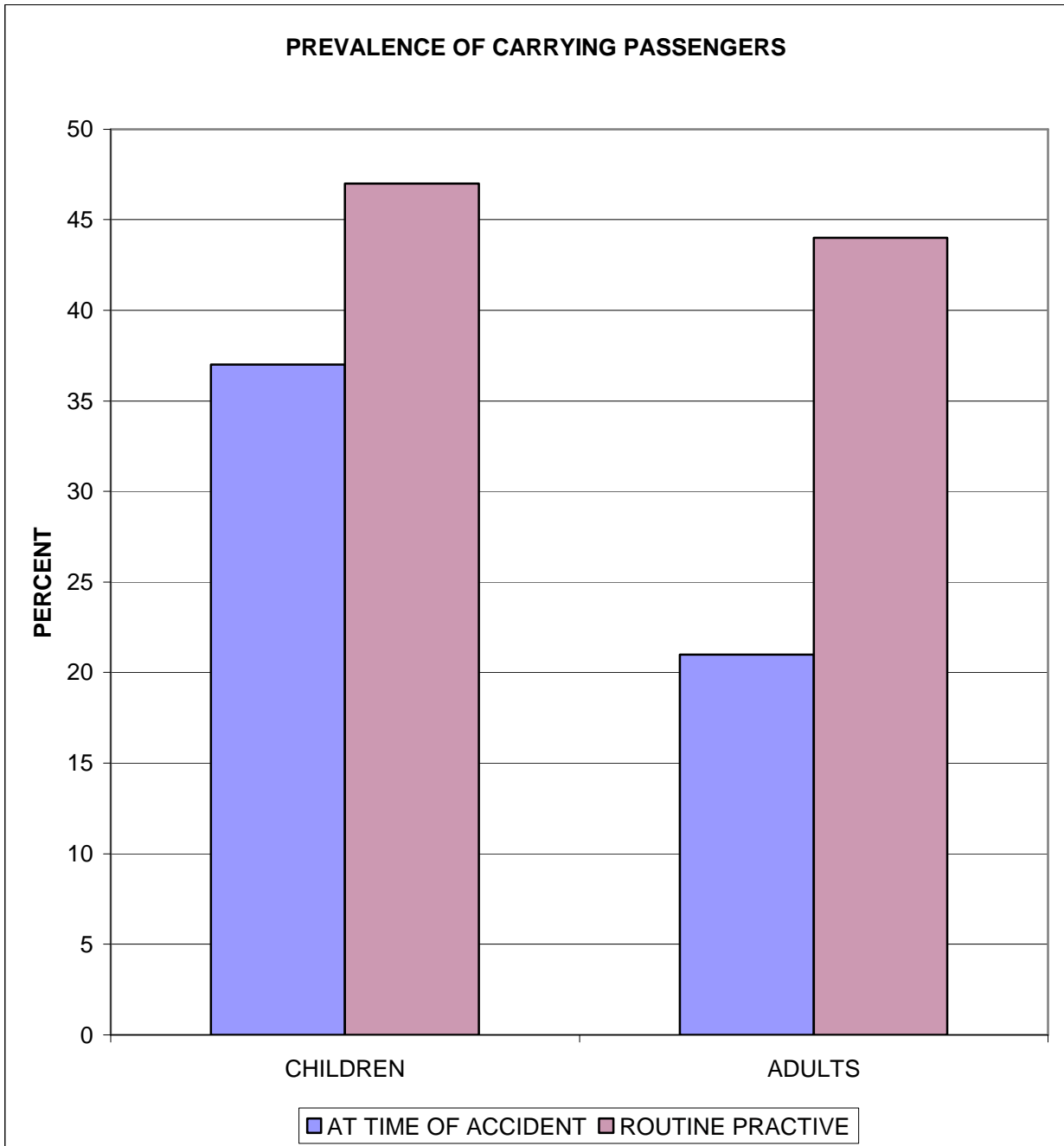
Source: Kyle, Susan B. and Prowpit W. Adler, *Part II: Report on 1997 ATV Injury Survey* (U.S. Consumer Product Safety Commission, April 1998), page 50, for 1997. Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003, for 2001.

EXHIBIT 7



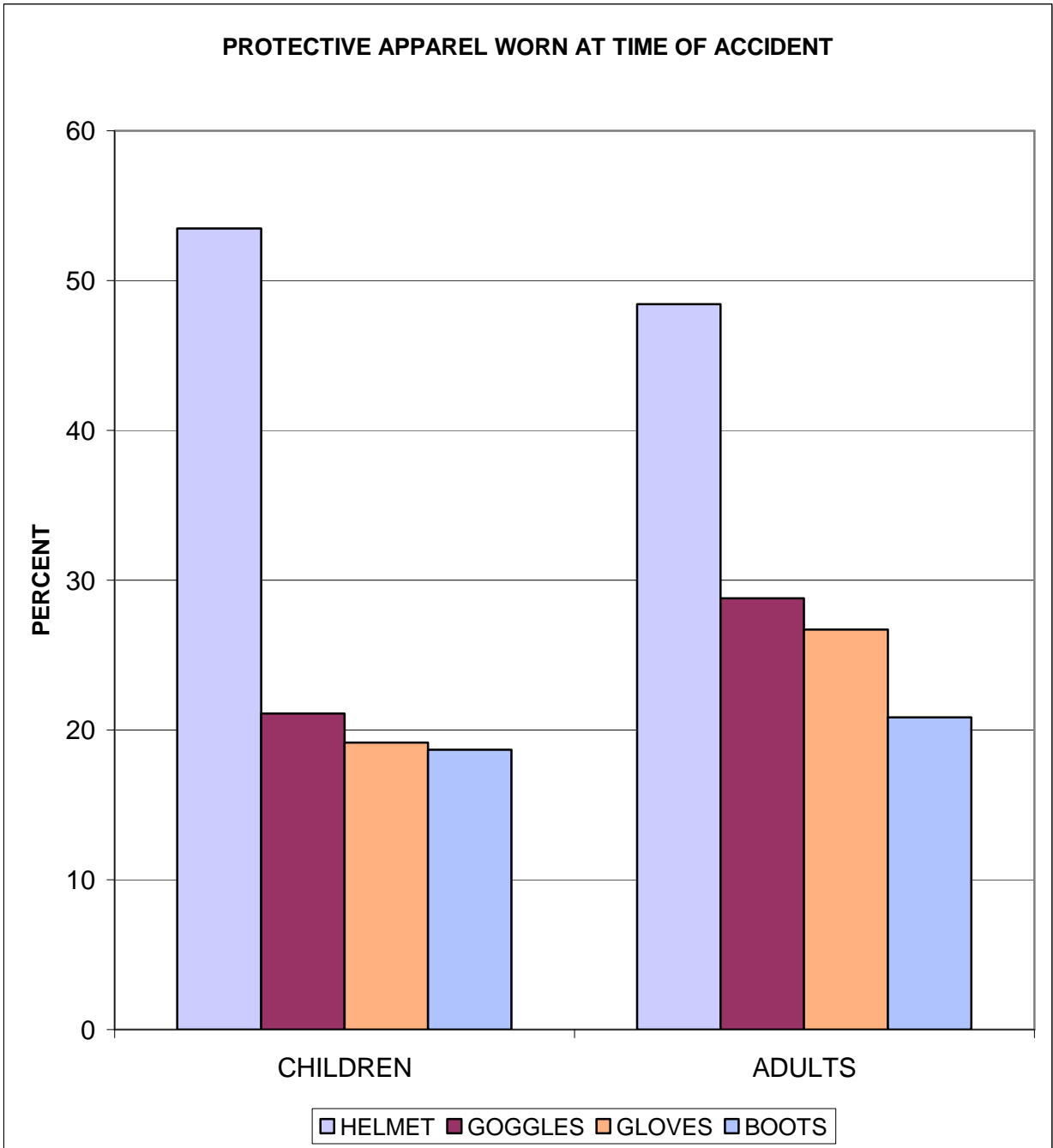
Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003.

EXHIBIT 8



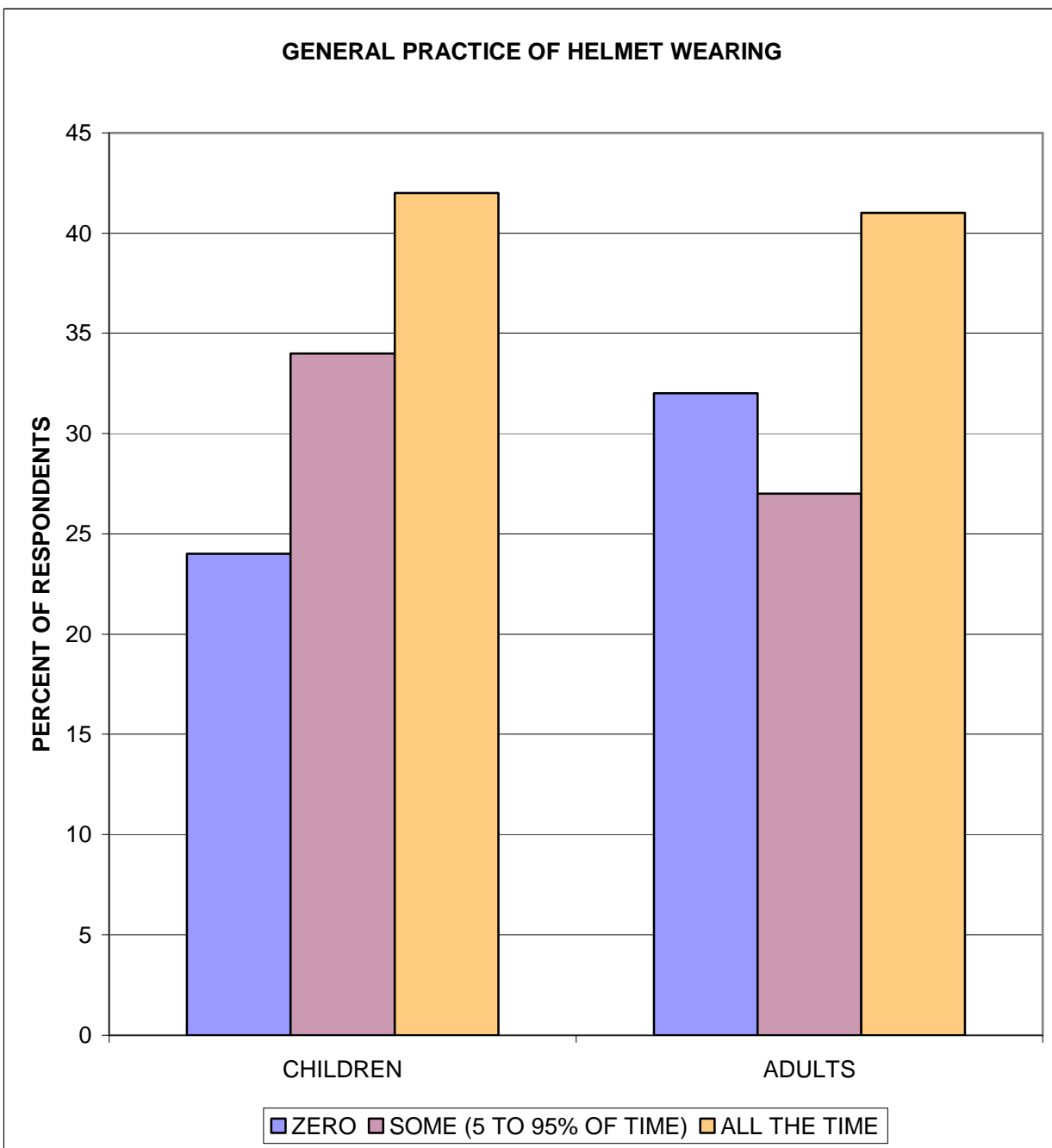
Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003.

EXHIBIT 9



Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003.

EXHIBIT 10



Source: Analysis of Injury Special Study Raw Data Files, Provided as Attachment 2 to U.S. Consumer Product Safety Commission Response to FOIA Request from Rachel Weintraub, Assistant General Counsel, Consumer Federation of America, response dated February 11, 2003.