

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

The State Factor

Jeffersonian Principles in Action

Restoring Legal Protections for Women And Children: A Historical Analysis of The States Criminal Codes

By Dr. Linda Jeffery

April 2004

Introduction

It is my pleasure as former National Chair of ALEC, to introduce this *State Factor*, "Restoring Legal Protections for Women and Children: A Historical Analysis of the States Criminal Codes," proposed during my chairmanship and then approved December 11, 2003 for publication by the ALEC Education Task Force. The Education Subcommittee on Junk Science in the Classroom, ably chaired by Kansas Senator Kay O'Connor, commissioned this research because of widespread use of "junk" science misdirecting legislatures, courts and education.

The evidence presented in this *State Factor* reveals compelling evidence of illegal and criminal acts masquerading as science taken from Kinsey's confessions in his own "Reports" (1948-1953). Dr. Alfred Kinsey was a "sexual revolutionary" and his "Kinsey Reports" are junk science. Professor of Constitutional law Dr. Charles Rice of Notre Dame concluded that Alfred Kinsey's research was:

"...contrived, ideologically driven and misleading. Any judge, legislator or other public official who gives credence to that research is guilty of malpractice and dereliction of duty."

Since World War II Kinsey's fraudulent data informed and directed the American Law Institute's "Model Penal Code" in eliminating and weakening 52 sex laws that once protected marriage. If indeed, as Justice Brandeis once said, "law points the way," the changes to public policies and law naturally followed the Kinsey junk science sexuality model. The ALI's penal law reforms recommended to legislators and lawyers were largely adopted between 1960 – 1980 and permitted Kinsey's abnormal sexual conduct to be taught to American children via sex education. Since then public health costs from sexual disease and dysfunction have skyrocketed indeed all measures of socio sexual

disorder have soared from the 1960s, when protective laws began to be weakened and/or eliminated.

As Kinsey intended, contemplated in the current debate are calls for “discrimination” laws to protect the full range of sexual activities including transvestitism, transgenderism, polygamy, bestiality and the like and, in education, whether to teach our children all “alternate” sexual acts as normal - or to teach chastity and abstinence until marriage.

This *State Factor* is a valuable reference and resource for your work in government, because it provides you with history and current information of the utmost importance for any informed understanding of many public issues crucial to the protection of America’s families and young people. Understanding how junk sex science has deformed our thinking and laws is vital as legislators “point the way.” Restoration of reliable and honest standards in our state laws will ensure more healthful and economically sound outcomes for generations to come. Only if enough legislators call attention to Kinsey’s questionable findings, can we start to reverse the misguided assault on American law and way of life through investigation, inquiries and repeal of laws and public policies based on “junk” science.

- California State Senator Ray Haynes

Summary and Purpose of Paper

This paper presents the first-hand account of history from participants and scholars since 1948 of how “junk science” was introduced into public policies and state law, and suggests serious and official review, recall, and elimination of “scientific” fraud from public policies including education and state law. The “junk science” adopted by most state legislatures was based on Indiana University’s Kinsey Reports (1948,1953). The study presents a history and review of changes in public education, philosophy and program goals since 1950, and the concurrent comprehensive “science-based” criminal law reform known as the American Law Institute’s (ALI’s) Model Penal Code (MPC). This will inform public officials and state lawmakers about how many radical changes were made without informed consent, and as a result, specific protections were lost for American women and children based on widespread legislative and judicial reliance upon the Kinsey Reports and the Model Penal Code.

Evidence to make this case comes from the most compelling comments and admissions made by Kinsey himself and from those directly associated with the research and its use.

The Junk Sex Science

Alfred Kinsey was a moral revolutionary in scientist’s clothing. The science was bad, even bogus; the man himself may now be forgotten; but the revolution came to stay, with a vengeance. Kinsey’s message—fornicate early, fornicate often, fornicate in every possible way—became

the mantra of a sex-ridden age, our age, now desperate for a reformation of its own.¹

Most professionals, public officials, and Americans are unaware that the Sexual Revolution of the 1960s was ignited by publication of *Sexual Behavior in the Human Male* which appeared in January 1948 and *Sexual Behavior in the Human Female* which followed in August 1953. Each volume received extraordinary media coverage. The media coverage was coordinated with Dr. Kinsey and Kinsey-approved articles began appearing across the country prior to the January 5, 1948 public release of the first Male Report.

The Kinsey Reports “were meant to cause change” according to Kinsey Institute senior researcher, John Gagnon.² In 1997, Kinsey biographer James Jones revealed that Kinsey’s mission was to end the sexual repression of our “English-American common law traditions.”³ In fact, Kinsey’s “methodology” for changing society’s sexual life was modeled after his studies of gall wasps. Kinsey said: “The techniques of this research [were] born out of the senior author’s longtime experience with a problem in insect taxonomy. The transfer from insect [gall wasps] to human material is not illogical,” and could be applied to any population (Male volume, p. 9).

America’s trusted public institutions and professions adopted The Kinsey Reports’ radical findings. These included the stunning conclusion that 95% of “normal” American men, many World War II veterans of “the greatest generation,” would be classified as sex offenders under the 1948 common law state criminal codes.⁴ Alfred Kinsey and his Indiana University colleagues considered state laws protecting “Persons” and “Morality” unenforceable and campaigned for “science-based legal reform” to keep up with Man’s evolution.

Dr. Judith Reisman’s research into the “scientific” basis of Indiana University’s Kinsey Reports has dispositively revealed, from the Kinsey authors themselves, the Kinsey data were fraudulent.⁵ The internationally respected British Medical Journal, *The Lancet*, reviewed Dr. Reisman’s first book, *Kinsey, Sex and Fraud* (1990) recognizing:

Dr. Judith A. Reisman and her colleagues demolish the foundations of the two reports...The important allegations from the scientific viewpoint are imperfections in the sample and unethical, possibly criminal, observations on children...The book goes beyond that, however, for Kinsey, et. al, questioned an unrepresentative proportion of prison inmates and sex offenders in a survey of “normal” sexual behaviour...Kinsey, an otherwise harmless student of the gall wasp, has left his former co-workers some explaining to do.⁶

For 50 years the exalted and widely accepted validity of The Kinsey Reports derived primarily from the large sample claimed, possibly 18,000 subjects; however, Kinsey very unscientifically gleaned “...only a quarter of the cases in his two reports, without notice.”⁷

Female volume co-author and former Kinsey Institute Director Paul Gebhard reported:

In the early stages of the research, when much interviewing was being done at Indiana correctional institutions, Dr. Kinsey did not view the inmates as a discrete group that should be differentiated from people outside; instead, he looked upon the institutions as reservoirs of potential interviewees, literally captive subjects. This viewpoint resulted in there being no differentiation in our 1948 volume between persons with and without prison experience...Kinsey never [kept] a record of refusal rates--the proportion of those who were asked for in interview but who refused.⁸

Kinsey hagiographer Jonathan Gathorne-Hardy revealed that Kinsey never hired a statistician. "Frank Edmondson, young astronomer" who had had "some rather superficial statistical training" was Kinsey's "statistician." Said Edmondson, Kinsey "wasn't a mathematician," in fact Kinsey "often got muddled between mean (average) and median," elementary statistical concepts.⁹ *Male* volume co-author Clyde Martin "was no scholar," but served as a statistician without such knowledge.¹⁰ Under Dr. Alan Gregg, director of the Medical Science Division, the Rockefeller Foundation funded Kinsey's research. Rockefeller's Science Director Warren Weaver recorded Gregg's concerns regarding serious flaws in Kinsey's published data on May 7, 1951:

[T]here has never been, in this group, any trained mathematical statistician who comes within gunshot of having the competence, training, and experience that are required. In Dr. Kinsey's own listing of his staff (Progress Report, April 1, 1950) he says that Mr. Clyde E. Martin 'continues in charge of the statistical handling our data (sic).' His scientific stature has not as yet caused him even to be listed in American Men of Science, the latest edition of which contains about 50,000 names. Dr. Kinsey must approve highly of him, for in 1951, he raised his salary by 36 per cent. In his own diary record of a visit to Kinsey in July 1950, Dr. Gregg said, under the heading of personnel: 'Past and present needs remain unsatisfied in point of... statistics.' This fault - this admittedly absolutely basic fault - existed in the project in 1942, it has existed ever since, there is no promise whatsoever that it will cease to exist - and we do nothing about it.¹¹

Within months after the *Male* Volume was published, Dr. Kinsey was invited to testify before a judicial committee of the California Legislature, regarding "problems" with existing sex offense law. First, he claimed that his decade of research reflected "normal sexuality" to be found in the entire American male population: "[Our research] has the advantage of having a background of the picture typical in the population as a whole..."¹²

After Kinsey's death and in 1979, Kinsey co-author and Kinsey Institute Director Paul Gebhard undertook to "clean up" the data, but by that time most state penal code

revisions were concluding. Gebhard revealed that of the 18,000 interviews once widely considered so scientifically impressive, 5,300 White Males accounted for the research base in the *Male* Volume. Of that 5,300, 2,446 were designated by Gebhard and Johnson as convicts, 1,003 homosexuals, 50 transvestites, 117 mentally ill, 342 "Other," and 650 sexually abused boys. This yielded 4,628 n=Aberrant and 873 n="Normal" Male subjects.¹³

Kinsey also failed to allow for "volunteer error." According to Dr. Abraham Maslow:

[V]olunteers will always have a preponderance of [aggressive] high dominance people and therefore will show a falsely high percentage of non-virginity, masturbation, promiscuity, homosexuality, etc. in the population.¹⁴

Finally, zoologist Alfred C. Kinsey was not the conventional, middle-American family man and academic as marketed by Indiana University and the mass media. In 1997, Kinsey biographer James H. Jones revealed,

The man I came to know bore no resemblance to the canonical Kinsey. Anything but disinterested, he approached his work with missionary fervor...He wanted to undermine traditional morality, to soften the rules of restraint...Kinsey was a crypto-reformer who spent his every waking hour attempting to change the sexual mores and sex offender laws of the United States...In Kinsey's case, the personal was always political.¹⁵

Later Jones commented on how Kinsey's own carefully manufactured persona hid his "missionary fervor...to undermine traditional morality" and his own sexual predilections. The truth would have damaged his credibility and stopped his mission to change the sex offender laws of the United States.

There is no way that the American public in the 1940s and the 1950s would have sanctioned any form of behavior that violated middle class morality on the part of the scientist who was telling the public that he was disinterested and giving them the simple truth.... Any disclosure of any feature of this private life that violated middle class morality would have been catastrophic for his career.... For Kinsey, life in the closet came complete with a wife, children, a public image... that again he preserved at all costs. Kinsey's reputation still in large measure rests upon an image of him that he cultivated during his lifetime...the official mystique.¹⁶

Effectively keeping the sex lives of Kinsey and his men hidden, Jones is right that, to date, this effort "came to nothing." However, now Jones admits that Kinsey:

...was not quite what he appeared to be--the genial academic in baggy tweeds and bow tie, the simple empiricist disinterestedly reporting his data....Kinsey...was, in reality, a covert crusader who was determined to use science to free American society from what he saw as the crippling

legacy of Victorian repression. And he was a strong-willed patriarch who created around himself a kind of utopian community in which sexual experimentation was encouraged. In his obsessive energies and powers of persuasion, Kinsey resembled a late twentieth-century cult leader.....a self-created visionary with a burning belief in his mission (and ability) to change the world.¹⁷

Finally Jones reports that, "Kinsey concentrated on negative eugenics, calling for a program of sterilization that was at once sweeping and terrifying. "The reduction of the birth rate of the lowest classes must depend upon the sterilization of perhaps a tenth of our population."¹⁸

While Gore Vidal pronounced Kinsey the "most famous man in the world for a decade" one broadcast documentary, the Channel 4, British Yorkshire Television documentary, "Kinsey's Paedophiles," confirmed Dr. Judith Reisman's findings including Kinsey's collaboration with active pedophiles which resulted in the criminally derived pedophile "data" which became "Table 34," on page 180 in *Sexual Behavior in the Human Male*. Kinsey-favoring biographer James Jones admitted in the Yorkshire interview what Kinsey's own seminal research reveals, that is, children, some as young as 2 months of age, were used by "nine" adult male subjects for Kinsey's human experiments:¹⁹

Kinsey relied upon [King, a pedophile] for the chapter on childhood sexuality in the male volume ... Many of his victims were infants and Kinsey in that chapter himself gives pretty graphic descriptions of their response to what he calls sexual stimulation. If you read those words, what he's talking about is kids who are screaming. Kids who are protesting in every way they can the fact that their bodies or their persons are being violated.²⁰

Until 1998, when the Yorkshire investigators located the criminal trial records and news reports in Berlin, only a few in Kinsey's inner circle knew about the Kinsey Institute's collaboration with Dr. Fritz Von Balluseck. Von Balluseck was a Nazi pedophile, who contributed his child abuse data (from roughly 1936-1956) to Kinsey's research database.²¹ German news accounts during the trial reported,

The Nazis knew and gave him the opportunity to practice his abnormal tendencies in occupied Poland on Polish children, who had to choose between Balluseck and the gas ovens. After the war, the children were dead, but Balluseck lived. [*National-Zeitung*, May 15, 1957].

Balluseck... corresponded with the American Kinsey Institute for some time, and had also got books from them which dealt with child sexuality. [*Tagespiegel*, October 1, 1957].

The connection with Kinsey, towards whom he'd showed off his crimes, had a disastrous effect on [von Balluseck]... [I]n his diaries he'd stuck in the letters from the sex researcher, Kinsey in which he'd been encouraged to continue his research.... He had also started relationships ... to expand his researches. One shivers to think of the lengths he went to. [TSP, May 17, 1957]

Kinsey included these criminally-derived "child sexuality" data in his *Male* volume, cloaked in scientific respectability:

Better data on preadolescent climax come from the histories of adult males who have had sexual contacts with younger boys and who, with their adult backgrounds, are able to recognize and interpret the boys' experiences . . . 9 of our adult male subjects have observed such orgasm. . .we have secured information on 317 preadolescents who were either observed in self masturbation, or who were observed in contacts with other boys or other adults.²²

Kinsey's "Junk Science" Enters Education

Few people realize that the great library collection of...the Kinsey Institute...was formed very specifically with one major field omitted: sex education. "[I]t seemed appropriate, not only to the Institute but to its major funding source, the National Institute of Mental Health, to leave this area for SIECUS to fill. Thus we applied and were approved for a highly important grant from the National Institute for Mental Health that was designed to implement a planned role for SIECUS to become the primary data base for the area of education for sexuality.

SIECUS Report, May-July 1982, p. 6.

The ALEC Education Task Force has passed a unanimous resolution declaring what has been ALEC's policy for years that all teaching must honestly promote accuracy of information including verifiable scientific findings. Washington, Arizona and New Jersey were among the states introducing legislation in 2001 demanding medically accurate information in sex education. The new K-12 sex education is grounded in the fraudulent scientific foundation of the Kinsey Reports.

Since 1964, the Sex Education and Information Council of the United States (SIECUS) has provided sex education materials to public schools. SIECUS, a private entity, received initial seed money from the *Playboy* Foundation.²³ It was founded via the Kinsey Institute at Indiana University as its outreach. SIECUS is dependent upon Indiana University's Kinsey Reports, including the "scientific" tables documenting the Kinsey protocol of ongoing molestation of infants and children by pedophiles, including at least one former Gestapo officer.²⁴ These criminal acts provided the "proof," Kinsey said, of sexual desire and erotic capacity in infants and children. Therefore, according to Kinsey, "science" requires teaching kindergarten children about their sexuality. In the April 14,

1980 issue of *Time* Magazine, SIECUS was described as part of the “pro-incest lobby,” and in 1996, SIECUS issued a position statement advocating the use of “sexually explicit materials” to teach school children:

When sensitively used in a manner appropriate to the viewer’s age and developmental level, sexually explicit visual, printed, or on-line materials can be valuable educational personal aids helping to reduce ignorance and confusion and contributing to a wholesome concept of sexuality.²⁵

Just as SIECUS was founded to promote Kinseyan sex education to school children in 1964, the American Association of Sex Educators, Counselors and Therapists (AASECT) was created in 1967 for teachers with the stated purpose of training and accrediting educators, health personnel and other “helping” professionals in the area of human sexuality based on the Kinsey “findings.” Patricia Schiller was AASECT’s first executive director. Mrs. Schiller writes,

AASECT at its national and regional sex workshops and institutes, includes sensitivity sessions....Attitudes toward nudity, adolescent pregnancy, masturbation, abortion, homosexuality, contraception, divorce, group sex and extramarital sex relations are of major significance in the effectiveness of the sex education and counseling process. These are the realities of human sexuality.²⁶

A new study refuting the claims of the Kaiser Family Foundation and SIECUS reports that when parents are presented with the actual statements of comprehensive sex education curriculum, 61% are opposed to having their children exposed to such information. The curricula promoted by the Centers for Disease Control tallied a whopping 75.3% opposition from parents. The study was conducted by Zogby International on a random sample of 1,245 adult parents of children aged 5 to 18. The Zogby poll reports that former surveys by Alan Guttmacher Institute, Planned Parenthood, SIECUS and Advocates for Youth have been seriously flawed by vague, deceptive, and leading questions, with a clearly biased agenda to convince parents that such “expert” sex education is needed for their children’s health and well being. Examples of outrageously biased questioning by SIECUS and Planned Parenthood are given in the February 13, 2003 Zogby Study analysis entitled, “Deception Uncovered.”²⁷

Since Kinseyan findings within sex education materials entered schools, rates of sexual disease and dysfunction have increased. Condoms are now ubiquitous and are widely promoted in schools by public school and health authorities to prevent pregnancy and sexual disease, but according to the National Institutes of Health (NIH) study on condom effectiveness (June 2000), condoms do not prevent a stunning 98% of STD transmissions.²⁸ Condoms never protect against Human Papilloma Virus (HPV) that is spread by skin contact, not by fluids²⁹ and is the cause of cervical cancer, which kills 5,000 women per year in the United States. The prestigious British medical journal, *The Lancet*, suggests that “increased condom use will increase the number of AIDS transmissions that result from condom failures.”³⁰ There is a 24% pregnancy rate for teens who use condoms.

As for condoms and AIDS, according to the December 1999 Center for Disease Control reports, heterosexual contact has accounted for a miniscule 4% of AIDS in males, and a total of 10% of all AIDS cases in men, since reporting began in 1981. AIDS in the U.S. remains overwhelmingly a homosexual sodomy/drug user disease.³¹

Dr. Meg Meeker³² in her 2002 book, *Epidemic: How Teen Sex Is Killing Our Kids* has estimated the sexual revolution harvest:

- ❖ Nearly 1 in 5 adolescents is living with an STD, p. 13.
- ❖ In the 1960s a shot of penicillin could cure the two known STDs, syphilis and gonorrhea. Today there are no simple cures and, in most cases, no cures at all, p. 15, 31.
- ❖ The CDC considers the STD epidemic a “multiple” epidemic of at least 25 separate diseases (nearly 50 if you count the various strains of virus groups.), p. 14.
- ❖ Over 80% of STD-infected teens are unaware they have a STD; therefore they don’t get medical attention and may continue to infect others, p. 35.
- ❖ False claims are asserted by sex educators who under inform or mislead kids about STDs and condoms that offer little or no protection from disease, p. 104-5.
- ❖ Pharmaceutical companies promote drugs that control STD symptoms, encouraging children in the delusion they can be promiscuous without any of the associated problems.
- ❖ Anatomic and immunological differences make the adolescent body – particularly the female’s - more susceptible to STDs than the adult body, p. 175-6.
- ❖ The idea of maintaining sexual freedom rather than preventing disease remains the driving force and primary focus of national sex education and the STD epidemic continues to worsen as long as it does, p. 26-29.

Sex education in public education was promoted to teachers and parents in the early 1950’s as sex crime “prevention.” Guided directly by Kinsey, who served on the Illinois commission’s workgroup to devise the “Framework for Sex Offender Laws,” Illinois blamed poor parenting and lack of education for high levels of sex crimes in the early 1950s. These rates seem miniscule in comparison with those today. The Report of the Illinois Commission on Sex Offenders stated:

Children oftentimes are inadequately trained to live in a free society. The inability of some parents to rear children in a democratic atmosphere and, at the same time, to observe the conventions of society is a fact that needs consideration. Too often indulgence on the one hand or oppression on the other result in emotional maladjustment that may lead to sexual offense. Methods of educating adults, who deal with children must be considered also. Prevention through mental hygiene and sex education for both adults and children may prove to be effective.³³

Kinseyan legal reformers testified before legislatures and in professional literature that sex education would reduce violent sex crimes and high rates of sex offender (rapists and child molesters) recidivism.³⁴ And AASECT worked at “educating adults, who deal with children.” Carol Cassell (currently the director of the Center for Disease Control’s Teen Pregnancy Prevention Program) describes ASSECT’s use of the Kinsey Reports as the root of their professional authority:

Look how we've used the Kinsey data. We've used it for everything from assessing the stability of marriage to raising children to trying to understand human growth and development -- not just sexual but also psychological growth and changes over time.³⁵

Taught by AASECT trained teachers, the SIECUS sex education programs were guided by The Kinsey Report’s assertion that human beings are sexual actors from birth.³⁶ At law, this meant that four or five year old children could be considered “provocateurs.”³⁷ Redefining children as sexual beings resulted in lowered penalties for rape and child molestation reflecting the new science’s claim that there is no harm unless “serious force is used.” In public education, after state laws were changed, SIECUS expanded “the talk” about sexuality from a total of thirteen minutes to sex education covering thirteen school years with the theme that any and all imaginable sexual behaviors, at any age, are simply “responding to a wide human need.”³⁸

Between 1994 and 2000, SIECUS received over one million tax dollars from the publicly funded Center for Disease Control. The CDC materials promote sodomy as “normal” and as equally fulfilling and desirable as marital relations. In the SIECUS 1991 Guidelines for Comprehensive Sexuality Education: Kindergarten-12th Grade, a family is redefined as any grouping of people who care for each other (Key Concept 2). Kindergarten children are told that marriage is a mere option some people choose (“Some couples who love each other live together in the same home without getting married” Topic 5, level 1).

The sex “experts” and the Kinseyan sex education monopoly are well entrenched in higher education. For example, Tennessee legislators passed Abstinence legislation to promote “Marriage.” However, the *Lifetime Wellness Curriculum* Framework produced by the Tennessee Department of Education treats Marriage as merely a parenting and economic option chosen by some. School children are guided in graphic games about oral and anal sodomy and about death. Tax supported teaching programs are required to be accurate in order to be funded. There is no doubt, after reviewing pre-Kinsey levels of sexual disease and dysfunction, the SIECUS sex education programs post 1964 have seen STD rates skyrocket. Abstinence programs calling for modesty and saving sex until marriage guarantee taxpayers a major reduction in costly post-Kinsey disease and dysfunction.

Kinsey’s Junk Science Enters the Law

The Professional Call for “Science-based” Legal Reform

In a 1952 article in the *Harvard Law Review* Columbia Law Professor Herbert Weschler advocated for revision of "ineffective, inhumane and thoroughly unscientific" state criminal laws which, its author claimed, were not based on the truth now available through "objective" scientific pursuit.³⁹ Attorney Morris Ernst, a few months after the appearance of the 1948 Kinsey Report, published one of five books which would be published advocating penal reform based on the "science" of the Kinsey Reports, stating:

[V]irtually every page of the Kinsey Report touches on some section of the legal code . . . a reminder that the law, like our social pattern, falls lamentably short of being based on a knowledge of facts.⁴⁰

Based upon what has been previously shown in this study to be Kinsey's biased and seriously flawed data, the "Sexual Offenses" Article 207 of the 1955 Model Penal Code was constructed. For example, Section 207.5, titled "Sodomy and Related Offenses," proposed that consensual sodomy with an "actor" 10 years or older be classified a misdemeanor. Appendix A to section 207.5 is titled "Frequency of Sexual Deviation," and of 21 quotations, 19 are taken from Kinsey's book, *Sexual Behavior in the Human Male* (1948).⁴¹

ALI Reporter Morris Ploscowe parroted Kinsey's "scientific" findings:

These pre-marital, extra-marital, homosexual and animal contacts, we are told, are eventually indulged in by 95 per cent of the population in violation of statutory prohibitions. If these conclusions are correct, then it is obvious that our sex crime legislation is completely out of touch with the realities of individual living and is just as inherently unenforceable as legislation that prohibits . . . an activity that responds to a wide human need.⁴²

In addition to this book by Albert Deutsch (Ed.), to which Ploscowe contributed, three of the four other 1948 releases called for "science-based" law reform based on the new "science" of the Kinsey Reports. These three books presented collections of essays by luminaries in education, law, psychiatry, psychology, and medicine.⁴³

Kinsey's data "permeate all present thinking on this subject."⁴⁴

The ALI began a campaign⁴⁵ to secure enactment of its provisions as state law beginning in Illinois which adopted the Code in 1961. Frank Horack, Jr., acting Dean of Indiana University, writing in support of the Kinsey Reports' impact on law, predicted:

The principal impact of the Kinsey Report will be at the level of the administration of the law. It will provide the statistical support which police officers, prosecutors, judges, probation officers and superintendents of penal institutions need for judging individual cases . . . Officials will read it. Defense counsel will cite it. Even when it is not offered into

evidence, it will condition official action. Psychiatrists, psychologists, penologists, juvenile and probation officers all participate in modern penal procedures - they will use the data and their professional advice will be heeded by the judge. Here the Report will control many decisions and dictate the disposition and treatment of many offenders.⁴⁶

Concurrent with the publication of Indiana University's and the Kinsey Institute's *Male* and *Female* volumes, a number of states conducted 'fact-finding' commissions to study sex crime problems. Kinsey Report co-author Wardell Pomeroy states that Kinsey personally worked on "the revision of sex laws" with Illinois, New Jersey, New York, Delaware, Wyoming, and Oregon commissions.⁴⁷ In December 1949, Kinsey testified for an entire day before the "California Subcommittee on Sex Crimes." Kinsey told the committee:

For the last 11 years we have had a research project, as you know, underway at the university on human sexual behavior . . . we find that 95 percent of the [male] population has in actuality engaged in sexual activities, which are contrary to the law.⁴⁸

Kinsey presented the California legislature with the wildly false claim, "[Our research] has the advantage of having a background of the picture typical in the population as a whole..."⁴⁹

In 1951, the Illinois legislature funded a commission to study the sex offender. Francis Allen chaired the committee that drafted the report submitted to the Illinois legislature. Under Section II, "Scientific Findings," Allen writes: "No specific reference to the Kinsey findings is made here since these permeate all present thinking on this subject." Allen also chaired the workgroup "Framework for Sex Offender Laws" to which Alfred C. Kinsey and Co-author Wardell Pomeroy served as consultants.⁵⁰

A similar commission was conducted in New Jersey. The report was facilitated by Paul W. Tappan, who later would be a Reporter for the ALI Committee that drafted the Model Penal Code. Section II of the New Jersey report is titled: "Sex Deviation: Its Extent and Treatment." It begins with quotations from Kinsey's *Male* volume. The New Jersey Commission expressed its gratitude to Dr. Kinsey and Morris Ploscowe for their "frequent and extended consultations."⁵¹

The New Jersey Commission's report stated:

[T]here can be no real doubt that a very large number of the male population of New Jersey has engaged in practices coming within the enumerations of our present abnormal sex offender law, on the basis of which they might be committed to one of our state mental hospitals.⁵²

Louis B. Schwartz, author of the "Sex Offense" section of the Model Penal Code, reviewed Kinsey's *Male* Volume in the *University of Pennsylvania Law Review* in 1948.

His article provided the new language for the American bench and bar that was used to normalize formerly proscribed sexual conduct. Schwartz wrote:

To reveal that certain behavior patterns are widespread, that they are a product of environment, opportunity, age and other factors over which the individual has little control, that they are not objectively harmful except as a result of society's efforts at repression (Kinsey, pp. 385-86) to point out that similar behavior is encountered among other animals than man, to suggest that the law ought not to punish and that psychiatrists might better devote themselves to reassuring the sexual deviate rather than attention to "redirect behavior" (Kinsey p. 660) - all these add up to a denial that sexual "perversion" is an evil.⁵³

Schwartz then pictures "the distant day when Americans cease to regard minority morals as a legitimate object of social coercion," and suggests a covert and undemocratic method for elites to change state criminal codes:

Eventually, such distinctions ease themselves into the written law, especially if it can be done in the course of a general revision of the penal code. This avoids the appearance of outright repudiation of conservative moral standards, by presenting the changes in a context of merely technical improvements.⁵⁴

State Law Journals Advocate for Penal Reform using Kinsey as authority

The ALI penal reform campaign appealed to the bench and bar via states' Law Journals. These cited to the Kinsey Reports as the "scientific" authority to define normal and therefore non-criminal behavior. The *North Carolina Law Review* testifies to its readers:

More than two decades have passed since the publication of Alfred Kinsey's study on human sexual behavior that made clear the wide disparity between conservative sexual behavior permitted by law and the liberal sexual practices that Kinsey found actually to occur in society. Dr. Kinsey stated that "[s]ex laws are so far at variance with general sex practices that they could not conceivably be rigorously enforced" (Citing to 23 *New York University Law Quarterly Rev.* 540, 541 (1948), quoting Kinsey's Male volume).⁵⁵

Other states Law Journals cite the Kinsey Report data to advocate legalizing prostitution (Maine, 1976); harmlessness of boy prostitution (Duke University, 1960); lightening sex crime penalties (Ohio, 1959); legalizing homosexuality (South Dakota, 1968); the need for "beneficent concern for pedophiles" (Georgia, 1969); and for general sex law revisions (Oklahoma, 1970). The journals commonly cited the "fact" that 95% of males are sex offenders (Oregon, 1972); that young children are seducers (Missouri, 1973, Tennessee, 1965); and that judicial bias is the cause of "severe condemnation of

sex offenders" (Pennsylvania, 1952).⁵⁶ Finally, the *Colorado Law Review* ridicules American standards of virtue, honor and chastity by publishing "The Legal Enforcement of Morality" authored by none other than *Playboy's*, Hugh Hefner. Claiming to be Kinsey's "pamphleteer," Hefner writes to his legal audience:

Kinsey reports that in some groups among lower social levels, it is virtually impossible to find a single male who has not had sexual intercourse by the time he reaches his mid-teens.⁵⁷

Revision Commissions reported to state legislatures. The Model Penal Code was their blueprint for complete sex crime revisions. Such liberalized sex laws were enacted nationwide--generally occurring for the first time since statehood.⁵⁸

In the rush to "science-based legal reform," not all state commissions accepted the sweeping revisions as an assumed improvement in the "clarification of law." In 1970 the *Michigan Journal of Law Reform* published the report of the director of the Criminal Law Revision Commission in California describing the advisory board's reaction to its "revision":

... its product at first inspection struck most of the members of the Board, unfamiliar with the Model Penal Code or another contemporary criminal law revision, as a strange and baffling departure from all of the familiar landmarks of conventional law. The style of the Model Penal Code, its rigorously logical order and its general abandonment of common law terminology does pose difficulties for anyone whose entire educational and professional experience has been circumscribed by the eighteenth century common law concepts still preserved in the criminal law of California. The staff, of course, was greatly influenced by the Model Penal Code."⁵⁹

Purpose and Principles of ALI's Model Penal Code

The stated purpose of the ALI MPC was to reduce crime, recidivism and to modernize the law in accord with scientific advances. In his 1952 *Harvard Law Review* article, chief author Columbia University Law Professor Herbert Wechsler argued for a Model Penal Code on the grounds that the current crime rate was too high. He said this high rate proved the common law then in effect was "ineffective" and "unscientific."⁶⁰ By the late 1970s, most local and state bar associations had heeded Wechsler's call and promoted the passage of a revised penal code based on the ALI MPC.

In the wake of modernity naturalistic science emerged preeminent over the nation's guidance by the fixed moral standards of the Declaration of Independence. The MPC portrayed fixed law with moral supports as inadequate and antiquated. Unhinged from the divine, evolving law with scientific support became the standard.⁶¹

Model Penal Code authors called for laws using the "aid that modern science can afford." This created a crisis in American law, for modern evolving law apparently based

on science appeared to conflict with America's long settled (and protective) common law, and the common law was being portrayed as inconsistent, ambiguous, outmoded, and redundant.⁶² Law, by definition, to be "law" must be fixed, but state revision commissions revised state penal codes according to the new ALI MPC understanding of law that is always evolving and requiring constant change.

The American Law Institute transformed corrections by revising the definition of criminal responsibility. This dramatic change occurred under the guidance of three psychiatrists: Lawrence Z. Freedman, Winfred Overholser, and Manfred Guttmacher. Though there was not complete agreement, Wechsler reports the ALI authors "were totally responsive to the psychiatric points, while advancing a fresh solution."⁶³ By applying the modifications of the Model Penal Code, criminal responsibility was redefined to include: 1) knowledge of right and wrong, and 2) the capacity to conform to the law. There was an important new element to which only a qualified "expert" could testify. *The M'Naughten Rule* that originated in 1843, required the cognitive ability of the offender to know right from wrong in order to be guilty of crime. The drafters of the Model Penal Code thought that in addition to knowledge, it was important to determine the offender's capacity for self-control.

Benjamin Karpman, who is quoted as the primary psychiatric authority in the Model Penal Code, claimed that criminal behavior could be compared to tonsillitis:

Criminal behavior is an unconsciously conditional psychic reaction over which [the criminals] have no conscious control. We have to treat them as psychically sick people, which in every respect they are. It is no more reasonable to punish these individuals...than it is to punish an individual for breathing through his mouth because of enlarged adenoids, when a simple operation will do the trick.⁶⁴

Karpman held little regard for a common law that had provided safety and security for the law-abiding citizen, while punishing criminal behavior. As a psychiatrist, he claims the medical profession is the "vanguard of human progress."

Experiment is viewed as superior to precedent; old methods are readily abandoned, to give way to newer methods. It is therefore a matter of great wonderment, and disappointment as well, that with so many physicians on the staff of prisons...medicine has thus far contributed so little of positive value toward a more scientific and more humane understanding of crime.⁶⁵

The influence of Guttmacher and the Group for the Advancement of Psychiatry on law reform is evidenced by states' adoption of a therapeutic approach to criminology despite therapy's experimental and unproven track record. The *South Carolina Law Review* reported in 1968 that:

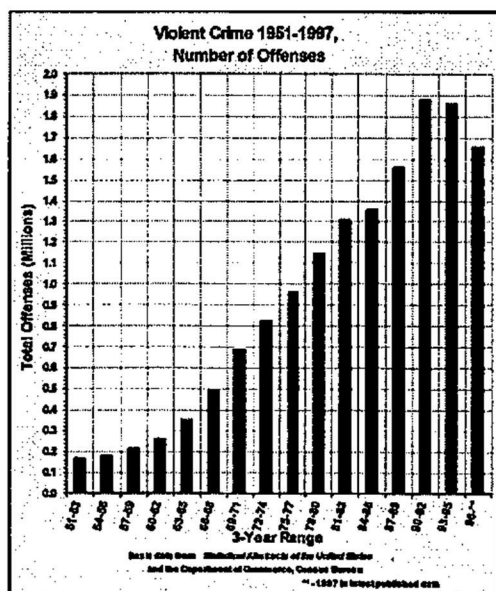
There are no data indicating the amount of success of correctional efforts to date. There is a large body of literature reporting numerous research findings and suggesting a large number of plausible theories concerning treatment of the

offender. However, the knowledge that is available has not been translated into feasible action programs or the programs have not been successfully implemented or if they have been implemented they have lacked evaluation. If they have been evaluated, the results have usually been negative, and in the few cases where there were positive results reported there have been no replications to support these findings.⁶⁶

A further consequence of therapeutic influence has been to strip the authority of the jury, replacing it with expert testimony. The ALI MPC authors held that a judge did not have the expertise to judge offenders. Moreover, a jury of one's peers was too likely to mete out tough punishments to criminals. Wechsler wrote:

It is widely urged that the responsibility for the determination of the treatment of offenders should not, in any case, be vested in the courts; that judges have no special expertise or insight in this area that warrants giving them decisive voice; and that they should be superseded by a dispositions board that might include the judge but would draw personnel of equal weight from social work, psychiatry, penology and education.⁶⁷

In view of the new offender sympathies and the desire to therapeutically manage criminals in the ALI's MPC, the power of the uniquely American jury "of one's peers" system was significantly curbed. This was accomplished in state after state through the expert's classification and sub-classification of crimes and the assignment of multi levels of penalties for once simply understood crimes and punishments.



If psychiatric experts were now needed to determine criminal responsibility under the new law system, they would also determine the remedy. Wechsler said that the common law "employs unsound psychological premises such as 'freedom of will' or the belief that punishment deters."⁶⁸ Criminals under the MPC were often cast in neutral terms such as "actors" and victims as "complainants." Terms such as "rapist" or "sodomist" are too harsh according to the new penal revisions.⁶⁹ And based on the Model Penal Code, an individual may have been so impaired mentally that he was unable to follow the law. Therefore, argued the MPC, the convicted sex crime offender is more likely to be rehabilitated through treatment and counseling by mental health experts than by incarceration. After fifty years of experience and research producing no evidence that

therapy reduces recidivism,⁷⁰ former Attorney General Janet Reno acknowledged in her acceptance speech for the "Brandeis Medal for commitment to individual liberty, concern for the disadvantaged, and public service," that punishment is indeed necessary to control crime.⁷¹

The principal sex offenses of rape, sodomy, sexual abuse, and indecent exposure were redefined. In the ALI MPC the simplicity of common law punishments were made complex by grading⁷² them according to the use of "forcible compulsion," the capacity or incapacity of the victim to consent, the age of the victim, and the age of the sexual predator.

ALI Model Penal Code Failed

As we have seen, the purpose of the Model Penal Code, according to Professor Wechsler, was to reduce crime. In this regard, the data are clear: the ALI MPC has been a total failure. Women and children are far less safe today than they were before the changes brought in by the MPC.

Wechsler declared the MPC authors' intentions in 1955: "We mean to act as if we were a legislative commission, charged with construction of an ideal penal code."⁷³ Wechsler wrote in the *Columbia Law Review* when the project was over, "Viewing these words in retrospect, I am content with their description of the effort."⁷⁴ By the late 1970s, most state legislatures had heeded Wechsler's call and had passed revised penal codes.⁷⁵ These revisions were supposed to have been guided by a new scientific understanding of sex, sex crime, and sex criminals. However, the results suggest a lessening of understanding rather than an enhancement of it.

As the chart shows, violent crime increased 993% from 1951 to 1997. There was a 2.1% increase in the child population (the number of people under age 20) from 1970 to 2000.⁷⁶ This clearly does not account for the skyrocketing levels of sex crimes. According to the MPC vision, comprehensive sex education graphically presented in elementary and secondary grades should have reduced crime. Instead, during the same period, we see high rates of venereal diseases,⁷⁷ rape, illegitimacy and abortions in teenage populations with the elimination of fornication as a crime, and the trivializing of penalties for statutory rape and other sex crimes.

The radical ALI MPC reforms that reduced sex crime penalties in the states do explain how America could have come to this societal malaise. Studies confirm a correlation between greater punishment and less crime.⁷⁸ The rise in crime that is making America a less-safe environment for women and children has followed the changes in law that occurred as states abandoned the common law and adopted the guidance of the ALI Model Penal Code.

Conclusion

Alfred Kinsey was a moral revolutionary in scientist's clothing. The science was bad, even bogus; the man himself may now be forgotten; but the revolution came to stay, with a vengeance. Kinsey's message—fornicate early, fornicate often, fornicate in every possible way—became

the mantra of a sex-ridden age, our age, now desperate for a reformation of its own.⁷⁹

The Kinsey Reports, well known to sexual and legal revolutionaries, are all but unknown to the current bench and bar. Kinsey's once taunt "official mystique" sags now with many troubling revelations, especially since 1997. However, Kinsey's reputation still must be maintained because his Reports are the foundation of evolutionary sexuality worldwide. Sexual anarchists everywhere need "Dr. Kinsey." This need resulted in an image reconstruction effort is mounted by PBSTV's "The American Experience," and by Hollywood, PBS and FoxSearchlight films, Myriad Pictures and Coppola's American Zoetrope studios. Reinventing Kinsey as a "sexual pioneer" may continue to cover up the ugly reality of the Indiana University's Kinsey and his assault on the Law's majesty, and maybe not.

The manufactured statistics of The Kinsey Reports transformed America's institutions of medicine, education and law. "Normal" human sexuality was metamorphosed into another image, which became indelible, when the American Law Institute delivered The Kinsey Reports junk science (in 1955 Draft #4, "Sexual Offenses," Section 207 of the Model Penal Code) to the bench and bar in every state. Soon, based on the ALI MPC and the Kinsey Reports, the states' long-settled and fixed common law sexual and reproductive standards were abolished via misinformed legislation and judicial decisions. After the laws were changed, the SIECUS brand of sex education entered schoolrooms to permanently alter Marriage, and the American family.

Prior to 1950 American Law largely prohibited any sexual acts outside of marriage. Marriage was a public contract, both civil and religious. Society had an interest in the security and solvency of every marriage. Marriage was to provide for the progeny of the union, secure the orderly passage of property to the next generation and prevent any burden to the State wrought by divorce, promiscuity, perversion and "unnatural" acts.⁸⁰ Marriage served the "public interest." However, the "experts" of the ALI MPC dismantled the institution, based on the Kinsey Reports. By recommending the legalization of fornication, cohabitation, adultery, sodomy, etc., the MPC transformed what were known as "Public Morals" or "vice" laws into private sexual behaviors between "consenting" individuals. The new freedom, "Privacy," would allow one to be left alone to pursue one's sexual "tastes," according to Judge Learned Hand.⁸¹

The "junk science" based on the debunked and discredited Kinsey Reports today serves as the foundation of publicly funded sex education. In addition, the ALI Model Penal Code has been adopted, all or in part, in every state. The harmful results can be seen over the past 50 years, especially as these changes negatively affected the lives of American women and children. The case is strong for real fact-based reform to remove the fraudulent findings of the Kinsey Reports from publicly funded programs, policies, and laws beginning with sex education and criminal law.

How Should Legislators Respond?

State judiciary and education committees, legislators or activists may want to make presentations to clarify and inform leadership of the history and scope of Kinsey's fraudulent "science-based reforms." Undoing harmful changes to sex education curricula and sex offense laws since each state's penal code revision would be prudent. Bar Associations and state legislatures can initiate a restoration effort for legal protections once enjoyed by women and children.

The legal reforms that have been enacted since 1960 must be examined. First of all, legislators must be aware of the scientific authorities that were used to justify sex law changes. Next legislators should determine what benefit or detriment these sex law changes have brought to America's law-abiding citizens, especially our vulnerable children. Finally, legislators must directly address a working system for protecting women and children. The current system provides overwhelming proofs that it is moving society in the wrong direction.

Law must refocus on illegal acts and their consequences. Criminal behavior must once again be met with criminal sanctions that depend on the act of the aggressor—not the age of the victim, or the personality of the offender.

State legislatures must require accountability for programs involving rehabilitation. Programs should reduce recidivism or meet other measurable criteria established by the legislature in order to receive taxpayer support.

State legislators should continue the call for accurate science in children's education. A review board could monitor textbooks purchased by the state Department of Education, and investigate parent's concerns. Political ideologies should never be represented as science to vulnerable school children.

Possible Objections to Legal Reformation

Legislators, activists and concerned citizens who seek to restore legal protections to women and children may be met with the objection that "you can't legislate morality" or that "culture drives law, anyway."

A report in the *Wall Street Journal* confirms that law can shape behavior. According to the Journal, in response to rampant AIDS in Tanzania, laws and severe penalties against illicit sexual conduct were established, and this in a culture that historically has been free of limits on sexual behavior. The Journal reports "within two years teachers report a decrease in schoolgirl pregnancy." The national AIDS committee chairman states, "We're penalizing people less often because almost everyone is behaving better."⁸² Just as Tanzania's experience demonstrates that law shapes behavior, we can expect positive change here in the United States as well.

U.S. Supreme Court Justice Louis D. Brandeis said;

“...the conduct of life is to so large an extent determined by the existing legal institutions, that an understanding of the legal system must give you a clearer view of human affairs in their manifold relations, and must aid you in comprehending the conditions, and institutions by which you are surrounded.”⁸³

People often point to the influence of music and media upon our youth to explain massive changes in society. But these are outgrowths of what Brandeis explained drives our “conduct of life.” If understanding the legal system gives you a “clearer view of human affairs” and aids in “comprehending conditions...by which you are surrounded,” as Justice Brandeis declared, then the question to be answered is evident: What, within American “legal institutions,” changed to account for the significant changes in “the conduct of life” in America regarding illegitimacy, rape, and sexual violence? On the evidence, those changes occurred primarily as a result of twentieth century law reform based on the American Law Institute’s Model Penal Code, whose authority for defining normal human intimate behavior was the Kinsey Reports.

Executive Summary

Prior to the adoption of the American Law Institute’s Model Penal Code by the states, men who raped and preyed on children were deemed criminals, not simply “actors” as they are today. Abused and violated women and children were victims, not “complainants.” Justice was meted out by a jury of one’s peers, not by social science “experts,” and predators received penalties, not legal protections.

With regard to sex offense crimes in the ALI MPC: A rash of state sex offense commissions convened just prior to the ALI MPC publication, providing findings to MPC authors. These commissions also relied heavily upon Alfred Kinsey and the fraudulent Kinsey Reports’ view of “normal” human sexuality. Sexual activities are presented by the ALI MPC authors as “wide human need” and necessary from womb to tomb for health and happiness. Language and terms are changed to neutralize crimes against women and children. Rape and child abuse are redefined and de-stigmatized; the definition of “adult” tends to include children for purposes of sex. Creation of multiple degrees of a sex crime negates the felony penalty. And sex education in public schools is recommended as the primary crime prevention measure.

As in law, terms were changed in sex education to dissociate it from the eugenics movement. The Birth Control Federation of America became Planned Parenthood, which was necessary “to neutralize the highly negative image offered to the public by the term “birth control” (Alan Guttmacher writing in the preface of Margaret Sanger’s autobiography, 1970). The new term “family planning” did not convey prejudice against large families, and linked contraceptives with marriage and babies instead of with prostitutes and illicit sexual alliances. Sex education became “family life education” which SIECUS founder Lester Kirkendall said would be “less threatening to parents and teachers and, in the end, “would lead to more not less sex education.”⁸⁴

The plans legal revolutionaries made and acted upon overturned or trivialized 52 designated laws protective of women and children,⁸⁵ aided and enabled by the indispensable sex "science" of the Kinsey Reports. Over the past fifty years, our sex and reproduction laws have been deconstructed on the basis of a fraudulent set of data.

Law, by definition, is fixed or settled. But in the second half of the twentieth century Law entered an ever-evolving "stream," based on so-called scientific innovation. Billed as "science" based law reform, the Model Penal Code was promoted as a simple revision of the law based on new scientific discoveries in the social sciences. This effort was undertaken because of the high rates of violent crime. However, over the ensuing 50 years, the ALI MPC has failed to reduce crime and specifically failed to provide protections for women and children. It is time for state lawmakers to jettison bad policy based on bad science, and to restore legal protections for American women and children.

Fifty years have passed since the advent of the ALI MPC into the American stream of law. Now is the time for state legislatures to review the performance of the science-based criminal law reform that according to its chief author in 1952, was expected to lower crime. Wechsler declared common law penal codes were ineffective. It is time to review many of the radical changes brought about by the enactment of the Model Penal Code and to restore the safety and security lost for our most vulnerable citizens.

Footnotes

¹ Joseph Epstein, *Commentary*, January 1998. At www.Britannica.com, downloaded March 31, 2001

² *Human Nature*, October 1978, pp. 92-95.

³ James Jones, *Alfred C. Kinsey: A Public/Private Life* at 619 (NY: W.W. Norton, 1997).

⁴ "This is one of the startling observations of the Kinsey group ... When a total clean-up of sex offenders is demanded, it is in effect a proposal to put 95% of the male population in jail." Albert Deutsch, *Sex Habits of American Men*, at 121.

⁵ J. A. Reisman, *Kinsey: Crimes and Consequences* (2nd ed.), (Crestwood: Institute for Media Education, 2000).

⁶ *Really Dr. Kinsey?* 337 *The Lancet* at 547 (March 2, 1991).

⁷ J. A. Reisman, *supra.*, at 50-53. See also Arno Karlen, *Sexuality and Homosexuality* at 456 (1971).

⁸ Gebhard, Gagnon, Pomeroy, and Christenson, *Sex Offenders* at 31-33 (1965).

⁹ Jonathan Gathorne-Hardy, *Alfred C. Kinsey: Sex the Measure of All Things* at 130-131, 144, (1998).

¹⁰ *Id.* At 144, see also Reisman, *supra.* at 40.

¹¹ Warren Weaver, *Desk Diary*, May 7, 1951, pp. 4-5, Rockefeller Archive Center.

¹² *Testimony of Alfred C. Kinsey before the Assembly Interim Committee on Judicial System and Judicial Process of the California Legislature*, 1949, p. 133. Recorded in the *Assembly Journal*, March 8, 1950.

¹³ NIMH Grant *The Kinsey Data; Marginal Tabulations*, 1979, p. 3. -6 Gebhard and Johnson claim theirs is a 5,460 White Male Sample.

¹⁴ Abraham Maslow, *Test for Dominance-Feeling (Self-Esteem) in college Women*, *The Journal of Social Psychology* at 255, 270 (1940); See also Abraham Maslow, *Self-esteem, Dominance, Feeling and Sexuality in Women*, 16 *The Journal of Social Psychology* at 259, 294 (1942)

¹⁵ James H. Jones. *Dr. Yes. The New Yorker* at 100-101 (September 1, 1997).

¹⁶ James H. Jones, interview in Tim Tate, *Secret Histories: Kinsey's Paedophiles*. (Yorkshire Television (Channel 4), United Kingdom, aired August 10, 1998.

¹⁷ James H. Jones, *Annals of Sexology*, *Dr. Yes. The New Yorker* at 101 (August 25 and September 1, 1997).

¹⁸ James H. Jones, *Alfred C. Kinsey: A Private/Public Life* at 809, footnote 78 (1997).

¹⁹ *Alfred C. Kinsey, Wardell Pomeroy, Clyde Martin, Sexual Behavior in the Human Male*, at 144 (W. B. Saunders, 1948).

- ²⁰ "Secret Histories, Kinsey Paedophiles, *supra*. See also Kinsey, *Sexual Behavior in the Human Male*, at 161 (noting "violent convulsions, groaning, sobbing, violent cries, with an abundance of tears (especially among younger children.)").
- ²¹ J. A. Reisman, *supra*, note 5, at 165-170.
- ²² Kinsey, et al, *supra*, Note 19, at 144.
- ²³ Reisman, J. A. *Supra*, note 5, at 177.
- ²⁴ Kinsey, Pomeroy and Martin, *Sexual Behavior in the Human Male*, page 180, Table 34.
- ²⁵ SIECUS Report, February/March 1996, "Position Statement" on "Sexually Explicit Materials."
- ²⁶ Herbert Otto, (Ed.), *The New Sex Education*, at 171. (Chicago: Association press/Follett Publishers, 1978).
- ²⁷ Survey results and analysis are available at www.whatparentsthink.com
- ²⁸ The panel of researchers found effectiveness in the heterosexual transmission of HIV and the female to male transmission of gonorrhea. These two areas represent 2% of all STDs occurring annually in the U.S. See the Response of the National Abstinence Clearinghouse to the NIH Condom Report; American Social Health Association, *Sexually Transmitted Diseases in America: How Many Cases and at What Cost?* Kaiser Family Foundation, December 1998; and CDC HIV/AIDS Surveillance Report, 1999.
- ²⁹ Dr. John Diggs, WebMD, <http://my.webmd.com/content/article/1700.50173>
- ³⁰ Justin Torres, "Condom crazy: The UN Pushes Contraception to fight AIDS." *World Magazine*, Vol. 15, September 9, 2000
- ³¹ Center for Disease Control, HIV/AIDS Surveillance Report. Dec. 1999. Vol. 11, No. 2, Table 5.
- ³² Meg Meeker, *Epidemic: How Teen Sex Is Killing Our Kids*, (Washington, D.C.: Regnery Publishing, 2002).
- ³³ Illinois Commission on Sex Offenders, March 15, 1953, p. 36.
- ³⁴ Herbert Wechsler, *Challenge of a Model Penal Code*. 65 *Harvard Law Review* at 1103 (1952).
- ³⁵ Carol Cassell, *Contemporary Sexuality*, The American Association of Sex Educators, Counselors and Therapists (AASECT), (October, 1991).
- ³⁶ The Illinois Commission cites this as a "scientific finding" on p. 9. See also, Kinsey, A.C., Pomeroy, W. B., & Martin, C.E. *Sexual Behavior in the Human Male*. at 181 (W. B. Saunders, 1948).
- ³⁷ A term used by Psychiatrist and Law Professor Ralph Slovenko to describe a four or five year old girl. See R. Slovenko & C. Phillips, *Psychosexuality and the Criminal Law*. 15 *Vanderbilt Law Review*, at 809 (1962). "The sometimes extreme seductiveness of a young female is a factor which has no place in the law, but it certainly affects motivation. Even at the age of four or five, this seductiveness may be so powerful as to overwhelm the adult into committing the offense. The affair is therefore not always the result of the adult's aggression; often the young female is the initiator and seducer." (Emphasis added).
- ³⁸ Albert Deutsch (Ed.), *Sex Habits of American Men, A Symposium on the Kinsey Reports* at 126-128, (New York: Prentice Hall, 1948).
- ³⁹ Herbert Wechsler, *Challenge of a Model Penal Code*, 65 *HARVARD LAW REVIEW* 1103 (1952).
- ⁴⁰ Morris Ernst and David Loth, *American Sexual Behavior and the Kinsey Report*, n. 28, at 132 (Graystone Press, 1948).
- ⁴¹ Model Penal Code, Draft 4, Section 207.5. Sodomy and Related Offenses, appendix A, pp. 281-282. Quoting from Kinsey's Male volume, pp. 371, 671, Figure 156 [page 625].
- ⁴² Morris Ploscowe, *Sexual Patterns and the Law*, in Albert Deutsch, *Sex Habits of American Men: A Symposium on the Kinsey Report* at 126 (1948).
- ⁴³ Rene Guyon, *The Ethics of Sexual Acts* (1948); Morris Ernst, *American Sexual Behavior and the Kinsey Report*, (1948); Donald Porter Geddes and Enid Curie, Eds. *About the Kinsey Report*, (1948); Jerome Himelhoch and Sylvia Fava, Eds. *Sexual Behavior in American Society*, (1948).
- ⁴⁴ Report of the Illinois Commission on Sex Offenders, March 15, 1953, at 9.
- ⁴⁵ Linda Jeffrey and Ronald D. Ray. 2003. *A History of the American Law Institute's Model Penal Code: The Kinsey Reports' Influence on "Science-based" Legal Reform 1923-2003*. (Crestwood, KY: First Principles Press).
- ⁴⁶ Frank E. Horack, Jr. *Sex Offenses and Scientific Investigation*. 44 *Illinois Law Review*, at 156, 158 (1950).
- ⁴⁷ Wardell Pomeroy, Dr. Kinsey and the Institute for Sex Research, at 210-11 (1972).
- ⁴⁸ Preliminary Report of the Subcommittee on Sex Crimes of the Assembly Interim Committee on Judicial System and Judicial Process, California Assembly, March 8, 1950, reported in foreword, unnumbered.
- ⁴⁹ Testimony of Alfred C. Kinsey, Id., p. 133.
- ⁵⁰ Report of the Illinois Commission on Sex Offenders, March 15, 1953, at 9.
- ⁵¹ Report and Recommendations of the Commission on the Habitual Sex Offender as Formulated by Paul W.

Tappan, Technical Consultant, February 1, 1950 at 12.

⁵² *Id.*, at 18.

⁵³ Louis B. Schwartz, Book Reviews: *Sexual Behavior in the Human Male*, 96 *University of Pennsylvania Law Review* at 917 (1948).

⁵⁴ *Id.*

⁵⁵ John Parker Huggard, *Criminal Law—North Carolina's Sodomy Statute: A Need for Revision*, 53 *North Carolina Law Review* at 1037 (1975).

⁵⁶ Judy Potter, *Sex Offenses*, 28 *Maine Law Review* 78 (1976); Albert J. Reiss, *Sex Offenses: The marginal status of the adolescent*, 25 *Law and Contemporary Problems* 311-312 (1960); Phillip E. Stebbins, *Sexual Deviation and the Laws of Ohio* 20 *Ohio State Law Journal* 347 (1959); Ronald P. Johnsen, *Sodomy Statutes—A Need for Change*, *South Dakota Law Review* 395-396 (Spring, 1968); B. E. C., Jr., *Pedophilia, Exhibitionism, and Voyeurism: Legal Problems in the Deviant Society* 4 *Georgia Law Review* 152 (1969); Larry E. Joplin, *Criminal Law: An Examination of the Oklahoma Laws Concerning Sexual Behavior*, 23 *Oklahoma Law Review* 459 (1970); Edward N. Fadeley, *Sex Crime in the New Code*, 51 *Oregon Law Review* 517 (1972); Orville Richardson, *Sexual Offenses Under the Proposed Missouri Criminal Code*, 38 *Missouri Law Review* 383 (1973); Ralph Slovenko and Cyril Phillips, *Psychosexuality and the Criminal Law*, 15 *Vanderbilt Law Review* 809 (1962); Jerome Hall, *Science and Reform in Criminal Law*, 100 *University of Pennsylvania Law Review* 733 (1952).

⁵⁷ Hugh Hefner, *The Legal Enforcement of Morality*, 40 *University of Colorado Law Review* 200 (1967).

⁵⁸ See for example, *The New Jersey Penal Code, Final Report of the New Jersey Criminal Law Revision Commission*, October, 1971, at x; Morgan S. Bragg, *Victimless Sex Crimes: To the Devil, Not the Dungeon*, 25 *University of Florida Law Review* 140 (1973); John S. Eldred, *Classification and Degrees of Offenses—An Approach to Modernity*, 57 *Kentucky Law Journal*, 81 (1968-69); John C. Danforth, *The Modern Criminal Code for Missouri (Tentative Draft)—A Challenge Fulfilled and the Challenge Presented*, 38 *Missouri Law Review*, 362 (1973); Paul E. Wilson, *New Bottles for Old Wine: Criminal Law Revision in Kansas*, 16 *Kansas Law Review*, 588 (1968).

⁵⁹ Arthur H. Sherry, *Criminal Law Revision in California*, 4 *Journal of Law Reform* 433 (1971).

⁶⁰ Herbert Wechsler, *Challenge of a Model Penal Code*, 65 *Harvard Law Review* at 1103 (1952).

⁶¹ Herbert W. Titus, *God, Man, and Law: The Biblical Principles at 3-14*. (Oak Brook, IL: Institute in Basic Life Principles, 1994).

⁶² *Final Report of the New Jersey Criminal Law Revision Commission*, October 1971, p. v.

⁶³ Herbert Wechsler, *Codification of the Criminal Law in the United States: The Model Penal Code*, 68 *Columbia Law Review* at 1442 (1968).

⁶⁴ Benjamin Karpman, *Criminality, Insanity and the Law*, 1949. Quoted in 52 *Columbia Law Review* at 749 (1952).

⁶⁵ Benjamin Karpman, *Sex Life in Prison*, 38 *Journal of Criminal Law and Criminology* at 476 (1948).

⁶⁶ C. W. Dean, *Treatment Concepts and Penology: A Sociologists's View*, 21 *South Carolina Law Review* at 51 (1968).

⁶⁷ Herbert Wechsler, *Challenge of a Model Penal Code*, 65 *Harvard Law Review* at 1128.

⁶⁸ *Id.*, at 1103.

⁶⁹ Orville Richardson, *Sex Offenses under the Proposed Missouri Criminal Code*, 38 *Missouri Law Review*, at 372 (1973).

⁷⁰ *Sex Offender Treatment: Research Results Inconclusive About What Works to Reduce Recidivism*. Government Accounting Office, GGD-96-137, June 21, 1996.

⁷¹ *Reno Receives Highest Law School Award*. *The Louisville Cardinal, Independent Student Newspaper of the University of Louisville*, February 12, 2002, p. 1-2.

⁷² Richardson, *supra*. Note 69, at 377, 392.

⁷³ Herbert Wechsler, *A Thoughtful Code of Substantive Law*, 45 *Journal of Criminal Law, Criminology and Police Science*, at 524-535 (1955).

⁷⁴ Herbert Wechsler, *Codification of the Criminal Law in the United States: The Model Penal Code*, 68 *Columbia Law Review* at 1427 (1968).

⁷⁵ Wechsler cites to drafting committees in Minnesota, 1964; New Mexico, 1964; New York, 1967; Pennsylvania, 1967; and Michigan, 1967. Other early revisions include Illinois, 1962; Georgia, 1969; Kansas, 1970; Maryland, 1970; New Jersey, 1971; Massachusetts, 1972; Colorado, 1972; and Kentucky, 1974.

⁷⁶ U.S. Child Population, Bureau of Census, *International Data Base reports* 76.97 million under 20 in 1970, and 78.60 million under 20 in 2000.

-
- ⁷⁷ \$17 billion spent on major STDs and their preventable complications, including HIV infections in 1994. Data from the National Institutes of Health NIAID, Fact Sheet, December 1998.
- ⁷⁸ A study last year by the Manhattan Institute demonstrated that enforcing penalties against minor crimes prevented over 60,000 violent crimes in New York City from 1989 to 1998. The tough-on-crime stance some call "broken-windows policing," was "significantly and consistently linked to declines in violent crime." See George Kelling & William Sousa, Jr. *Do Police Matter? An Analysis of the Impact of New York City's Police Reforms*. Civic Report No. 22, December 2001. The Manhattan Institute for Policy Research.
- ⁷⁹ Joseph Epstein, *Commentary*, January 1998. At www.Britannica.com, downloaded March 31, 2001
- ⁸⁰ Webster's *American Dictionary of the English Language*, (1828), "The act of uniting a man and woman for life; wedlock; the legal union of a man and woman for life. Marriage is a contract both civil and religious, by which the parties engage to live together in mutual affection and fidelity, till death shall separate them. Marriage was instituted by God himself for the purpose of preventing the promiscuous intercourse of the sexes, for promoting domestic felicity, and for securing the maintenance and education of children."
- ⁸¹ David Allyn, *Private Acts/Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality*. 30 *Journal of American Studies* at 426 (1996).
- ⁸² Michael Phillips, *To Help Fight AIDS, Tanzanian Villages Ban Risky Traditions*, *The Wall Street Journal*, January 12, 2001, at 1.
- ⁸³ Leonard Baker, *Brandeis and Frankfurter: A Dual Biography* at 29 (Washington Square, NY: New York University Press, 1986).
- ⁸⁴ Lester Kirkendall, *Education for Family Living*, in Ellis and Abarbanel (Eds.), *The Encyclopedia of Sexual Behavior* at 700 (1967).
- ⁸⁵ Morris Ernst and David Loth, *American Sexual Behavior and The Kinsey Report*, (NY: Graystone Press, 1948).

“From the first presentation to the ALEC Education Task Force of the Kinsey fraud in 1999 to the final vote at the 2003 ALEC Summit meeting, it has been a pleasure working to make this State Factor a reality. I was honored to serve as the Junk Science sub-committee Chair on this very important project. The evidence herein speaks for itself, documenting the reckless, imprudent decades-long use of fraudulent “sex science” data to cripple the sex laws and public polities that had served our nation so well until they were deftly subverted by a cadre of legal revolutionaries. It is hoped that this State Factor will serve legislators all over the nation by providing a factual history of how the Kinsey frauds came to dictate school sex education and our sex laws nationwide.”

Senator Kay O'Connor
Chair of the Subcommittee on Junk Science

The ALEC Education Task Force members who served on the Subcommittee on Junk Science are:

Senator Kay O'Connor (KS) Chair

Rep. Keith King (CO)

Senator Laurie Bleaker (KS)

Del. Janet Greenip (MD)

Rep. Carolyn Coleman (OK)

Rep. Andre Martel (NH)

Del. John Reid (VA)

Senator Jack Westwood (KY)

Dr. Judith A. Reisman, Scientific Advisor to the Subcommittee on Junk Science.

Dr. Linda Jeffrey was the State Factor's Chief Author for *Restoring Legal Protections for Women and Children: A Historical Analysis Of The States Criminal Codes*.

For further information on changes to state law codes, please see the detailed monograph, *A History of the American Law Institute's Model Penal Code: The Kinsey Reports' Influence on "Science-based" Legal Reform 1923-2003*, available at www.firstprinciplespress.org.

Drs. Reisman (jareisman@surewest.net) and Jeffrey (drjeff@aye.net) are available for questions or to brief legislators and other state leaders or for consultation and expert testimony if required.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Restoring Legal Protections for Women And Children: A Historical Analysis of the States' Criminal Codes has been published by the American Legislative Exchange Council (ALEC) as part of its mission to discuss, develop and disseminate policies which expand free-markets, promote economic growth, limit government and preserve individual liberty. ALEC is the nation's largest nonpartisan, voluntary membership organization of state legislators, with nearly 2,400 members across the nation. ALEC is governed by a 21-member Board of Directors of state legislators, which is advised by a 21-member Private Enterprise Board representing major corporate and foundation sponsors.

Copyright © April 2004 by the American Legislative Exchange Council. All rights reserved. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior permission of the publisher.

Published by:

American Legislative Exchange Council
1129 20th Street, N.W., Suite 500
Washington, DC 20036
Publications Order Code: 0407
Cost to non-members: \$10.00 + S/H