

SEPTEMBER 1956



In This Issue

American Law Institute's Model Penal Code
Sodomy and Related Offenses
Complete Text---Statute and Comment

U. S. Sues to Kill Kinsey Imports

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NEW YORK TELEVISION PROGRAM TACKLES HOMOSEXUAL SUBJECT; VIEWERS RESPOND WITH PRAISE

"The Open Mind," a New York television program originating in New York, recently dared to explore the SUBJECT: Homosexuality. The Saturday telecast drew a response from viewers, too. A flood of letters, mostly praiseful of the program, asked for additional programs devoted to the subject. Most complete comment in reviewing the program appeared in the *New York Times* under Jack Gould's by-line. It stated:

Breaking Trail

"The Open Mind," which is seen locally over Channel 4, devoted a half hour Saturday evening to a discussion of homosexuality. In the main, it was a worth-while thirty minutes on a subject that is not too easy to discuss on a mass medium catering to the whole family.

Dr. Robert Laidlaw, the psychiatrist; Florence Kelly of the New York Legal Aid Society, and Dr. Arthur Swift of the New School for Social Research touched on some of the medical, legal and social aspects of homosexuality. All

stressed the importance of greater public understanding of the problem.

The program, probably one of the first of its kind, demonstrated how far broadcasting has come in dealing with difficult social issues. The next step now will be to examine how such matters can be expressed in terms a little more comprehensible to the average layman; "The Open Mind" is sometimes a little too esoteric.

Richard Heffner, producer and moderator of the program, does a sound job in guiding the discussion, but his introductory statement could be shortened to advantage.

Lithographed in U.S.A.

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TABLE OF CONTENTS

MATTACHINE SALUTES.....	2
U. S. SUES TO KILL KINSEY IMPORTS.....	4
AMERICAN LAW INSTITUTE MODEL STATUTE ON SODOMY...	5
COMMENT ON THE STATUTE.....	10
PUBLICATIONS PROJECTS.....	26
COMMISSIONS FOR DISTRIBUTORS.....	27

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articles, notes and comment from foreign homophile magazines

Contents of this special issue were selected, translated and edited by the New York chapters of the Mattachine Society. In addition to a number of interesting articles and stories, an excerpt from Peter Wildeblood's new book will appear, along with an expanded letters section, book reviews and quotes and comment. **DON'T MISS IT!**

U. S. SUES TO KILL KINSEY IMPORTS

Sex Researcher Sees 'Real Test' of Scholars' Rights in Seizures by Customs

The Government moved yesterday to gain permanent possession, so as to destroy, a collection of photographs, paintings, statuettes and books shipped from Europe and the Orient for Dr. Alfred C. Kinsey's Institute for Sex Research, Inc.

These objects never reached their destination, for they were seized by the United States Customs authorities over the last six years and lately have been held in safekeeping at the Federal Court House.

It was there that Alfred P. O'Hara, chief executive assistant United States Attorney, filed his suit. Technically called a "libel" action, the motion is in fact an "in rem" proceeding against the objects in question and does not mention Dr. Kinsey or the institute.

"This is a real test of the right of scholars to have access to their material," Dr. Kinsey asserted last night at his home on the campus of the University of Indiana.

"They have taken the position that the same prohibitions apply

to us as would to a commercial enterprise. The customs people have taken six years to make up their minds what to do about this and I cannot really say more until our attorneys have studied it."

That's Their Opinion

When informed of the Government viewpoint as set forth in a statute forbidding the importation of any obscene material whatsoever, Dr. Kinsey remarked: "That's their opinion."

Items that would merit scholarly interest, according to Dr. Kinsey, include an album of six paintings from China said to have been done in 1750, a number of Chinese phallic symbols in wood and stone and folders from Paris containing lithographs and colored plates.

There is also a volume entitled "The Lascivious Hypocrite of The Triumphs of Vice," written by "The Keeper of the Temple" in 1790.

Mr. O'Hara described a shipment labeled as "four cases of printed matter" that proved to contain an assortment of erotic symbols and a picturesque Japanese scroll. Six sheets of plain white paper with obscene drawings and writing on them, consigned to Dr. Kinsey, bore as identification the tag "lavatory wall inscriptions."

The Government men expressed a fear that if they were to lose this case the way would be open for a rash of pseudo-scientific groups bent on importing obscene and immoral objects now banned.

Dr. Kinsey has until Aug. 31 to answer the complaint should he decide to speak up on behalf of those things shipped to him.

Sodomy and Related Offenses

Published here with permission is the complete model penal code statute recommended by the American Law Institute covering the crimes of sodomy and related offenses. This statute has been reprinted from Tentative Draft No. 4 of the Institute dated April 1955. Following the statute is an extensive section of comment related to the draft.

Section 207.5. Sodomy and Related Offenses.

(1) Deviate Sexual Intercourse by Force or Its Equivalent. A person who causes another to carry out or submit to an act of deviate sexual intercourse commits a felony of the second degree if:

(a) The victim is compelled to participate by force or violence, or out of fear that death or serious physical injury or extreme pain is about to be inflicted on him or a member of his family, or by threat to commit any felony of the first degree; or

(b) For the purpose of preventing the victim from resisting, the actor administers or employs, without the victim's knowledge or consent, drugs, intoxicants, or other substance or force resulting in a major deficiency of ordinary power to make judgments or control behavior; or

(c) The victim is unconscious or physically powerless to resist; or

(d) The victim is less than 10 years old (whether or not the actor is aware of that).

(2) Gross Imposition. A person who causes another to carry out or submit to an act of deviate sexual inter-



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course in situations not covered by subsection (1) commits a felony of the third degree if:

(a) The victim is compelled to participate by any intimidation [which would prevent resistance by a person of ordinary resolution] [reasonably calculated to prevent resistance]; or

(b) The actor knows that the victim's submission is due to substantially complete incapacity to appraise or control his own behavior, but this paragraph shall not apply where a victim over 18 years of age loses that capacity as a result of voluntary use of drugs [or intoxicants] in the company of the actor; or

(c) The victim submits because he is unaware that a sexual act is being committed upon him; or

(d) The victim is less than 18 years old, and the actor is at least 5 years older than the victim, but it shall be a defense under this paragraph if the actor proves that the victim had previously engaged promiscuously in deviate sexual intercourse.

(3) Minor Wards and Persons in Custody. A person who causes another to carry out or submit to an act of deviate sexual intercourse in situations not covered by subsections (1) and (2) commits a misdemeanor if:

(a) The victim is less than 21 years old and the actor is charged with his care, treatment, protection, or education; or

(b) The victim is in custody of law or detained in a hospital, school or other institution and the actor is associated in any capacity with his custody or control or with the institution or authority having such custody or control.

(4) Consensual Sodomy; Public Solicitation. A person who engages in an act of deviate sexual intercourse² or who in any public place solicits another with whom he had no previous acquaintance to engage in deviate sexual intercourse commits a misdemeanor.

(5) Prompt Complaint; Corroboration. Subsection (5) of Section 207.4 shall apply to offenses under subsections (1), (2) and (3) of this section.

(6) Definition. Deviate Sexual Intercourse means penetration by the male sex organ into any opening of the body of a human being or animal, other than carnal knowledge within Section 207.4, and any sexual penetration of the vulva or anus of a female by another female or by an animal.

STATUS OF SECTION.

Presented to the Institute for consideration at the May meeting, 1955.

For Commentary, see p. 276, *infra*.

Section 207.6.—Sexual Assault.

(1) Ordinary. A person who subjects another to sexual contact, other than sexual contact between spouses, commits a misdemeanor if:

(a) There is no consent to the contact, or the victim is unaware that a sexual act is being committed upon him; or

(b) The actor knows that submission is due to substantially complete incapacity of the victim to appraise or control his own behavior; or

2. See special note on conflict between Council and Advisory Committee as to inclusion of private acts between consenting adults, p. 276 *infra*.

(c) The victim is less than 10 years old (whether or not the actor is aware of that); or

(d) The victim is less than 16 years old and the actor is at least 5 years older than the victim; but it shall be a defense under this paragraph if the actor proves that the victim had previously engaged in promiscuous sexual activity; or

(e) The victim is less than 21 years old and the actor is charged with his care, treatment, protection, or education; or

(f) The victim is in custody of law or detained in a hospital, school or other institution and the actor is associated in any capacity with his custody or control or with the institution or authority having such custody or control.

(2) Aggravated. A person who subjects another to sexual contact, other than sexual contact between spouses, commits a felony of the third degree if:

(a) The act is carried out by force, violence or intimidation, or by the administration, without knowledge or consent of the victim, of drugs, intoxicants or other substance or force resulting in a major deficiency of the victim's power to appraise or control his behavior; or

(b) The victim suffers serious physical injury; or

(c) The contact is with the genitals or anus of either the actor or the victim, and the case is otherwise within subsection (1).

(3) Prompt Complaint; Corroboration. Subsection (5) of Section 207.4 shall apply to offenses under this section.

(4) Definition. Sexual contact means contact, other than intercourse covered by Sections 207.4 and 207.5, for

the purpose of arousing or gratifying sexual desire of the actor or the victim, but does not include acts commonly expressive of familial or friendly affection.

STATUS OF SECTION.

Presented to the Institute for consideration at the May meeting, 1955.

For Commentary, see p. 292, *infra*.

Section 207.7. Necrophilia.

Not yet drafted.

Section 207.8. Public Indecency.

Not yet drafted.

Section 207.9. Obscenity and Pornography.

Not yet drafted.

SECRET IN A BOTTLE

By Flint Holland

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Your most open-minded attention is invited to this little book . . . written for the layman in story form, but of first importance to professionals.

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Section 207.5. Sodomy and Related Offenses.*Special Note Re Consensual Sodomy between Adults.*

The following comments were written in support of Section 207.5 as proposed by the Reporters and unanimously approved by the Advisory Committee, *i.e.*, excluding consensual relations between adults from criminal punishment. The Council of the Institute, at its March 1955 meeting, voted in favor of criminal punishment. Some members believe that the Reporters' position is the rational one but that it would be totally unacceptable to American legislatures and would prejudice acceptance of the Code generally. Other members of Council oppose the position of the Reporters and the Advisory Committee on the ground that sodomy is a cause or symptom of moral decay in a society and should be repressed by law. Subsection (4) of Section 207.5 was accordingly revised to reflect the Council's position and to raise the issue for discussion by the Institute.

(1) Background and General Recommendation.

The sexual impulse finds expression in a variety of ways other than heterosexual copulation.¹⁷⁴ Substantial numbers of males and females find themselves drawn to members of their own sex. In both homosexual and heterosexual relationships, gratification may be sought and bestowed digitally, orally, or by the anus. There may be no human partner, as in copulation with animals or corpses, or in masturbation. Some individuals obtain sexual satisfaction from exposing themselves indecently, from wearing clothes of the opposite sex, or from contact with objects of symbolic sexual significance, *e.g.*, a shoe or an undergarment. Heterosexual copulation must also be considered deviate, when accomplished by force or with a child, especially when these circumstances appear to be essential to the actor's gratification. Superficially non-sexual offenses such as larceny, burglary, or arson may have an avowed or unconscious sexual aspect, just as, for that matter, approved behavior, including successful pursuit of art, literature, money, or fame, may be bound up with sexual drives. It is generally agreed, also, that an isolated episode of deviate sexuality may have no important significance with respect to the character of the actor, being the result of a chance encounter, curiosity, or experiment.

In varying degrees deviate sexuality has been regarded with intense aversion in nearly all times and civilizations, and subject to condemnation by religious interdict or severe secular punishment. Depending on the environment and education of the analyst, deviate

174. See Appendix A on Frequency of Sexual Deviation Among Males. Homosexual responses which proceeded to orgasm were found to have occurred in about a third as many females as males. Kinsey, Pomeroy, Martin & Gebhard, *Sexual Behavior in the Human Female*, 475 (1953).

sexuality may be attributed to spiritual illness (sin), to improper early psychic influences, or to congenital and hereditary defect. Those who have studied the problem most are in such disagreement as to cause and the possibility of cure that a law-maker must proceed cautiously in decreeing drastic measures, whether with the aim of deterrence, incapacitation, or therapy.¹⁷⁵ Evidence does not support the hypothesis that this generation suffers from a special "wave" of serious sex offenses, or that sex offenders in general tend to recidivism, or that sex offenders of one type tend to progress to other more serious sex offenses or to violent aggressions, or that sex offenders of all varieties can be rationally treated as a single group, whether for statistical purposes, punishment, or therapy. Therefore the so-called sex psychopath laws, which have been adopted in fifteen states, are seriously questionable insofar as they prescribe or permit long or indefinite sentences until "cure", especially where the commitment is or may be to a purely custodial institution, or where finances or scientific personnel are unavailable or inadequate for a realistic program of study and treatment.¹⁷⁶ On the other hand, provision must be and generally is made by other laws for the commitment of mentally deranged and dangerous persons. The difficulty with many of the sex psychopath laws is that they permit too ready an inference of public danger from relatively minor episodes of deviate sexuality. This danger probably exists also in the general commitment statutes which often contain broad definitions of mental illness that could easily comprehend the "sex psychopath." The reform of this legislation, however, goes beyond the present boundaries of the Penal Code project. A related question is whether deviate sex offenses require a special test of criminal responsibility, *e.g.*, to take account of "irresistible impulse" or violations "caused by" mental illness. Except to observe that a test of knowledge of right and wrong is clearly inadequate for some of these cases, we leave the matter to be resolved in the General Part of this Code. There it might be provided, for example, in addition to the extended sentence initially imposed in habitual and psychopathological cases, that no prisoner should be discharged at the end of his term if it is established that he would perpetrate dangerous aggressions.

Our proposal to exclude from the criminal law all sexual practices not involving force, adult corruption of minors, or public offense is based on the following grounds. No harm to the secular interests of the community is involved in atypical sex practice in private between consenting adult partners. This area of private morals is the

175. See Appendix B on Causes of Sexual Deviation; Appendix C on Cure of Sexual Deviation.

176. See Appendix D, Comments on Sex Psychopath Laws; and the careful and comprehensive Report to the New Jersey Legislature of the Commission on The Habitual Sex Offender (1950). This report, drafted by Professor Paul W. Tappan, was based on extensive consultation with judges, prosecutors,

distinctive concern of spiritual authorities. It has been so recognized in a recent report by a group of Anglican clergy, with medical and legal advisers, calling upon the British Government to reexamine its harsh sodomy law.¹⁷⁷ The distinction between civil and religious responsibilities in this area is reflected in the penal codes of such predominantly Catholic countries as France, Italy, Mexico and Uruguay, none of which attempt to punish private misbehavior of this sort. The Penal Codes of Denmark, Sweden and Switzerland also stay out of this area. On the other hand, the German Code of 1871, still in force, contains broad and severe provisions directed particularly against male homosexuality.

As in the case of illicit heterosexual relations, existing law is substantially unenforced, and there is no prospect of real enforcement except against cases of violence, corruption of minors and public solicitation. Statutes that go beyond that permit capricious selection of a very few cases for prosecution and serve primarily the interest of blackmailers. Existence of the criminal threat probably deters some people from seeking psychiatric or other assistance for their emotional problems; certainly conviction and imprisonment are not conducive to cures. Further, there is the fundamental question of the protection to which every individual is entitled against state interference in his personal affairs when he is not hurting others. Lastly, the practicalities of police administration must be considered. Funds and personnel for police work are limited, and it would appear

probation and parole authorities, medical, religious and educational groups. Information was obtained by questionnaires submitted to 300 psychiatrists familiar with sexual deviation. A panel of 15 outstanding authorities in psychiatry, law, biology, case work and sociology met to advise the Commission. Sanford Bates, New Jersey Commissioner of Corrections, convened a conference of officials from eight northeastern states. The position taken in the present text and comments is largely based on the facts gathered and presented in the New Jersey Report. The recommendations of the New Jersey Commission laid heavy emphasis on non-criminal law programs of prevention. In accord with the cautious recommendations of the Commission with regard to the criminal law, the New Jersey Legislature declined to follow the prevailing pattern of the "sex psychopath" laws, which in effect eliminate any ceiling on sentences for sex offenses, and in some cases dispense with the necessity of proving that the defendant did commit a criminal offense. Instead, the New Jersey statute does require conviction, and detention is authorized only for the maximum term authorized by the penal law. The New Jersey Legislature failed, however, to adhere to the Commission's recommendation that the program of special examination, and sentence of sex offenders be restricted to serious sex offenses involving a pattern of repetitive compulsive behavior plus either violence or age disparity between victim and aggressor. See also note, Pennsylvania's New Sex Crime Law, 100 U. of Pa. L. Rev. 727 (1952).

177. *The Problem of Homosexuality, An Interim Report* (1954) published by The Church of England Moral Welfare Council.

178. Georg K. Sturup, M.D., *Sexual Offenders and Their Treatment in Denmark and the other Scandinavian Countries*, 4 INTERNATIONAL REVIEW OF CRIMINAL POLICY 1, 2 (1953); Mueller, *Present Trends in Continental European Sex Crime Legislation* (1953) (prepared for the Illinois Commission on Sex Offenders).

to be poor policy to use them to any extent in this area when large numbers of atrocious crimes remain unsolved. Even the necessary utilization of police in cases involving minors or public solicitation raises special problems of police morale, because of the entrapment practices that enforcement seems to require,¹⁷⁹ and the temptation to bribery and extortion.

At the present time only New York has a statute which, like our proposal, treats deviate sexuality with primary emphasis on the aggression, grading the offense in a manner quite similar to rape. But even there consensual relations between adults remains a misdemeanor, and intercourse with an animal, bird or corpse continues to carry penalties as high as life imprisonment.

(2) Deviate Sexual Intercourse.

The statutes of nearly all states punish fellatio (oral stimulus of the male sex organ), cunnilingus (oral stimulus of the female sex organ), anal intercourse (sodomy originally meant anal intercourse between men, but by extension the term has been applied to all anal and oral intercourse as well as buggery and necrophilia), and bestiality (copulation between human and animal). The term buggery is used to refer collectively to bestiality plus anal intercourse. In a few states and in England, fellatio and cunnilingus are not included so that the offense is limited to bestiality and anal intercourse by males. One result is to make male homosexuality a grave offense while leaving Lesbianism unpunished in these jurisdictions.¹⁸⁰ Where mouth-genital contact is held not to be covered by the sodomy law, it may be punishable under statutes dealing with lewd and lascivious behavior.¹⁸¹ The distinction thus drawn between two closely related types of sexual deviation results in a preposterous difference in maximum sentence: e.g. twenty years for anal sodomy; three years for oral. It is common to provide that "any penetration, however slight" suffices to complete the offense. If the atypical sex practice is criminal, both participants are guilty, that is to say, both the active and the passive partner, consent being no defense. And the law reaches into the very privacy of the marriage chamber to punish husband and wife who depart from its standards.¹⁸² Punishment provided under present law, aside from the indeterminate sentences of the

179. See *Kelly v. United States*, 194 F. 2d 150 (D.C. Cir. 1952) holding that a policeman's unsupported testimony was insufficient to convict, and pointing to the dangers of blackmail particularly when the charge is solicitation.

180. Society has never regarded or treated female homosexuality as harshly as male homosexuality either socially or legally. Kinsey, Pomeroy, Martin and Gebhard, *Sexual Behavior in the Human Female*, 483 et seq. (1953).

181. *State v. Morrison*, 25 N.J. Super. 534, 96 A.2d 723 (1953). An equally irrational distinction prevails in Ohio, where fellatio but not cunnilingus falls in the gravest category. *State v. Forquer*, 74 Ohio App. 293, 58 N.E. 2d 696 (1944).

182. *Reg. v. Jellyman*, 8 Car. & P. 604 (1838); 3 Burdick, *The Law of Crime*, Sec. 879.

"sex psychopath" laws, is extremely severe. Maximum imprisonment ranges from three years to life, with ten years most common (seventeen states) and twenty years the next most frequent (nine states). Twenty-nine states fix minimum sentences from one to seven years. Six jurisdictions provide for aggravated penalties if sodomy is committed on a child: (fourteen years—California; fifteen years—Washington; sixteen years—District of Columbia, Georgia, New Jersey; eighteen years—New York).

Deviate sexual intercourse as defined in subsection (6) of Section 207.5 is somewhat broader than existing laws dealing with unnatural intercourse insofar as it includes digital penetration of a female by another female and penetration by inanimate objects. These activities seem to fall within the basic concept of the unnatural intercourse offense, namely, violation of bodily integrity in a manner that simulates normal intercourse. Indecent assaults that do not take this specially resented form of mock intercourse will be covered in a separate section of this article. A comparable distinction is made in Article 191 of the Swiss Penal Code: A person who subjects a child under 16 ". . . to intercourse or analogous act . . ." is punished more severely than one who ". . . commits any other indecency on a child below 16 . . ."

(3) *Grading According to Degree of Compulsion.*

In general this section parallels the provisions of Section 207.4—Rape and Related Offenses. However, no first degree offense is provided. The difference is justifiable on the ground that, in the common view, the harm done to a woman by forceful intercourse is graver than that involved in homosexual assault. The possibility of pregnancy, the physical danger in case abortion is required, and the impairment of her marital eligibility are factors to be considered. Were it not for these, it might well be that no rape should be first degree.

(4) *Age Disparity.*

Commentators agree that disparity of age is an important consideration. Overt homosexual practice typically begins in youth, and while a certain amount of it will undoubtedly continue to arise spontaneously among the youthful, it seems advisable to attempt to deter seduction of the young by older perverts, while avoiding criminality for occasional or experimental adolescent experience with contemporaries. Paragraph (d) of subsection (2) seeks to accomplish this by making 18 the "age of consent" and requiring a five year age disparity. The reasons for using 18 rather than 16, as in Section 207.4 (2)(4), are (1) belief that emotional instability of adolescence probably is greater and more prolonged among males; (2) it seems desirable to afford protection against seduction during the normal years of secondary education; and (3) the hypothesis that homosexual

Dr. Kinsey Dies

Every man and woman in the world lost a good friend on August 25 when Alfred C. Kinsey died in a Bloomington, Ind., hospital after a brief illness.

The tireless work of this great scientist and his capable associates at the Institute for Sex Research has been the greatest contribution in modern times toward unveiling the true aspects of human sex behavior.

Dr. Kinsey was a man to whom the ignorance, hypocrisy and bigotry surrounding mankind's sexual expression posed a tremendous challenge: He and his associates dared to be pioneers in piercing the mysteries, prejudices and taboos which for centuries have caused the human race to suffer untold tragedy and unhappiness--because the truth about sex behavior was not known.

Dr. Kinsey devoted much of his life to an objective study of the subject, reporting only what thousands of men and women told him. His data, in books already published, and in works still to be completed, will enrich the status of man as a social creature, and open still more doors to greater human understanding, acceptance and happiness.

That his untimely death occurred at the height of his career was tragic, indeed. That his work can and will be carried on by experts who are qualified to do so is fortunate for our culture.



Alfred C. Kinsey

Alfred C. Kinsey
Professor of Zoology

By United Press

BLOOMINGTON, Ind., Aug. 25.—Dr. Alfred C. Kinsey, 62, university professor who became perhaps the world's foremost

authority on human sexual behavior, died early today in Bloomington Hospital.

Kinsey, famous as author of two volumes on the private

habits of men and women, was hospitalized three days ago for a heart condition and pneumonia. For several months, he had been in failing health and spent increasingly less time at the Institute for Sex Research on the Indiana University campus.

Kinsey's name became a household word in 1948 when his first world-famous "Kinsey Report" on sex behavior of the human male was published as a best-seller. A volume on female sex behavior, published in 1953, made him even more famous than the first.

Son of Professor

He was born in 1894 in Hoboken, N.J., son of a college engineering instructor. As a boy, he lived in South Orange, N.J.

He worked his way through Bowdoin College, Me., largely with money earned as counselor in summer camps. After getting a B.S. degree in psychology, Kinsey got a Doctor of Science degree in biology at Harvard and stayed on for graduate research on insect life.

Kinsey became the world's foremost authority on the life and habits of the gall wasp. His intensive studies—his research covered 150,000 specimens—gave him the experience in detail work which later helped his research in sexual behavior.

He joined the Indiana University faculty in 1920 as a zoologist at 26, and had been there ever since.

Married a Student

Kinsey married one of his IU students, Clara McMillen, a chemistry major. They were parents of four children, one of whom died in childhood.

In searching through books on human sex, he decided most were confusing, contradictory and patchy. He found, he said, "assumptions that had been un-

questioned for centuries—with-out any scientific validation."

With encouragement from superiors, Kinsey outlined a research program and decided it would require nine volumes and 30 years of steady work by many persons to complete.

One Assistant

At first, he paid a graduate student from his own faculty salary to help him. Three years later, he asked the National Research Council for a grant and got \$1600.

Three widely-known scientists visited Kinsey's campus research headquarters at Bloomington in 1942 to examine his plans and aims and submit voluntarily to personal interviews of the type which Kinsey and his staff later used throughout the country in recording case histories.

Their report was so favorable Kinsey began getting research grants from many sources.

Conservative Publisher

Kinsey's first volume was titled "Sexual Behavior in the Human Male." He chose a conservative medical publishing house in Philadelphia because, he said, he wanted to assure "non-sensational" publication of the book.

He planned to follow up the first volume within two or three years, but more than five years went by before "Sexual Behavior in the Human Female" was ready.

It sold better than the first volume, after unprecedented unsolicited publicity buildup, including Kinsey's photo on the covers of numerous slick-paper magazines.

Kinsey never accepted a penny outside his faculty salary although he could have been rich from his book royalties and lectures. All profits reverted to the research project.

Quotable Quote

Prejudice is a great time-saver. It enables you to form opinions without bothering to get the facts.

The news of Dr. Alfred Kinsey's sudden death arrived while this issue of the Review was on the press. This special insert was prepared and included in the issue in order that the comment of the United Press might be distributed to all Review readers.

It goes without saying that Mattachine and all its members and friends have lost a valued counselor and advisor with Dr. Kinsey's passing.

His helpfulness to Mattachine leaders will never be forgotten.

The **MATTACHINE REVIEW** is published by the Mattachine Society, Inc., a non-profit, non-partisan organization founded in the public interest for the purpose of providing true and accurate information toward the solution of problems of human sex behavior.

mattachine **REVIEW**

seduction is more likely to precipitate a fixed pattern of undesirable behavior and maladjustment.

(5) *Offensive Public Behavior.*

This aspect of deviate (principally male homosexual) behavior requires treatment somewhat on the lines of "open and notorious" heterosexual relationships. Cf. Section 207.1. However, the problem is different in that a strong inference of sexual relations follows from "cohabitation" of a man and woman, and if it is known that they are not married the cohabitation constitutes an open flouting of widely held standards of morality. This is not the case when couples of the same sex live together, however strong the suspicion may be of a sexual relation between them. Accordingly, subsection (4) reaches the problem by prohibiting solicitation of strangers in public places. Even so narrowly defined, the crime of solicitation of sodomy involves some danger of abuse by blackmailers and law officers.¹⁸³

APPENDIX A

FREQUENCY OF SEXUAL DEVIATION

I. Kinsey, Pomeroy and Martin, *Sexual Behavior in the Human Male* (1948)

A. Mouth-genital contact.

"Mouth-genital contacts of some sort, with the subject as either the active or the passive member in the relationship, occur at some time in the histories of nearly 60 per cent of all males . . .

"Mouth-genital contacts (of any kind) occur much more often at high school and college levels, less often in the grade school groups. In the histories of the college group, about 72 per cent of the males have at least experimented with such contacts, and about 65 per cent of the males who have gone into high school but not beyond. Among those males who have never gone beyond eighth grade in school the accumulative incidence figure is only 40 per cent." at p. 371.

B. Animal Contacts

"In the total population, only one male in twelve or fourteen (estimated at about 8%) ever has sexual experience with animals (Table 59). In this total population, it is not more than 6 per cent which is involved in the most active period (between adolescence and 20). The percentage drops in successive age groups to a little more than 1 per cent in the early twenties, and to a still lower figure at old age.

183. See *Kelly v. U.S.*, 194 F.2d 150 (D.C. Cir. 1952).

[Appendix A § 207.5]

"Frequencies of animal contact are similarly low taken as a whole. For most individuals, they do not occur more than once or twice, or a few times in a lifetime." at p. 670.

"... It is, in consequence, something between 40 and 50 per cent of all farm boys who have some sort of animal contact, either with or without orgasm, in their preadolescent, adolescent, and/or later histories." at p. 671.

C. Homosexuality

[some experience]

"37 per cent of the total male population has at least some overt homosexual experience to the point of orgasm between adolescence and old age (Figure 156). This accounts for nearly 2 males out of every 5 that one may meet.

"50 per cent of the males who remain single until age 35 have had overt homosexual experience to the point of orgasm, since the onset of adolescence (Figure 156).

"58 per cent of the males who belong to the group that goes into high school but not beyond, 50 per cent of the grade school level, and 47 per cent of the college level have had homosexual experience to the point of orgasm if they remain single to the age of 35 (Figure 158).

[experience after adolescence]

"63 per cent of all males never have overt homosexual experience to the point of orgasm after the onset of adolescence (Figure 156).

"50 per cent of all males (approximately) have neither overt nor psychic experience in the homosexual after the onset of adolescence (Figures 162-167).

"13 per cent of the males (approximately) react erotically to other males without having overt homosexual contacts after the onset of adolescence.

[post-adolescent homosexual responses for 3 years or more]

"30 per cent of all males have at least incidental homosexual experience or reactions (i.e., rate 1 to 6) over at least a three-year period between the ages of 16 and 55. This accounts for one male out of every three in the population who is past the early years of adolescence (Table 150, Figure 168).

"25 per cent of the male population has more than incidental homosexual experience or reactions (i.e., rates 2-6) for at least three years between the ages of 16 and 55. In terms of averages, one male out of approximately every four has had or will have such distinct and continued homosexual experience.

"18 percent of the males have at least as much of the homosexual as the heterosexual in their histories (i.e., rate 3-6) for at least three years between the ages of 16 and 55. This is more than one in six of the white male population.

"13 per cent of the population has more of the homosexual than the heterosexual (i.e., rates 4-6) for at least three years between the ages of 16 and 55. This is one in eight of the white male population.

"10 percent of the males are more or less exclusively homosexual (i.e., rate 5 or 6) for at least three years between the ages of 16 and 55. This is one male in ten in the white male population.

"8 per cent of the males are exclusively homosexual (i.e., rate 6) for at least three years between the ages of 16 and 55. This is one male in every 13.

"4 per cent of the white males are exclusively homosexual throughout their lives, after the onset of adolescence (Table 150, Figure 168).

"None of those who have previously attempted to estimate the incidence of the homosexual have made any clear-cut definition of the degree of homosexuality which they were including in their statistics. As a matter of fact, it seems fairly certain that none of them had any clear-cut conception of what they intended, other than their assurance that they were including only those 'who were really homosexual.' For that reason it is useless to compare the 2 or 3 per cent figure of Havelock Ellis, or the 2 to 5 per cent figure of Hirschfeld, or the 0.1 per cent figure of the Army induction centers with any of the data given above." at p. 650-1.

II. Ploscowe, *Sex and the Law*.

"Nor is homosexuality a rarity in our culture. It has been estimated by such authorities as Hirschfeld and Havelock Ellis that from 2 to 5 per cent of a particular population are homosexual. Kahn who studied homosexuals in New York City Penal Institutions, estimated that there were from 100,000 to 500,000 in that city alone. . . .

"Female homosexuality has been studied much less intensely than male homosexuality, but it too is far more widespread than is generally realized. Katherine B. Davis studied twelve hundred unmarried college graduates who averaged thirty-seven years of age. Of this number half had experienced intense emotional relations with other women and over three hundred, or one-fourth of the total, reported sexual activities with other women. Of one hundred married women studied by Hamilton, one-fourth admitted homosexual physical episodes." at pp. 206-207.

APPENDIX B.

CAUSES OF SEXUAL DEVIATION.

Karpman, *The Sexual Psychopath*, 42 J. OF CRIM. L. AND CRIMINOLOGY 184, 193-4 (1951).

"Sexual offenses are no more hereditary than are neuroses in general. They are not due to bad sexual upbringing or to sexual ignorance on the part of the parents, or of others as we commonly understand it. The development of perversions in general and sexual offenses in particular follows its own psychological laws, which are but little influenced by external situations. . . ."

"A certain number of sexual crimes are committed by individuals suffering from brain diseases such as encephalitis lethargica, which argues strongly for the need of thorough physical examinations of all sexual (and other) offenders. Even these respond favorably to psychotherapeutic treatment. But beyond this, abnormal sex behavior, be it in the adult or child, derives from the unwholesome family and social atmosphere in which the child develops. The fault lies with the parents, who, themselves products of unhealthy repression and much involved in sexual problems, do not know and cannot set themselves to be frank and open with a child whose naive and artless curiosity should have been handled in an equally simple way. Because of the many evasions, rationalizations, and sheer prohibitions, the child is led into aberrant channels that, not being corrected, become magnified and distorted."

Smith, *The Homosexual Federal Offender: A study of 100 Cases*, 44 J. OF CRIM. L. AND CRIMINOLOGY, 582, 583 (1954).

"It must be conceded that the genesis of homosexuality remains obscure. Havelock Ellis advanced the opinion that it is a congenital anomaly. In a recent comparative twin study of male homosexuals, Kallman presented evidence favoring a genetic basis for the disorder"

"So far, studies designed to demonstrate a biological basis have not been conclusive"

"It seems that most of the present-day psychological explanations of homosexuality stem from Freudian theories. According to these theories, the disorder begins when a male child identifies strongly with his mother. In so doing, he narcissistically takes himself as the sexual object, and, as he matures, he seeks a feminine type man for his love object. Fenichel indicates that there may be some "physical constitutional factors" which predispose the individual to employ psychological mechanisms of this type in establishing homosexual relationships."

East, *Sexual Offenders—A British View*, 55 YALE LAW J. 527, 545 (1946).

"Homosexuality may be constitutional or acquired, and in many cases a constitutional factor seems to be present. Generally, a clearer view of the condition is obtained if it is regarded as the result of a combination of various causes."

William James, *Principles of Psychology*, Vol. 2, p. 439.

Considered inversion "a kind of sexual appetite of which very likely most men possess the germinal possibility."

Havelock Ellis, *Studies in the Psychology of Sex—Sexual Inversion*, 3rd Edition, p. 83.

"It may now be said to be recognized by all authorities, even by Freud who emphasizes a special psychological mechanism by which homosexuality may become established, that a congenital predisposition as well as an acquired tendency is necessary to constitute true inversion, apparent exceptions being too few to carry much weight."

Dr. A. Moll, *Perversions of the Sex Instinct*, translated by M. Popkin, (1931), p. 168.

"Krafft Ebing has tried to explain sexual inversion from etiological facts. He supposes that congenital sexual inversion is transmitted by way of heredity."

COMMENTS ON THE CAUSES OF SEXUAL DEVIATION.

Drummond, *The Sex Paradox* (1953).

"As to whether the cause of homosexuality is wholly environmental, whether a constitutional factor plays a part or an endocrine imbalance contributes, psychiatrists are not in agreement. Anthropologists direct attention to the nations and tribes in which homosexuality is a recognized social institution to point up the environmental argument. Havelock Ellis emphasized the importance of the constitutional factor. He found family or hereditary inversion in 35 per cent of the cases. Other writers disagree with these findings, some estimating the percentage to be not more than 1 or 2 per cent.

"Those who admit to an endocrine type say that it is not the physical condition which causes it as much as a female type of figure, lack of hair on the chest, a soft voice, etc., which cause the individual intellectually to become homosexual by producing a psychological conflict.

"Other psychiatrists insist there is not the slightest vestige of evidence that homosexuality is either congenital or endocrine, contending that the condition is all psychological and environmental—that the rare creatures who have both male and female primary sex organs are anomalies. Most of the psychiatrists interviewed by the writer lean toward the view that in a small minority of cases homo-

sexuality is congenital in the sense that a familial tendency toward it exists. But that in the vast majority of cases it results from environmental factors." (pp. 124-125)

"As lack of love may produce nail-biting or jail-breaking it may also lie at the bottom of adult homosexuality, we find, in the enumeration of causative factors, which also includes: inverted nipples in a mother, resulting in abnormal sucking habits; cruel and brutal fathers and over-indulgent mothers; early seduction by a homosexual; unrealistic sex-morality teaching; codes productive of frustration; deep affection or genuine love for a man; a misconception about avoiding venereal disease, etc. Whatever the causative factors, homosexuality has existed since the dawn of history in animals of the human, as well as of the lower, order." (p. 126)

Plosowe, *Sex and the Law* (1951).

"Students of homosexuality disagree as to why the sex impulse fails to develop normally in certain individuals. Some believe that biological and constitutional factors predominate in the development of the homosexual. All persons are said to have within themselves characteristics and qualities of both sexes. In the normal individual, the process of growth and development pushes the characteristics and qualities of his own sex to the fore. But in the homosexual, either through congenital defect, hereditary taint, or endocrinological imbalance, the growth process is arrested and the individual remains with many of the characteristics and qualities of the opposite sex." (at p. 211)

"Psychiatrists and particularly psychoanalysts reject the explanation of homosexuality on any constitutional or biological basis. They are more likely to agree with Bergler that homosexuality is not due to biological hermaphroditism. . . . Endocrinology has nothing therapeutic to contribute to the problem of homosexuality."

"In attempting to determine what psychogenic factors determine the individual's homosexuality, psychiatrists stress his early childhood, the over-solicitousness and over-protection of the parent of the opposite sex, and the gross abusiveness or negative role of the parent of the same sex, the marked emotional instability of the parents, the fact that the parents wanted a child of a different sex and showed it in the treatment of the child. Thus the latent homosexual may be foreseen in the boy who is tied to his mother's apron strings, who does not play the usual boyhood games with his own age group, who prefers girls' games and girlish activities. Similarly, Lesbianism may be predicted in the girl who identifies herself with her father rather than her mother, who engages in tomboy activities, who prefers boys to girls as playmates, who would rather play baseball and football than dolls or house. Psychiatrists stress the decisive role of homosexual seduction around puberty and the disastrous influence of contact with experienced older homosexuals." (at p. 212)

APPENDIX C.

CURE OF SEXUAL DEVIATION.

Karpman, *Sex Life in Prison*, 38 J. CRIM. L. AND CRIMINOLOGY 475, 484 (1948).

" . . . Generally, the treatment of sexual abnormalities acquired in prison is essentially the same as the treatment of sexual anomalies and deviations observed in daily life among individuals who have never been in prison. And these can be cured. Every psychiatrist of experience and competence has in his records cases of homosexuality that have been cured, and cases of paedophilia (sexual attraction toward children), exhibitionism and peeping, transvestism (cross-dressing or male and female impersonation), etc., that have definitely yielded to treatment."

Hewitt, *Nebraska Statutory Revision of Punishment of Sex Offenders*, 33 NEB. L.R. 475, 478 (1954).

"There is a diversity of opinion as to whether a psychopath can be cured. Many regard such people rarely curable, and then only by long periods of therapy. Ordinarily, the true psychopath will not seek a cure of his own. . . ."

Smith, *The Homosexual Federal Offender: A Study of 100 Cases*, 44 J. OF CRIM. L. AND CRIMINOLOGY 582, 591 (1954).

" . . . In general, these observations indicate that there are few individuals in this group whose homosexuality could be expected to be modified by psychoanalytic treatment."

East, *Sexual Offenders—A British View*, 55 YALE L.J. 499, 556 (1946).

"The psychological treatment of the sexual offender has its limitations and an exaggerated idea of its value is sometimes discernible."

Guttmacher and Weifhofen, *Sex Offenses*, 43 J. OF CRIM. L. AND CRIMINOLOGY 153, 172-3 (1952).

"The problem of the medical and psychiatric treatment of the individual sex offender is a very complex one. The most time-honored form of treatment is that of castration and in many parts of the world it is still widely employed. It has been generally viewed in this country as a cruel and inhuman punitive measure rather than as a therapeutic device. Doubtless it deserves careful re-evaluation and, if really effective, might be less inhuman than penal incarceration for life. In England extensive use has recently been made of injection of female sex hormones in male sex offenders. This may prove to be a valuable measure. Electroshock therapy and even brain surgery have also recently been advocated but, on the basis of our present

knowledge, they would seem to have a very doubtful value at this time.

"Psychotherapy of various types has been used in selected cases. For some cases of a neurotic nature deep psychotherapy of the classical analytical type is doubtless the treatment of choice. But the virtual impossibility of carrying out such treatment in the ordinary highly restrictive institutional environment, its time-consuming character, and its great cost, limit its use to only a small number of offenders on probation, and only such of these as can profit from it and want it. . . ."

Ploscowe, *Sex and the Law* 234 (1951).

". . . Moreover, as we shall see, definitive psychiatric procedures for the treatment of psychopathy do not exist. The result has been that sex psychopaths have tended to be discharged from institutions as the needs of the institutions required, rather than the needs of the individual."

Drummond, *The Sex Paradox* 331 (1953).

". . . There is almost total lack of agreement among 'authorities' on the fundamental issues involved in the causation, treatment, prognosis and legal handling of sex offenders."

APPENDIX D.

COMMENTS ON SEX PSYCHOPATH LAWS.

a. *Fallacies underlying present laws.*

Guttmacher and Weihofen, *Sex Offenses*, 43 J. OF CRIM. L. AND CRIMINOLOGY 153, 154 (1952).

"Three widely held misconceptions have been responsible for most of the defects in the so-called sexual psychopathic laws. In the first place, sex offenders are treated as if they comprised a separate and homogeneous group of criminals. The reverse is true. . . . Secondly, it is believed that sex offenders regularly progress from minor offenses such as exhibitionism to major offenses like forced rape. Such a graduation is almost unknown. . . . Then, there is a widespread belief that sex offenses are today rampant—that there has been a sudden alarming increase in their incidence. All of the careful investigations made recently have failed to demonstrate any persistent trend in that direction. A fourth major source of error is the belief that all sex offenders tend to be recidivists. . . . Some exhibitionists and some pedophiliacs have repeated arrests for the same type of crime—but among other sex offenders there is little tendency toward repetitiveness."

Ploscowe, *Sex and the Law* 216 *et seq.* (1951).

"Most sex offenders are charged with relatively minor crimes. They are not for the most part degenerate sex fiends who are potential killers. Nor are they individuals with persistent patterns of illicit sexual activity who graduate from minor crimes to atrocious major offenses. . . . In New York City, for example, of 2,366 indictments for rape during the 30's only 418, or 18 per cent, were for forcible rape, and 1,948 or 82 per cent were for statutory rape involving sexual intercourse with girls under eighteen. If most rapes simply involve consensual acts of sexual intercourse with under-age girls, they are *not* the product of degenerates and psychopaths who force their attentions upon unwilling victims. . . ."

"First offenders, moreover, commit most sex crimes. . . . In the New York City Study, six offenders of every ten convicted of sex crimes had no prior criminal record. . . ."

b. *Efficacy and/or shortcomings of present act.*

Guttmacher and Weihofen, *Sex Offenses*, 43 J. OF CRIM. L. AND CRIMINOLOGY 153, 164 *et seq.* (1952).

The authors point out the following:

a. In all but New York and New Jersey the attempt to define the persons covered is hopelessly confused.

b. New York and New Jersey, which provide for examination upon conviction of certain crimes as a prelude to disposal of the case, do not reach all antisocial conduct impelled by sexual abnormality.

c. "The sexual psychopath laws typically make no special provision for treatment."

d. Under these laws, preventive work is neglected to concentrate upon putting people into institutions only after serious, and perhaps incurable, abnormality is present.

e. *Conclusion*: "Perhaps, the only, valid justification for separate legislation for sexual psychopaths is a pragmatic one. Such legislation permits experimenting with new procedures in a limited area, procedures which would be considered too radical for general acceptance." pp. 171, 172.

Ploscowe, *Sex and the Law* (1951).

"The sex-psychopath laws fail miserably in this vital task," [of distinguishing the dangerous, mentally abnormal individual]. "Because of the vagueness of the statutes, the sex-psychopath laws have

been used primarily against minor sex offenders and in considerable degree *have not* been employed to isolate dangerous sex criminals. . . ." at p. 229.

"As Americans, we have had pride in the safeguards which the law throws around persons charged with a crime. . . . This tradition takes a beating at the hands of the sex-psychopath laws." at p. 231.

"If treatment, which is the sine qua non of any program of dealing with the sex psychopath, is not generally provided in the various states, then it becomes obvious that sex-psychopath laws have no special advantages in protecting the public from sex offenders over the traditional methods of the criminal law. . . . The law is almost never invoked in some states and rarely used in others." at p. 236.

Drummond, *The Sex Paradox* (1953).

"Psychiatric considerations, however, appear to be confined to the psychological needs of the accused. The psychological needs of the community for revenge . . . are overlooked or discounted today. . . . Also, the most potentially dangerous least often fall either under the specific provisions of the law or under their general administration. Advocates and opponents of the legislation alike are dissatisfied with the lack of provision for protecting individual's civil rights, . . ." at pp. 326, 332.

Orenstein, *The Sex Offender*, 1950 Yearbook, National Probation and Parole Association, 195, 201.

"1. We focus the major attention on the sexual psychopath and then discover that we are unable to clearly define the concept itself.

"2. Our actual experience of treatment results for this group is so limited and circumscribed as to make it difficult to draw valid conclusions.

"3. If we attempt to use and apply what we already know from related material, namely the treatment of the neurotic, we discover that a therapeutic approach requires an expenditure of time and effort which is costly.

"4. At best our present day techniques prohibit large scale application, such as is possible in other public health services. To be more specific, individual or group psychotherapy is regarded as the treatment method of choice in our problem, but we have to face the fact that even a well-trained psychiatrist can treat only a relatively small number.

"5. We make no provision for psychiatric examination of the plaintiffs and thorough evaluation of the stories with the result that the offender's behavior is frequently isolated from the overall circumstances in which it occurs.

"6. In attempting to protect society by focussing attention upon the misdemeanor we tend to ignore available prophylactic measures. If we can agree, and I think we can, that sexual psychopathy is the end result of complications in the course of personality development, then it becomes necessary to expand our educational methods and deal more concretely with the problem of prevention. This will not limit itself to sexual psychopathy but will inevitably be reflected in the control of abnormal aggression in general."

APPENDIX E.

RECOMMENDATIONS.

Ploscowe, *Sex and the Law* (1951).

"It might be desirable to eliminate the legal prohibitions against adult homosexual behavior in private altogether. Such prohibitions benefit nobody but blackmailers at the present time. . . ."

"For similar reasons, the legal provisions against heterosexual behavior which violates sodomy and crimes-against-nature statutes should be eliminated. . . ."

"First and foremost, children and minors must be protected against sexual advances, whether such advances are heterosexual or homosexual in character. . . ." at p. 213.

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