



mattachine **REVIEW**

FEBRUARY 1962

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Containing 16 Pages on Sex Offenses as Outlined in New Illinois Criminal Code.



A letter reprinted from *The Independent*, 225 Lafayette St., New York 12, N.Y.

Regarding the letter by one Eldridge Chase (Issue #113) about homosexuals: as a one-time subscriber to the *Mattachine Review* it is my impression that those of their articles that attempted to deal with the subject in an authoritative manner were all written by psychiatrists, psychologists and other specialists (i.e., presumably not homosexual persons) and none of the articles written by (presumably) homosexuals, as I recall, pretended to have any particular validity except as an expression of that person's experience or opinion.

I believe it is precisely the opinion of most enlightened persons today that homosexuality is not a matter of choice, and that the persecution of such persons and the laws dealing with them, which assume a freedom of choice, are particularly unjust.

I doubt very much if many homosexuals claim that they have 'made a choice.' I do not believe that they feel that their particular orientation is any more a matter of choice than 'normal' people feel that what they experi-

ence is a matter of choice. At some time or other, the homosexual person comes to realize that he feels differently from others and comes finally to accept that as a fact.

As for the 'certain rare cases' in which homosexuals 'function extremely well,' it is certainly a fact known to anyone who knows anything about the subject that many thousands of homosexuals hold down responsible jobs and earn good money and live quite unsensational lives.

Admitting that something has gone wrong with such persons, that there has been some faulty conditioning or some miscarriage of functions, it seems to me that the term 'mentally disturbed person' is not quite the right one to apply, if the words are used in their normal English meaning.

And if anyone is at all interested in helping such persons it certainly does them no good to be told that they are 'sick persons.'

Probably few of them could afford a psychotherapist anyway.

Atlee Estabrook
New York, N. Y.

OTHER ORGANIZATIONS

CALIFORNIA: One, Inc., 232 S. Hill St., Los Angeles 12; Daughters of Bilitis, Inc., 1232 Market St., San Francisco 2; Hollywood Assistance League, P.O. Box 29048, Hollywood 29; League for Civil Education, Inc., 1154 Kearny St., San Francisco 11.

MASSACHUSETTS: Demophil Center, 15 Lindall Place, Boston 14.

PENNSYLVANIA: Janus Society, P.O. Box 7824, Philadelphia 1.

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Opposite Attitudes, Adjacent Jurisdictions

MacKENNETH FINGAL

With attention focused as it is upon the new Criminal Code of Illinois (discussed in detail in this issue), two other items are of significance in their relationship to it.

Maryland is different.

In *James Canter v. Maryland*, 168A 2d 385 (1961), Canter was convicted of sodomy with one Frank Howard, caught in the act by two policemen who had flashlights. The court ruled that the inference could be drawn that penetration had occurred although there was no actual proof as to this.

In the District of Columbia, however, another judgment went in the opposite direction, although the jurisdictions are separated only by a boundary. In *Calvin L. Rittenour v. District of Columbia*, 163A 2d 558 (1960), Rittenour was convicted of sodomy by Municipal Court Judge Mildred Reeves. He appealed and Municipal Court of Appeals Judge Hood reversed the lower court judgment and ruled that homosexuality or the act of sodomy between consenting adults in private is not a crime in the District under the 1948 Miller statute passed by Congress. However, the language was clear to mean that the already-mentioned criteria were necessary: "Not a crime if the act is committed in privacy in the presence of a single and consenting adult person." Judges Rover and Quinn also participated in the decision.

Thus Illinois may actually be the second U.S. jurisdiction to remove consenting varied sex expression, including that of homosexual adults, from the status of crime when conducted in private and without pressure.

Significant also in the D.C. Municipal Appeals Court ruling is the fact that the law interpreted by the judges was a law passed by Congress, since that body legislates the statutes for the Federal District. Therefore if a national legislature considers it not a crime, this may be an impetus for other states to consider revision of antiquated laws to the contrary.

Calling Shots

FORNICATION LEGAL, SAYS CALIFORNIA SUPREME COURT

All the hue and cry over an inrush of "undesirables" into California as a result of a Dec. 27 State Supreme Court decision on sexual intercourse between unmarried men and women is a lot of political nonsense. Some police chiefs and prosecuting attorneys to whom crime provides a career are as incensed as can be. Newspapers pick this up and fan it for all its worth to milk every dime out of the word and thought of "sex" in headlines, thus appealing to the very worst in man's nature. It's all so much hypocrisy and pious bigotry for a buck. Fact is, the decision poses no threat except to the power-lusting officials who wish to control the lives of others, Police Chief Parker of Los Angeles included. It simple means that fornication is not a crime in itself (It is not a function of the law to define *sin*.); and it gives no green light or bill of rights to homosexuals, contrary to what some newspapers have published. Unfortunately, other laws forbid the latter.

Persons seeking bedlock without wedlock won't have to rush to California for it now, either. They can get it anywhere and have been for centuries, without state intervention. No laws have ever slowed down or even delayed the performance.

Homosexuals won't flock here as a result, either. Laws are better for them elsewhere than in California. For instance, in Illinois, a new penal code which went into effect New Year's Day permits adults, including homosexuals, to indulge in sexual relations in private so long as there is no force or violence involved. This comes as a part of the revision of the entire penal code of that state, and it is the product of the legislature, not a court decision.

In New York, certain acts defined as felonius sodomy in California are considered no more than a misdemeanor.

Many western European countries—including valued U.S. allies—have no laws against fornication or homosexual acts in private. In some, these acts have never been legislated against; in others, laws have been changed decades ago—and in none of them has the population lapsed into sexual degeneracy. On the other hand, these countries have lower rates of illegitimacy, juvenile delinquency, venereal disease and sex crimes than the U.S. which spends so much effort trying to prevent what the people go right on doing anyway in spite of the added risk of blackmail engendered by our legal system and abetted, perhaps unwittingly, by the police, courts and

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Editor's Note: The following is a reply to a newspaper item in the DAILY ILLINI, March 18, 1960, by an assistant professor of Biology on the campus of the University of Illinois, where the paper was published. Dr. Koch called his reply, which is self-explained below, "Advice on Sex." The author is known for previous outspoken viewpoints on sexual freedom which made headlines nationally.

SEX FREEDOM FOR YOUNG ADULTS? Leo F. Koch

YOU HAVE MADE a great show of liberalism in racial problems whose center of physical and emotional disturbance is a safe 1000 miles away. I will be interested to see how your social conscience operates with a problem which strikes very closely home, here on campus.

The problem is broached by Dick Hutchison and Dan Bures in their article, "Sex Ritualized," (16 March) under the heading, "Off the Cuff" on your editorial page.

Hutchison and Bures are to be commended for their courage in candidly discussing the sexual problems of college students, if only with a narrow-minded, if not entirely ignorant, perspective.

Their discussion omits entirely any reference to the social milieu which compels healthy, sexually mature human animals to such addictions (of which masturbation is likely to be the least objectionable) to unhealthy and degenerative practices.

The first hazard encountered by frank discussion in public of sexual problems is the widespread moralistic attitude that where there is smoke there is fire. Anyone who insists on speaking about sex in public, say the orthodox moralists (unless it is condemned soundly) must be a sexual deviate (a queer) in their orthodox view.

The second and by far the more important hazard is that a public discussion of sex will offend the religious feelings of the leaders of our religious institutions. These people feel that youngsters should remain ignorant of sex for fear that knowledge of it will lead to temptation and sin.

Hence we have the widespread crusades against obscenity which are so popular among prudes and puritanical old maids. Bachelors are known to be immune to this disease inasmuch as they are the favored sex in a double standard of morality which accepts as respectable premarital experience for men but not for women. This occasions some difficulty as most men are heterosexually inclined.

Thus we come to the crux of the problem which is not even hinted at by Hutchison and Bures. Their article would lead a casual reader (to believe) that the evils portrayed by them are due only to the depravity of the indi-

viduals they observed, whereas, in fact, the load of blame should fall on the depraved society which reared them. I submit that the events described by Hutchison and Bures are merely symptoms of a serious social malaise which is caused primarily by the hypocritical and downright inhuman moral standards engendered by a Christian code of ethics which was already decrepit in the days of Queen Victoria.

College students, when faced with this outrageously ignorant code of morality, would seem to me, to be attended with remarkable decorum, and surprising meekness, if they do no more than neck at their social functions.

Perhaps it would be nearer to the truth to say that such meek and very frustrating, no doubt, behavior indicates an extreme degree of brainwashing by our religious and civil authorities in the name of virtue and purity, to the point where the students have become psychologically inhibited from satisfying their needs in more obvious and healthy ways.

With modern contraceptives and medical advice readily available at the nearest drug store or at least a family physician, there is no valid reason why sexual intercourse should not be condoned among those sufficiently mature to engage in it without social consequences and without violating their own codes of morality and ethics.

A mutually satisfactory sexual experience would eliminate the need for many hours of frustrating petting and lead to much happier and longer lasting marriages among our younger men and women.

CHOOSE TO KNOW!

One of the facts of life is that astrology, divorced from charity and generalized sun sign readings, is true science. Who can afford to deny life the advantage of knowledge? Yet if ignorance were bliss happiness would oftener be the rule. The twin truth of karma and astrology (cause and effect) reveals fate to whomever will seek to know it thereby. Your inquiry is welcome.

I have had over twenty years' research and experience in the occult and believe that a properly delineated horoscope is the most valuable property one can ever own! I charge ten dollars for drawing the life chart and answering questions regarding personal fate, i.e. career, health, finances, emotional concerns, past experiences, future plans—and describe the individual's destiny in terms of these, offering advice if so requested. I have a sincere desire to employ my knowledge in the service of worthy and interested persons. Please include moment of birth if known as well as the year, month, day and place with the precise questions desired answered. Fee promptly refunded if dissatisfied! All work personally done and typewritten.

L. E. KINCAID

226 Columbia Avenue, Dover, Delaware

The Incident

JOHN E. O'CONNOR

President Harrison Seawell did not drive his Lincoln across the campus for his appointment with Bart Creveling. It was the end of the school year, and although the great majority of the student body had departed for the summer, hordes of new faces were pouring into town. Reunioners from the classes of 11, 36, 51 and 56. Families and friends of the class of 61, whose commencement exercises would begin the following day. President Seawell felt that he owed it to these people to remain as visible as time permitted, a living symbol of the age and dignity of Singleton College. And a reminder that, despite last night's catastrophe, Singleton would survive for many years to come. He had spent the early morning with the local chief of police, a man whom he disliked, and the later part of the morning with the Supervisor of Plant and Management whom he disliked even more. The supervisor belonged to that small group of administrators, trustees and faculty members who had opposed Harrison Seawell from the moment of his inauguration. They were a rebellious bunch, a snide, backbiting bunch. Harrison Seawell knew what they said about him. Damning him with faint praise. An adequate president, they called him. Unspectacular. Mediocre. Pretentious. Chosen for want of a better man. An interregnum president, not expected to last over ten years, at which time a more adequate man would be found for the post. Harrison Seawell pursed his mouth angrily. He was sixty-seven but his health couldn't be better, and those fine-feathered small-bore backbiting critics were going to look awfully foolish one day.

As he reached the corner of Manchester Road and Essex Street, Harrison Seawell paused before a tract of land where four buildings were in the process of being torn down. It was here that the new Moorehead Center of Creative Arts was to be built. Already, some of the critics had begun to look worried. Moorehead Center had been Seawell's idea from the very beginning: a huge building for the art, music and drama departments, with abundant new facilities to stimulate creative activity among students and teachers alike. It was a grand idea. Of and from the moment it was approved by the

board of trustees it became President Seawell's most important project. He was determined to see its construction through from beginning to end; so when the big day came, and it was opened to the faculty and student body, there would be no doubt in anybody's mind as to who had been responsible for the monument to growth. It would be called the Herbert R. Moorehead Center after a deceased trustee and governor of the state, but *they would know*. They would know that President Harrison Seawell had chosen the architect and even assisted in designing the most modern and colorful building on the campus—a structure of granite facing over steel frame and masonry construction, with huge windows and sunlit galleries and terra cotta tiles of green and white covering large areas of the exterior walls. For Harrison Seawell the most distinctive feature of the center would be the Heritage Corridor on the third floor, with its wood panelling and its long row of portraits of former Singleton presidents and trustees. There would be two unusable fireplaces, one at either end. Over the first would hang the portrait of Herbert R. Moorehead, and over the other there would hang nothing. But Harrison Seawell could dream and hope about whose picture would eventually fill that empty space. The architect, ordinarily an amenable young man, had balked vigorously against the inclusion of the Heritage Corridor. It was too incongruous, he said; it clashed with everything else. "Then change everything else!" Harrison Seawell had snapped, and there the matter rested. The Heritage Corridor remained. The critics had laughed and carped and ridiculed the idea, but that was to be expected. They had no respect for tradition. To Harrison Seawell's surprise, they were joined by a few members of the art and music faculties, including some of the more distinguished professors, who wrote letters to the college newspaper and appeared before the administrative committee, calling the whole project a farce, a travesty, a waste of time. He had shrugged it off philosophically.

No matter what you did for people, there would always be those who bit the hand that fed them. So long as the alumni council accepted the plan and was willing to finance the construction, it didn't much matter what the small-bore carping malcontents had to say.

Harrison Seawell resumed walking until he reached the Stockton Lodge, an ancient, huge brown-frame hotel, ordinarily quiet throughout the year, but now buzzing with activity clearly beyond the capacity of its small staff. People in short sleeves and sunglasses were climbing out of beautiful automobiles and lugging their own suitcases across the flagstones through oaks and pines to the gallery steps and from there to the lobby to claim reservations which had been made months in advance. A couple of them stopped Harrison Seawell as he walked across the lobby. He shook hands with them and exchanged a few words. Presently he managed to reach the third floor

and knock on the door of Room 304. The door opened and Bart Creveling stood there with an extended hand and big grin.

"Harry! Come in, come in."

"Bart, it's nice to see you again."

They shook hands and Harrison Seawell came into the room and took a seat. Bart Creveling was bigger and younger than Harrison Seawell. His voice was louder and his gestures broader and more expressive.

"Harry, I've got some bourbon here. Let me fix you a drink."

"I'd better not, Bart. I've got to be at a meeting of the administration committee in another forty-five minutes. Thanks anyway."

"Sure, sure," said Bart Creveling. He took a long pull from his drink and settled expansively into an armchair decorated with doilies. "Sorry to put you through this trouble, Harry, especially at your busiest time of the year. But I thought it best that you come over here, rather than my visiting you at your home or at the administration building."

"I understand," said Harrison Seawell.

"Under the circumstances, I don't think anybody should know about my being in town."

"I understand," said Harrison Seawell. "I quite understand."

"You may be interested to know that we've completely sold out for next week's alumni dinner. New York City is waiting for you, my friend. We'll all be there."

"I'm looking forward to it."

"So am I, Harry. I'm working like crazy to get those skinflints to cough up cash for Moorehead Center, but I'm only the president of their alumni council. What they need is a little inspiration. Someone who can bring old Singleton College right before their eyes. That's why we need you, the president of the college."

Harrison Seawell laughed modestly. "Well, I hope I can do it. They've got all the money. Without their help, there just won't be any Moorehead Center."

"We've got them licked, Mr. President. We're the unbeatable team—you the intellectual, and me the politician."

"I've been following your campaign very closely. They say you're going to win, Bart. I hear they've already bought you a one-way ticket to Washington."

"Well, it's not quite that certain," said Creveling. "But, on the other hand, you've got to admit that I've got the background and the experience, whereas that twerp Holstein... six years in the state legislature and he's ready to rule the world."

"Holstein does carry a lot of weight in the rural areas, though..."

(Continued on page 27)

SEX OFFENSE STATUTES

from the

Illinois Criminal Code of 1961

Including Sections Relating to Rape, Deviate Sexual Conduct, Deviate Sexual Assault, Indecent Liberties with a Child, Contributing to the Sexual Delinquency of a Child, Indecent Solicitation of a Child, Adultery, Fornication, Public Indecency, and Obscenity

With Corresponding Explanations and Instructions from the
POLICE OFFICER'S GUIDE

A REVIEW correspondent writes: "The Illinois Revised Criminal Code, effective 1/1/62, has apparently by omission, silence and implication, repealed the sodomy law here. There is in it no reference to sodomy, fellatio, or buggery. There is now 'deviate sexual conduct,' but it seems apparent that it is not a criminal offense if committed with mutual consent, without threat or force, and in privacy and behind closed doors, and by those over 18 years of age.

"There are laws against public indecency, contributing to the sexual delinquency of a child, indecent liberties with a child, patronizing a prostitute. Fornication and adultery must be open and notorious to be criminal. Possession of obscene material is no longer a crime unless purveyed to those under 18, and such material can be sold or given legally to anyone over 18.

"Prostitution in a house or as a street walker is now a crime.

"Deviant sexual assault on one under 18 is severely penalized—the crime is 'infamous' and those convicted lose right to hold office, vote or

serve on a jury unless such rights have been restored by executive pardon or otherwise.

"To plead insanity one must know the criminality of his act, rather than be merely able to distinguish between right and wrong. The 'irresponsible impulse' has been invalidated also.

"Nearly all the newspapers have been silent in the changes in sex laws. I think the Cairo paper said something about 'homosexuality no longer a crime,' but I haven't seen it."

In January REVIEW, a discussion of this topic came from a clipping in the December 21, 1961, edition of Chicago *Sun Times*.

Here, from Article 11, Sex Offences, of the "Illinois Criminal Code of 1961" are printed the more pertinent sections. Following the statutes themselves are printed the corresponding sections from the "Police Officer's Guide" by Claude R. Sowle, Associate Professor of Law, Northwestern University. Both "Code" and "Guide," bound together, are obtainable at \$3.50 from the Burdette Smith Company, 111 W. Washington St., Chicago 2, Illinois.

OFFENSES AGAINST THE PERSON

11 SEX OFFENSES

§ 11-1. Rape

(a) A male person of the age of 14 years and upwards who has sexual intercourse with a female, not his wife, by force and against her will, commits rape. Intercourse by force and against her will includes, but is not limited to, any intercourse which occurs in the following situations:

- (1) Where the female is unconscious; or
- (2) Where the female is so mentally deranged or deficient that she cannot give effective consent to intercourse.

(b) Sexual intercourse occurs when there is any penetration of the female sex organ by the male sex organ.

(c) Penalty.

A person convicted of rape shall be imprisoned in the penitentiary for any indeterminate term with a minimum of not less than one year. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-1.

§ 11-2. Deviate Sexual Conduct

"Deviate sexual conduct", for the purpose of this Article, means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-2.

§ 11-3. Deviate Sexual Assault

(a) Any person of the age of 14 years and upwards who, by force or threat of force, compels any other person to perform or submit to any act of deviate sexual conduct commits deviate sexual assault.

(b) Penalty.

A person convicted of deviate sexual assault shall be imprisoned in the penitentiary from one to 14 years. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-3.

§ 11-4. Indecent Liberties with a Child

(a) Any person of the age of 17 years and upwards who performs or submits to any of the following acts with a child under the age of 16 commits indecent liberties with a child:

- (1) Any act of sexual intercourse; or
- (2) Any act of deviate sexual conduct; or
- (3) Any lewd fondling or touching of either the child or the person done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the person or both.

(b) It shall be an affirmative defense to indecent liberties with a child that:

- (1) The accused reasonably believed the child was of the age of 16 or upwards at the time of the act giving rise to the charge; or
- (2) The child is a prostitute; or
- (3) The child has previously been married.

(c) Penalty.

A person convicted of indecent liberties with a child shall be imprisoned in the penitentiary from one to 20 years. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-4.

§ 11-5. Contributing to the Sexual Delinquency of a Child

(a) Any person of the age of 14 years and upwards who performs or submits to any of the following acts with any person under the age of 18 contributes to the sexual delinquency of a child:

- (1) Any act of sexual intercourse; or
- (2) Any act of deviate sexual conduct; or
- (3) Any lewd fondling or touching of either the child or the person done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the person or both; or
- (4) Any lewd act done in the presence of the child with the intent to arouse or to satisfy the sexual desires of either the person or the child or both.

(b) It shall not be a defense to contributing to the sexual delinquency of a child that the accused reasonably believed the child to be of the age of 18 or upwards.

(c) Penalty.

A person convicted of contributing to the sexual delinquency of a child shall be fined not to exceed \$1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-5.

§ 11-6. Indecent Solicitation of a Child

(a) Any person of the age of 17 years and upwards who solicits a child under the age of 13 to do any act, which if done would be an indecent liberty with a child or an act of contributing to the sexual delinquency of a child commits indecent solicitation of a child.

(b) It shall not be a defense to indecent solicitation of a child that the accused reasonably believed the child to be of the age of 13 years and upwards.

(c) Penalty.

A person convicted of indecent solicitation of a child shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-6.

§ 11-7. Adultery

(a) Any person who cohabits or has sexual intercourse with another not his spouse commits adultery, if the behavior is open and notorious, and

- (1) The person is married and the other person involved in such intercourse is not his spouse; or
- (2) The person is not married and knows that the other person involved in such intercourse is married.

(b) Penalty.

A person convicted of adultery shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both. 1961, July 28, Laws 1961, p. —, H.B.No. 342, § 11-7.

§ 11-8. Fornication

(a) Any person who cohabits or has sexual intercourse with another not his spouse commits fornication if the behavior is open and notorious.

(b) Penalty.

A person convicted of fornication shall be fined not to exceed \$200 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. 1961, July 28, Laws 1961, p. —, H.B.No. 342, § 11-8.

§ 11-9. Public Indecency

(a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:

- (1) An act of sexual intercourse; or
- (2) An act of deviate sexual conduct; or
- (3) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person; or
- (4) A lewd fondling or caress of the body of another person of the same sex.

(b) "Public place" for purposes of this Section means any place where the conduct may reasonably be expected to be viewed by others.

(c) Penalty.

A person convicted of public indecency shall be fined not more than \$500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. 1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-9.

Sections 11-10, Aggravated Incest; 11-11, Incest; 11-12, Bigamy; 11-13, Marrying a Bigamist; 11-14, Prostitution; 11-15, Soliciting for a Prostitute; 11-16, Pandering; 11-17, Keeping a Place of Prostitution; 11-18, Patronizing a Prostitute; 11-19, Pimping are omitted here. It should be noted, however, that Soliciting for a Prostitute and Patronizing a Prostitute are now offences.

§ 11-20. Obscenity

(a) Elements of the offense.

A person commits obscenity when, with knowledge of the nature or content thereof, he:

- (1) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
- (2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or

- (3) Publishes, exhibits or otherwise makes available anything obscene; or
- (4) Performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or
- (5) Creates, buys, procures or possesses obscene matter or material with intent to disseminate it in violation of this Section, or of the penal laws or regulations of any other jurisdiction; or
- (6) Advertises or otherwise promotes the sale of material represented or held out by him to be obscene.

(b) Obscene Defined.

A thing is obscene if, considered as a whole, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters. A thing is obscene even though the obscenity is latent, as in the case of undeveloped photographs.

(c) Interpretation of Evidence.

Obscenity shall be judged with reference to ordinary adults, except that it shall be judged with reference to children or other specially susceptible audience if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience. In any prosecution for an offense under this Section evidence shall be admissible to show:

- (1) The character of the audience for which the material was designed or to which it was directed;
- (2) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;
- (3) The artistic, literary, scientific, educational or other merits of the material, or absence thereof;
- (4) The degree, if any, of public acceptance of the material in this State;
- (5) Appeal to prurient interest, or obscene thereof, in advertising or other promotion of the material;
- (6) Purpose of the author, creator, publisher or disseminator.

(d) Penalty.

A person convicted of obscenity shall for the first offense be fined not to exceed \$1,000 or imprisoned in a penal institution other than

the penitentiary not to exceed one year, or both, and for a second or subsequent offense shall be confined in the penitentiary for not less than one year nor more than 3 years, or be fined not less than \$1,000 nor more than \$5,000, or both.

(e) Prima Facie Evidence.

The creation, purchase, procurement or possession of a mold, engraved plate or other embodiment of obscenity specially adapted for reproducing multiple copies, or the possession of more than 3 copies of obscene material shall be prima facie evidence of an intent to disseminate.

(f) Affirmative Defenses.

It shall be an affirmative defense to obscenity that the dissemination:

- (1) Was not for gain and was made to personal associates other than children under 18 years of age;
- (2) Was to institutions or individuals having scientific or other special justification for possession of such material.

1961, July 28, Laws 1961, p. —, H.B.No.342, § 11-20; 1961, Aug. 1, Laws 1961, p. —, S.B.No.187, § 1.

The 1961 amendatory act imposed the penalty for a second or subsequent offense.

On the following page are the corresponding excerpts from the POLICE OFFICERS GUIDE.

A-8

RAPE (§ 11-1)

(1) **General definition.** To establish the felony of rape, the evidence must show that

- (a) the accused had sexual intercourse with a female, *and*
- (b) the female was not the wife of the accused, *and*
- (c) the act of intercourse was committed by force and against the will of the female victim, *and*
- (d) the accused was a male 14 years of age or older at the time of committing the act.

(2) **"By force and against will."** An act of intercourse is committed "by force and against the will" of the female if

- (a) the act is committed at a time when the female is unconscious, asleep, drugged, intoxicated, or so mentally deranged or deficient that she is not able to agree to the act, or
- (b) the evidence shows such resistance by the female as to demonstrate that the act was without her consent and against her will.

(3) **"Sexual intercourse."** Sexual intercourse is committed when a male inserts his penis into the sex organ of a female. For sexual intercourse to occur, it is not necessary that the male have an emission.

Other forms of sexual gratification, such as the insertion of the penis into the mouth or anus of a female, are not covered by § 11-1. (But see A-9, A-10, and A-11, below.)

Section 11-1 of the 1961 Code made no change in the Illinois law of rape. Formerly, however, Illinois law dealt with both forcible and statutory rape in a single section. Statutory rape situations are now covered by §§ 11-4 and 11-5 of the Code.

A-9

DEVIATE SEXUAL ASSAULT (§§ 11-2, 11-3)

(1) **General definition.** To establish the felony of deviate sexual assault, the evidence must show that the accused used force or threat of force to compel another person

- (a) to *submit* to an act of deviate sexual conduct, or

- (b) to *perform* an act of deviate sexual conduct upon the accused or upon a third person.

The evidence must, in addition, show that the accused was 14 years of age or older at the time the act occurred.

(2) **"Deviate sexual conduct."** The phrase "deviate sexual conduct" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another. (See § 11-2 of the Code.)

Both males and females may be found guilty of deviate sexual assault. The victim may be either of the same sex as the accused, or of the opposite sex.

(3) **Consent.** It is a defense to the crime of deviate sexual assault that the alleged victim consented to the acts performed. But if the victim is a child, the accused may be guilty of indecent liberties with a child (see A-10, below) or contributing to the sexual delinquency of a child (see A-11, below), even if the child consented to the act.

Sections 11-2 and 11-3 of the 1961 Code made a basic change in the law of Illinois. Unnatural acts by humans with animals and deviate sexual conduct between consenting adults—formerly called the "crime against nature"—are no longer criminal offenses in Illinois. Persons who engage in such conduct publicly, however, may be guilty of either public indecency (see § 11-9) or disorderly conduct (see § 26-1).

A-10

INDECENT LIBERTIES WITH A CHILD (§ 11-4)

(1) **General definition.** To be guilty of the felony of indecent liberties with a child, the accused must have engaged in *any one* of the following three kinds of behavior with a child who was, at the time, 15 years of age or younger:

- (a) **Sexual intercourse.** Sexual intercourse occurs when there is any penetration of the female sex organ by the male sex organ. It is not necessary that the male have an emission, or that the hymen of a virgin female be ruptured.
- (b) **Deviate sexual conduct.** Deviate sexual conduct means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another. (See A-9, above.)

- (c) **Lewd fondling or touching** of the body of the child by the accused or of the body of the accused by the child. The act of fondling or touching must be done with the intention of arousing or satisfying the sexual desires of the child, or the accused, or both. Mere exposure of the body of the accused without physical contact between the child and the accused is not sufficient to constitute this crime.

At the time any one of the above acts was done, it is necessary that the *accused* have been 17 years of age or older.

To be guilty of the crime of indecent liberties with a child, the accused must either have *performed* one of the above acts with the child, or have *submitted* to such an act when it was performed by the child.

Both males and females may be found guilty of indecent liberties with a child. The victim may be a member of the same sex as the accused, or a member of the opposite sex.

(2) **Consent.** It is no defense that the child consented to, requested, or otherwise initiated the act which constituted the offense. When the child has not consented to the act, however, the accused may, in addition to indecent liberties with a child, be guilty of the crime of rape (see A-8, above) or deviate sexual assault (see A-9, above).

(3) **Defenses.** An accused cannot be found guilty of indecent liberties with a child if:

- (a) he reasonably believed that the child was 16 years of age or older at the time of the act, or
- (b) the child is a prostitute, or
- (c) the child has been previously married.

Section 11-4 of the 1961 Code replaced and modified provisions of the former criminal code dealing with statutory rape, the crime against nature, and indecent liberties. Several changes in prior Illinois law were made: (a) It is now a defense that the accused was reasonably mistaken about the age of the victim, or that the victim is a prostitute or has previously been married. (b) The age below which a child may be the victim of indecent liberties has been raised from 15 to 16. (c) Either males or females may be found guilty of acts formerly called statutory rape.

A-11

CONTRIBUTING TO THE SEXUAL DELINQUENCY OF A CHILD (§ 11-5)

(1) **General definition.** To be guilty of the misdemeanor of contributing to the sexual delinquency of a child, the accused must have engaged in *any one* of the following four kinds of behavior with a child who was, at the time, 17 years of age or younger:

- (a) **Sexual intercourse.** Sexual intercourse occurs when there is any penetration of the female sex organ by the male sex organ. It is not necessary that the male have an emission, or that the hymen of a virgin female be ruptured.
- (b) **Deviate sexual conduct.** Deviate sexual conduct means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another. (See A-9, above.)
- (c) **Lewd fondling or touching** of the body of the child by the accused or of the body of the accused by the child. The act of fondling or touching must be done or submitted to with the intention of arousing or satisfying the sexual desires of the child, or the accused, or both.
- (d) **Any lewd act in the presence of the child.** The act must have been done with the intention of arousing or satisfying the sexual desires of the child, or the accused, or both.

At the time any one of the above acts was done, it is necessary that the *accused* have been 14 years of age or older.

To be guilty of contributing to the sexual delinquency of a child, the accused must either have *performed* one of the above acts with the child, or have *submitted* to such an act when it was performed by the child.

Both males and females may be found guilty of this offense. The victim may be a member of the same sex as the accused, or a member of the opposite sex.

(2) **Consent.** It is no defense that the child consented to, requested, or otherwise initiated the act which constituted the offense. When the child has not consented to the act, however, the accused may, in addition to contributing to the sexual delinquency of a child, be guilty of the crime of rape (see A-8, above) or deviate sexual assault (see A-9, above).

(3) **Mistake about age, etc.** It is no defense to the charge of contributing that the accused was mistaken about the age of the child, or that the child is a prostitute, or that the child has previously been married.

Section 11-5 of the 1961 Code replaced and modified the contributing to delinquency provisions of the Illinois statutes insofar as they related to matters of sexual conduct. (Other matters formerly called contributing to delinquency are now covered by the Family Court Act, Ill. Rev.Stat., Chap. 23, §§ 2001-2036.) Whereas the former statutes on contributing protected boys under 17 and girls under 18, Section 11-5 extends its protection to all persons under 18 years of age.

A-12

INDECENT SOLICITATION OF A CHILD (§ 11-6)

(1) **General definition.** To establish the misdemeanor of indecent solicitation of a child, the evidence must show that the accused solicited a child to do any act which, if done, would be either an indecent liberty with a child (see A-10, above) or an act of contributing to the delinquency of a child (see A-11, above).

At the time of the indecent solicitation, the accused must have been 17 years of age or older, and the child must have been under the age of 13.

(2) **"Solicit."** The word "solicit" refers to any command, request, encouragement, or inquiry concerning the willingness of the child to participate in any of the unlawful sexual activities mentioned in paragraph (1), above.

(3) **Age mistake no defense.** It is no defense to the crime of indecent solicitation of a child that the accused mistakenly thought the child was 13 years of age or older.

Section 11-6 created a new category of offense in Illinois. Under prior Illinois law, however, some of the acts now constituting offenses under § 11-6 were violations of statutes dealing with general attempts and with contributing to delinquency.

A-13

FORNICATION (§ 11-8)

(1) **General definition.** To establish the misdemeanor of fornication, the evidence must show that

- (a) the accused had sexual intercourse or cohabited with another person, and
- (b) the accused and the other person were not married to each other at the time of such conduct, and
- (c) the behavior of the offenders was open and aboveboard rather than secretive, and
- (d) it was widely believed that the offenders were unmarried, and that they were cohabiting or engaging in sexual intercourse.

(2) **"Cohabitation."** The word "cohabiting" as used above has the same meaning as the commonly-used expression "living together." Two persons cohabit when their living arrangements are such as to lead others to assume that the persons engage in sexual intercourse from time to time as would man and wife.

(3) **Community beliefs.** When it is generally believed in the community that two persons are married, they cannot be found guilty of fornication even if that belief is false. Moreover, even though it is widely suspected in the community that two persons have engaged in sexual intercourse, they cannot be found guilty of fornication if their cohabitation or sexual intercourse was done in a secretive manner rather than openly and with no regard for whether others learned of their acts. It is the purpose of the act to penalize only conduct which constitutes an affront to public decency.

It was not intended that § 11-8 of the 1961 Code should make any basic change in the prior Illinois law of fornication.

A-14

ADULTERY (§ 11-7)

General definition. To establish the misdemeanor of adultery, the evidence must show facts sufficient to establish the crime of fornication (see the discussion of fornication in A-13, above) and must, in addition, show

- (a) that the accused is married, but not to the other person involved, *or*
- (b) that the accused is not married, but knows that the other person involved is married.

It was not intended that § 11-7 of the 1961 Code should make any basic change in the prior Illinois definition of adultery. However, the law was changed to provide a more severe penalty for adultery than for fornication.

A-15

PUBLIC INDECENCY (§ 11-9)

(1) **General definition.** To establish the misdemeanor of public indecency, the evidence must show that the accused did *any one* of the following acts in a *public place*:

- (a) **Sexual intercourse.** It makes no difference whether the parties who participated in the act of intercourse were married at the time. Public indecency does *not* include "petting" or similar acts which may be preliminary to sexual intercourse between a male and a female.
- (b) **Deviate sexual conduct.** The phrase "deviate sexual conduct" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another. (See A-9, above.)
- (c) **Lewd exposure of the body.** This is not limited to the exposure of any particular portion of the body, but the exposure must be done with the intent to arouse or satisfy the sexual desires of the *accused*. If the act was done to arouse the sexual desires of the *viewer*, such as in a "strip tease" performance, § 11-9 does not apply. In the latter situation, however, the person may be guilty of the offense of obscenity. (See A-26, below.)
- (d) **Lewd fondling or caress of the body of another person of the same sex.** This applies to lewd acts between homosexuals in public.

At the time any one of the above acts was done, it is necessary that the accused was 17 years of age or older.

(2) **"Public place."** An act is done in a "public place" if it is done in a place where it is reasonable to expect that the act may be seen by others. It makes no difference whether the place is publicly

or privately owned. Thus, for example, a person standing nude before a lighted window of his private apartment at night, adjacent to a well-traveled public sidewalk, would be, for purposes of § 11-9, in a "public place." By contrast, a couple in a parked car on a public but lonely country lane might not be in a "public place," depending upon the likelihood of others traveling down the particular road at such hours.

It was not intended that § 11-9 of the 1961 Code, which replaced the lewd act and lewd exposure provisions formerly in effect, should make any basic change in the Illinois law with respect to public indecency.

Instructions dealing with Incest, Bigamy, Prostitution and Pandering are omitted here.

A-26

OBSCENITY (§ 11-20)

(1) **General definition.** To establish the offense of obscenity, the evidence must show that the accused knowingly did *any one* of the following things:

- (a) **disseminated** obscene material to strangers or children, *or*
 - (b) **prepared to disseminate** obscene material unlawfully, *or*
 - (c) **advertised** material which is represented to be obscene.
- (2) **"Obscene."** Material is obscene within the meaning of § 11-20 if *both* of the following facts are established by the evidence:
- (a) The main appeal of the material is to an interest in lewd things. Specifically, § 11-20 speaks of appealing to "a shameful or morbid interest in nudity, sex or excretion [e. g., urine]." It is not sufficient, however, that the material (e. g., a book or play) contain parts which are obscene, if the overall appeal of the material is to other interests.
 - (b) The material must go well beyond the limits of what is ordinarily acceptable in the community with respect to matters of nudity, sex, or excretion. This requirement is not met if only certain members of the community would be shocked. The material is to be judged by the standards of ordinary adults, unless it is clear that the material was designed for, or directed to, children or other groups which might be more easily shocked or aroused.

(3) "Dissemination" of obscene material. A person disseminates obscene material when he publishes, exhibits, sells, presents, performs, or otherwise makes available obscene material, or when he offers or agrees to make such material available.

The obscene material may be in the form of a book, picture, record, dance, play, movie, exhibition, television program, or any other representation of the obscene.

An accused may not be found guilty of obscenity if the evidence establishes that the dissemination was to his personal friends who were 18 years of age or older *and* that the dissemination was not done for the purpose of making money.

(4) "Preparing to disseminate" obscene material. The preparation must take the form of buying, procuring, creating, or possessing obscene material with the intention of disseminating it in violation of § 11-20, or of the laws of other states. It is not against the law for a person to have obscene material in his possession for his own use.

A person is presumed to intend to disseminate obscene material when he has in his possession more than 3 copies of the material, or when he has in his possession an engraved plate or other means by which a number of copies of the obscene material could be made.

(5) "Advertising" material which is represented to be obscene. It is not necessary that the word "obscene" be used so long as the advertisement conveys the same notion in other words or by other means. Moreover, it is not necessary that the material advertised actually be obscene, so long as it is represented to be of that nature.

Section 11-20 of the 1961 Code made a substantial change in the prior law of Illinois with respect to obscenity. Thus, it is no longer an offense for a person (a) to possess obscene material for his own use or (b) to disseminate obscene material to his personal friends over the age of 18, if the dissemination is not done for the purpose of making money. Also, material is not obscene under the definition of § 11-20 if it does not go beyond the limits of general community acceptance in dealing with matters of nudity, sex, or excretion.

THE INCIDENT (Continued from page 10)

"He does, but I'll beat him." Bart Creveling put down his drink, folded his hands and leaned forward. "Now what the hell, Harry," he said, lowering his voice an octave. "We're not here to talk politics. You know what I'm here for."

"Yes, of course."

"Some people might say that I'm meddling in something that's none of my damn business. After all, Billy Stryker isn't my son. Well, that's right, he isn't. But I feel sort of responsible for him, all the same. It was my idea for him to enter Singleton. So whatever he's done has something to do with me. Nottomention the fact that his father is my closest friend and heaviest supporter in the coming election. I don't know everything that's happened, but I can tell you one thing, Harry. This Stryker is a good kid. His family is the best. He was a natural leader back in high school. Head of the student council. A damn good basketball player. He was no genius, but he was well-rounded; and I'm sure that whatever he did, there was some *reason* for it..."

"I saw Chief Durgan this morning," said Harrison Seawell. "Apparently, young Stryker has made a full confe...uh, statement."

Bart Creveling frowned. "Damn it! Why didn't he call for a lawyer first thing?"

"Apparently he *wanted* to confess. The Chief said it was completely voluntary."

"Well, I've sent a lawyer over there. Al Meadows. He's tops. He'll help young Stryker, assuming that the kid can be helped. Just what did he say in that statement?"

"More than enough to incriminate him. As you know, young Stryker lived in the dormitory where Walter Jacobs also lived. Jacobs was a more quiet, studious type, an honor student in mathematics. He lived in a single, kept pretty much to himself, and wasn't very popular."

"An oddball, huh?" said Bart Creveling.

"I gather that the students more or less regarded him that way. As often happens, they ascribed to him the status of group deviant. A greasy grind. Apparently, young Stryker and his two roommates suspected that Jacobs was also a homosexual. It was a constant source of humor to them. When one of them complained of his...uh, unfulfilled sexual drives, the others would invariably suggest that he go downstairs to Walter Jacobs."

Bart Creveling nodded. "Was there any truth to this?"

"According to Stryker and his roommates, none. It was merely a joke among them."

"But *could* there have been some truth to it? Had anyone ever complained?"

"So far as we know, Jacobs was perfectly normal. Anyway, yesterday was the final day of the term, with examinations ending at noon. It is one of our dubious traditions for many students to spend their last night in town

drinking and letting off steam after the strain of examinations, and apparently Stryker and his two roommates, Matson and Gill reached the point where young fellows can be awfully mean. They got to talking about Jacobs, and then Stryker suggested that they all go down to Jacobs' room and teach him a lesson. Stryker was very clear and emphatic on this point. It was his idea from the start. They went rushing down the stairs yelling, "Jacobs, we're going to get you!" and they burst into his room. They found him packing his clothes into a trunk. Apparently, Jacobs was brusque with them, since he was impatient to be packed in order to leave early the following morning. He told them to leave his room, to go bother somebody else. Stryker came at him and struck him in the face with his open hand. Jacobs fought back, and then all three were upon him, striking him with their fists, and kicking him. There were students in the corridor who witnessed it, and it was finally broken up by a campus policeman and one of the students. Jacobs was unconscious. They called an ambulance for him. The campus police turned Stryker, Matson and Gill over to the town police, who kept the boys in jail overnight. Right now, Jacobs is in the hospital, still in a coma, and there's considerable doubt as to whether he's going to recover."

Harrison Seawell fiddled with his pocket handkerchief. Bart Creveling grimaced and rose to his feet and walked over to the window which commanded a view of rolling, wooded, New England mountains. He fished beneath his tweed jacket and brought out a cigar, then produced a gold pencil-shaped lighter which he flicked into action. He lit the cigar.

"This Jacobs kid," he said finally. "Tell me a little more about him. What sort of family is he from?"

Harrison Seawell felt a twinge of embarrassment at the question, because it was precisely the first question that he himself had put to the Dean of Undergraduates upon hearing of the calamity.

"His family lives in Kansas City. They're just an ordinary, middle-class family. Jacobs was one of our scholarship students, and apart from his excellent performance in his studies, there's nothing more to be said. His record was exemplary."

"Aw, he was probably a fairy," said Bart Creveling. "There're always a couple in every class. I remember that my class had one or two, but we knew how to make them uncomfortable, make them understand that Singleton College wasn't the place for them. It took a little while, but they got the message eventually."

"Aman was a man in those days," said Harrison Seawell.

"You bet they were. Of course, that other sort—fellows like this Jacobs that sort should never be admitted in the first place. That's the responsibility of the college and the alumni interviewing committees. But perhaps we've all been getting a little too lax recently. I believe I'll mention it to

our local interviewing committee, that they should start screening kids more carefully, so incidents like this won't happen."

"I agree with you," said Harrison Seawell. Again, he thought back to the incidents of that morning, the phone call he was obliged to make to Jacobs' family. After Mr. Jacobs' initial reaction of shock, there came anger. Who was this Stryker? What kind of young gangsters was the college admitting these days? Something must be done. Harrison Seawell had agreed with him.

"Needless to say," he told Bart Creveling, "The boy's parents are extremely upset..."

"Oh, I'm sure they are. They want their revenge." Bart Creveling flicked ashes from his cigar and returned to his seat. "Right now, though, the problem is to help young Stryker. If this Jacobs dies, then I guess it's completely out of my hands. Stryker will be tried for manslaughter and we'll just have to rely upon our attorneys. But if this Jacobs lives, then I might be able to pitch in and help. We won't have to worry about the Jacobs family pressing charges. We'll buy them off with a settlement that'll be twice as much as they'd recover in court.

"And then there's something else. Young Stryker has made a bad mistake, and I'm not condoning him, understand. But he's a good boy, Harry. I can personally vouch for him. I think that the college ought to give him a break."

Harrison Seawell's brow wrinkled in bewilderment. "What... what do you mean, Bart?"

"Well, for one thing, I think this incident should be hushed up as much as possible."

Harrison Seawell ventured a little smile. "That's easier said than done, I'm sorry to say. With half the dormitory looking on, I don't see how we can hush it up. Of the fourteen hundred and sixty-three members of the undergraduate body, I'd estimate that those who've heard about the incident number about fourteen hundred and sixty-three."

"Oh, I know all that." Bart Creveling had a habit of tapping his chin whenever he became impatient. He was tapping his chin now. "But we can still... play it down so that it doesn't become the issue of the day. And that's not all we can do. As I've said, this youngster should get a break. Singleton College can't afford to lose kids like him, and I feel..."

"Bart, we have rules," Harrison Seawell interrupted.

"Now you don't have to tell me the rules, Harry," said Bart Creveling, raising his voice. "I know that *ordinarily* an offense like young Stryker's is grounds for instant and permanent expulsion. However, these rules are made in the best interests of the students, aren't they? And isn't it up to us to help our students one hundred per cent, even when they transgress a little? Okay then, let's consider what would be best for young Stryker. Harry, I'm a man of no small experience and some wisdom, and I know you've

always had respect for my opinion, and it's my opinion here that Billy Stryker's best interests would be served by our overlooking these rules and readmitting him next fall. Hell, if we expell him, there isn't a first-rate college in the whole country who'd be willing to accept him, once they found out why we tied the can to him. So let him stay, Harry. Let him stay."

Harrison Seawell suddenly felt as though he had been in that room for an excessively long time. Things seemed to be getting out of control. He should be back at his office.

"But what would the other students think when they returned in the fall and noticed that Stryker was still among them?"

"I'm glad you asked me that, Harry. That's the one fortunate thing about this incident—the fact that it occured at the end of the school year. You know how boys are during their vacations. They'll be so busy working at their summer jobs and water-skiing on the weekends and screwing their girl friends at night that when school starts again, they'll have forgotten the whole thing. That's the way kids..."

The telephone rang. Bart Creveling looked at it suspiciously, then picked up the receiver. "Hello? Oh, yes he is. Just a second." He held out the receiver. "For you, Harry."

"Hello?" said Harrison Seawell.

"Mr. Seawell? This is Doctor Adair at the County Hospital. Your secretary gave me this number to call. I hope I'm not interrupting anything?"

"Not at all, Doctor. What's the news on young Jacobs?"

"He's come out of his coma. He'll live."

"Thank God for that."

"Well, it's a mixed blessing at best, I'm afraid. A coma is a pernicious thing, Mr. Seawell. If the human brain gets an insufficient blood supply for too long a time, it deteriorates rapidly. I regret to say that this has happened with Walter Jacobs. Although he'll live, nevertheless his brain has suffered permanent damage, and his days are over as an independent, intelligent human being. He'll have to be taken care of, like a baby, for the rest of his life."

Harrison Seawell talked a bit further with Doctor Adair, then he hung up and told Bart Creveling the news. The politician shook his head bitterly.

"I guess this is going to cost the Stryker family even more than they'd anticipated. But at least the kid isn't dead. He'll be well taken care of."

"Bart, in view of all this, I don't see how we can readmit young Stryker next fall. I really don't."

Bart Creveling made a noise of disgust. "Oh, Christ, Harry. Don't make things any harder than they already are. If you can't do it for Stryker, do it for me. I'm up to my ears in work. I'm trying to get ready for that alumni fund dinner next week; I'm working on all the key men, the money men. Sullivan,

Amorino, McLeod, Zimmerman—the whole bunch. I'm the only one who can make them give, and without their support you can kiss goodby to your Moorehead Center, Heritage Corridor and all. Also, I'm in the last quarter of a political campaign, for which I'm being heavily supported by Jason Stryker, young Stryker's father and right now the most influential member of the party. Assuming that I don't sleep during the next two weeks, I can just about handle these two deals—with Jason Stryker's unflagging assistance. That's why I'm up here and Jason isn't. He's too important to my campaign. Yeah, even more than me at this point. I've promised him I'll take care of everything. But if Jason has to start worrying about buying Billy into a new college, then he's liable to spend less time and effort on my campaign, which means that I'll have to spend even more time campaigning and less time soliciting for the alumni fund. The good Lord only gave me twenty-four hours per day, in which to work, Harry."

"Bart, I guess you're right," said Harrison Seawell. "It seems the only thing to do." He felt a strange dead sensation in his legs. For the first time, he could believe that he was all of sixty-seven years old.

"Harry, I can't tell you how much I appreciate this. Listen, are you sure I can't fix you a bourbon before you go?"

"No, thanks, really," said Harrison Seawell. "There's one thing I'd like to ask you, though: what about Stryker's two roommates, Matson and Gill? They were in on this. Do we bring them back, or what?"

Bart Creveling tapped his chin impatiently. "Oh, the hell with *them*," he said.

CALLING SHOTS (Continued from page 4)

press who seem to be less informed regarding its possibilities than the criminal elements themselves.

Experts have stated that the law breeds crime, and especially in matters of sex and other so-called "vice."

Certainly this is true with certain things considered obscene in our country. Change the law and the market for pornography disappears. One has only to look to Denmark for proof of this. There nude photos are not illegal, and the limited circulation of them offends no one. It would be well to remark, however, that such photographs are

confiscated by U.S. Customs. Ironically, freedom in America seems to be crystallizing in its *preaching* rather than its *practicing* aspects. Certainly this is true as far as *sex* is concerned. However, there is beginning to show a faint glow in the darkness.

The old "anti-sexual" forces which have controlled the U.S. and other English-speaking nations for so long die hard, but they are surely dying. The recent Marin County (Calif.) trial of "Tropic of Cancer" is an example. No significant body of citizens (especially citizens who read) were offended by the book. But a prosecuting attorney (whose business and salary

demand that he make arrests and seek convictions) was incensed. He brought two former DAs to the stand to help prove his case—and all three failed. Now the book sells in safety—and the demand for it has dropped to a dribble.

If America ever becomes addicted to sexual degeneracy, it will be because, in spite of all the light that reason can shed, *sex*, in its simplest form, has been defined as illegal—a definition completely at odds with the spirit in which the Constitution was created and with those ideals which we generally think of as being especially American.

GOV. ROCKEFELLER NAMES LEGAL STUDY COMMISSION

Gov. Nelson A. Rockefeller of New York recently signed into law a bill to create a Temporary State Commission on Revision of the Penal Law and Criminal Code. It is expected that this commission will make recommendations for revising the sections of the code dealing with sex, as well as the entire code.

There has been some interest and discussion on the naming of such a commission in California but no official announcement has been made.

In New Mexico, as previously reported, a revised penal code, set up along lines recommended by the American Law Institute, was passed by the assembly a year ago but not called out for vote in the Senate of that state.

Thus with revision a fact in Illinois, and a matter of study in several other states, there may be significant change up for consideration in the next decade.

LONG BEACH ARREST LEADS TO SUICIDE

The body of an instructor at Long Beach State College was found recently, an apparent suicide. Death was caused by inhaling chloroform. Sheriff's deputies announced that the 35-year-old psychology professor had been arrested a few days before on a morals charge after accusation by a sailor. The man was released on bail, and then fired by his college after he had been arraigned and a trial date set. Charges against him were for contributing to the delinquency of a minor (i.e., the sailor) and misdemeanor disorderly conduct.

READERS *write*

Letters from readers are solicited for publication in this regular monthly department. They should be short and all must be signed by the writer. Only initials of the writer and the state or country of residence will be published. Opinion expressed in published letters need not necessarily reflect that of the REVIEW or the Mattachine Society. No names of individuals will be exchanged for correspondence purposes.

ILLINOIS PENAL CODE

REVIEW EDITOR: I read your January REVIEW with great interest. However the one page devoted to the new Illinois Penal Code seems hardly adequate for the first "break through" in the English Speaking World. Six years of preparation by a committee so distinguished that the Illinois Legislature, hardly regarded as an intellectual or liberal group, passed the law with scarcely a change, resulted in an enormously brilliant law. Here for the first time was real effort made to distinguish between morality and legality. Here the basic right of an individual "to the pursuit of happiness" was spelled out as never before. We have forgotten in the past 30 years that our government has no powers of its own, but only those GRANTED to it by the people. Only the people, not the government, are "born with inalienable rights." We act today as if the government allows us to do things, when in reality we allow the government. And here is the real crux of the new Penal Code: not that the homosexual has the right to behave as he or she desires in private, respecting the age and desires of others; not that pornography can be owned and shown in the privacy of one's home, again with respect to certain age limits; but overshadowing these personal rights is the great concept THAT AN INDIVIDUAL HAS A RIGHT TO HIS PRIVACY.... THAT HIS PRIVACY IS INVOLABLE. May all the blackmailers and those who use entrapment starve to death in Illinois.—Mr. A. L., Chicago.

THE PROBLEM AND THE SOLUTION

REVIEW EDITOR: I enjoyed my recent talk with you and hope to be able to visit with you again soon. I wish I could be as optimistic as you on a reasonably early better legal treatment of homosexuals. After reading excerpts from the debate in Parliament, the opinion of the California Supreme Court in the Vallerga (Black Cat) case, and many articles by sympathetic persons, I continue to be struck by the long road ahead. So far we have, it seems

to me, gained the following concessions: (1) The problem of homosexuality does exist; (2) it is a difficult problem and one which we don't yet know what to do about; (3) the treatment of homosexuals is not really fair—society unduly suspects them and unfortunately treats them as pariahs; they are preyed upon by thugs who know that they are not likely to be caught or will be excused, if not praised, for self-defense of their virtue; and they are even mistreated by the police who entrap them, solicit bribes, and refuse them protection; and (4) sympathy and pity (not understanding and help are) all that can be given. Thus, we find that acceptance of the idea that "homosexuals are people too" hasn't really made noticeable headway, that the rights admitted to belong to all cannot be fully permitted to us and that the possibility of rectifying wrongs and of changing outmoded laws runs into a stone wall of opposition which, while paying profuse lip service (as did the government spokesmen in the parliamentary debates) to the homosexual, his problems, his unfair treatment, and the total failure of present methods to deal with the subject, yet refuses to be awayed one iota when the opportunity arises to do something constructive to correct and improve the present impossible situation.

It is possible that the Rittenour decision (DC District Court), if taken up by other courts, could lead to some improvement. (Do you know if it has?) Also, it is hoped that some good may come from the University of Michigan scandals and persecutions—at least in the sense that maybe when enough blood has been let and the community's conscience has been appeased and the vindictive group has become sufficiently satiated, some constructive measures may ensue. But I think the open leadership, if improvement is to come, must be provided not so much by homosexuals whose special interests are too apparent, but by responsible and respected community leaders (doctors, psychologists, newspaper editors, lawyers, public officials, police officers, and professional groups).

It seems to me that, in addition to the still general abhorrence of the masses (col-

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lectively, if not always individually) and the strong support for a change in the laws advocated by some doctors, lawyers, and persons of good will, we still face an amazing degree of indifference by many whose sympathies may well be with us. Until the indifference of this last group can be overcome, practical chances of change seem remote. Did, for example, the case of the four teen-agers who beat up and robbed the San Francisco schoolteacher last spring call forth any expression of concern by the general public, the police, elected officials, judges, newspaper editors, or professional groups over whether or not homosexuals ought to be considered criminals or whether or not homosexuals should receive police help when beaten or robbed? Or is it still open season?

Our acceptance as human beings enjoying the same rights and status as others seems to me to be possible only when the general public learns what sort of people homosexuals are. This knowledge can perhaps be spread by responsible public discussion, but until individual homosexuals reveal themselves to the public (a still most unlikely thing) or to their own friends and relatives, I am doubtful how much can be done. Nonetheless, perhaps by indirect means, some advance can be made. I wonder if we couldn't take advantage of certain situations which dramatically come to the attention of the public (for example, the murder of the San Francisco teacher or the wholesale arrests in Michigan, Florida, Delaware, etc.) to get across our story. Aren't there any writers sufficiently free from a personal "taint" (people perhaps like Jess Stearn) who could write something of value for major newspapers or magazines. Again, wouldn't the "queer-hunting teen-age gangs have been enough of an issue for a series of articles on homosexuals and their problems, for interviews with doctors, lawyers, editors, and the police? If we aren't ready to strike while the iron is hot, we will continue to lose golden opportunities for educating the public.

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ing material on the subject of homosexuality, or can inform me as to other sources of such material. I had the opportunity to attend the lecture at the Unitarian Church in San Jose last Friday and am deeply interested in your humanitarian efforts. Do you accept any contributions to help in this work? —Mrs. I. H., California.

EDITOR'S REPLY: We urgently need and gratefully accept contributions for our work. We were pleased to have been invited to the panel discussion at the Unitarian Church in San Jose and hope that the discussion was of value to those present.

MISCELLANEOUS

REVIEW EDITOR: In your reply to Mr. C. G. (November 1961) you first state that you believe there is no need to worry about the Post Office. Three sentences later you say: "These organizations with an alleged homosexual membership have come under fire from the post office."

Is it never alleged that the Mattachine Society has a largely, or predominantly homosexual membership? Your complacency does not seem well-founded. —Mr. L. S., Stockholm, Sweden.

EDITOR'S REPLY: We repeat that the post office department in the U.S. has made investigation and charges against "pen pal" organizations, of which Mattachine is not one. We exchange no names for correspondence purposes. Membership in the Society may or may not be predominantly homosexual; we only know that it is composed of adults concerned with the problems of homosexuality and sex variation. Mailing and membership lists are confidential and protected by U.S. Supreme Court decisions. No postal officials or police have ever sought access to them.

REVIEW EDITOR: I want to suggest that you there associated with the REVIEW give serious consideration to curtailing your expenses. This is difficult to do I know especially in view of the fact that so many of us are EXTREMELY RELUCTANT to part with any money no matter how small the amount for a project such as this. Most people I talk with are like the tale of the "Little Red Hen" who tried to get help to plant and harvest the corn but couldn't, but when the corn was ready to eat EVERYBODY (hens) was willing and ready to do

that. So with this thought in mind let's see if the expenses can't be cut. No business can prosper when more money goes out than comes in. I was appalled at the telephone bill per year. It seems there are too many toll charges. Check lights, heating, rent, etc. This is just good business sense. —Mr. H. S., California.

REVIEW EDITOR: Recently, we had quite a rash of arrests, here in Minneapolis, of an alleged ring of homosexuals. When will humanity "wake up" to the fact that it's no more sinful than "normal" intercourse? The Bible explicitly states that all who are born of a woman were conceived in sin! Only Jesus Christ was immaculately conceived; even Mary, the mother of Jesus, was of absolute human birth, so she, too, was a sinner, having the guilt of "original sin" hanging above her.

Enough of "theology!" May we someday soon see an "enlightened citizenry" in the good ol' U.S.A. —Mr. E. R. S., Minn.

REVIEW EDITOR: I recently received a copy of the transcript of your TV production of "The Rejected." I was much impressed with the production and the accounts thereof in the September and October issues of the Mattachine REVIEW.

There are a couple of questions I would like to ask: Is the picture to be shown in the East in the near future? I would like very much to see it and trust you will let me know if it is to be shown in New York particularly. I go up there quite often and could arrange one of my trips to suit it.

Enclosed is my check for \$10.50, for which please send me five copies of the transcript of the TV show and five copies each of the September and October issues of your REVIEW by air parcel post. They present the problem of homosexuality in a brilliant manner, and I think a study of it, particularly in this medical center, would be of great benefit to the cause. —Mr. W. P., Maryland.

REVIEW EDITOR: I've been in Mexico the past three months and I've noticed that the Spanish Indians are much more casual and affectionate at the same time in their man to man relationships, on street or in home or club. They are not inhibited by the narrow and ridiculous cold attitudes of the puritan-derived yankee or "gringo" here in the U.S.A. And they are certainly not effeminate, whether hetero or homo oriented. —Mr. J. P., Oregon.