

## ARTICLE

### MATERIALS DEEMED HARMFUL TO MINORS ARE WELCOMED INTO CLASSROOMS AND LIBRARIES VIA EDUCATIONAL “OBSCENITY EXEMPTIONS”

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Is there not charms  
By which the property of youth and maidhood  
May be abused? Have you not read, Roderigo, of  
some such thing?

Shakespeare, *Othello, the Moor of Venice Act I, Scene I*

#### I. INTRODUCTION

The FBI says child sex abuse is at epidemic levels where tens of thousands of children are believed to be sexually exploited in the country each year. “The level of paedophilia is unprecedented right now,” the FBI’s Joseph Campbell told the BBC.<sup>1</sup>

What has happened to so transform our nation that “thousands of children” are being sexually violated, when just a few years ago commentators were bemoaning the continuing effects of “sexual puritanism”?<sup>2</sup> And why is it that materials that cannot be sold to children can be checked out of the public library or school library and/or be presented as part of school assignments?

This Article explores those questions by pointing to the root of the sexual rights agenda plaguing our society and most tragically our children, i.e., Alfred Kinsey’s “revolutionary research” that purported to establish that children are sexual from birth and that all manner of child sexual activity is normal and harmless.<sup>3</sup> Kinsey’s “research” which became global legal fictions, was in fact neither scientific nor statistically valid, but was instead based upon the serial abuse of infants as young as two months old by “trained observers” using stopwatches to record their “data” for Kinsey. These “data” were used by Kinsey and his “team” to launch a sexual revolution and to fundamentally transform society into a sex-saturated, sex-centric culture that could normalize Kinsey’s and his team’s deviant lifestyles. That fundamental transformation has included wholesale revision of the criminal law to decriminalize or greatly diminish criminal sanctions for sexual offenses, including sexual offenses involving children. Part of the revision was the creation of “obscenity exemptions” for schools, libraries, organizations and individuals providing the materials for “educational” purposes. As a result of these exemptions, materials that are otherwise deemed “harmful to minors” are mainstreamed into school curriculum, library books, and internet content providers with no risk of criminal prosecution.

These “obscenity exemptions” are recognized in at least forty-four states and the District of Columbia and have given a license to those seeking to sexually indoctrinate children, unimpeded by the equivalent of movie ratings or warning labels. Even the most diligent parent who forbids their child to attend an R-rated movie, purchase an M-rated video game or music with a “parent advisory” warning lose the battle for their child’s mind when they drop them off at school where even more graphic sexual materials are presented as part of the school curriculum.

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<sup>1</sup> Tara John, *FBI: Child Abuse 'Almost at an Epidemic Level' in U.S.*, TIME (July 30, 2015), <http://time.com/3978236/american-children-sold-sex/>.

<sup>2</sup> See, e.g., Matthew Milliner, *Overcoming Sexual Puritanism*, FIRST THINGS (October 7, 2010) <https://www.firstthings.com/blogs/firstthoughts/2010/10/overcoming-sexual-puritanism>.

<sup>3</sup> See *infra* Part II.

Part I of this Article discusses legal and constitutional aspects of obscenity, including federal and state statutes that prohibit the sale, distribution or transmission of obscene materials. It also discusses particular state protections against the dissemination of obscene materials to minors, known as harmful to minors laws, and how schools, libraries, and similar educational interests have been exempted from those laws through statutory “obscenity exemptions” originating from the Model Penal Code. Part II discusses how the Model Penal Code and the obscenity exemptions originated from Alfred Kinsey’s reports on human sexuality that purported to find that all sexual conduct is normal, and children are sexual from birth and unharmed by sexual activity. His reports catapulted wholesale revisions of criminal law, particularly regarding sex offenses, which resulted in the creation of an innovative Model Penal Code. Part III discusses how the obscenity exemptions were used as catalysts for wholesale revision of education to train “sex educators” to supplant parents as primary teachers of human sexuality to their children. The obscenity exemptions were used by the professionals to introduce anxiety arousing sexual materials into schools, first in the form of sex education in inner city Washington D.C., then throughout the nation. Anxiety inducing sexual matter has now permeated every aspect of K-12 education. Part IV examines the consequences of the obscenity exemption-driven transformation of the schools, including traumatic cultural identity conflicts, traumatic brain rewiring, acting out, and exponential increases in the rates of disease and dysfunction. Finally, Part V discusses the legal ramifications of these consequences. The Article concludes with a call to action to repeal the obscenity exemptions and institute other policy changes to protect children.

## II. OBSCENITY EXEMPTIONS SUBVERT LAWS PROTECTING CHILDREN FROM OBSCENITY AND INDECENCY

### A. *Obscenity Is Not Constitutionally Protected.*

Obscenity is one of the narrowly defined classes of speech that the Supreme Court has determined is not protected by the First Amendment.<sup>4</sup>

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. “Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.”<sup>5</sup>

#### 1. Early Efforts to Quell Pornography and Prostitution Led to Strict Restrictions on Obscenity.

Through the nineteenth century the United States was, by and large, sexually reserved, and discussions of human sexuality were private matters reserved for the bedroom or medical examination. As has been true since the dawn of time, there were exceptions, such as some big cities like New York, a center of commercialized sex in the 1860s and early 1870s.

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<sup>4</sup> Roth v. United States, 354 U.S. 476, 485 (1957).

<sup>5</sup> Chaplinsky v. New Hampshire, 315 U.S. 568, 571–72 (1942) (quoting Cantwell v. Connecticut, 310 U.S. 296, 309-10 (1940)).

Once sequestered in brothels . . . commercial sex in postbellum New York had gone public. Sex was easily viewed and consumed on streets and in hotels, shops, and saloons . . . . Prostitutes . . . posted pictures, window modeling, and even newspaper ads promoted their specialties and rates. Local printers sold pornographic books, pamphlets, drawings, and photographs. Stage shows [offered] heterosexual and homosexual pleasures. Alone or in groups, entertainers would dance, strip, gyrate suggestively, or insert accoutrements like rubber dildos or cigars into various orifices . . . [C]ontraceptives, abortion services, and erotica thrived.<sup>6</sup>

Social activists worked to enact laws to protect the public from vice, including the Mann Act in 1910, which ended the White Slave Trade,<sup>7</sup> and laws to prevent obscenity from being sent through the mail:

And be it further enacted, [t]hat no obscene book, pamphlet, picture, print, or other publication of a vulgar and indecent character, shall be admitted into the mails of the United States; any person or persons who shall deposit or cause to be deposited, in any post-office or branch post-office of the United States, for mailing or for delivery, an obscene book, pamphlet, picture, print, or other publication, knowing the same to be of a vulgar and indecent character, shall be deemed guilty of a misdemeanor, and, being duly convicted thereof, shall for every such offen[s]e be fined not more than five hundred dollars, or imprisoned not more than one year, or both, according to the circumstances and aggravations of the offen[s]e.<sup>8</sup>

Criminal laws reflected society's disapproval of obscenity, commercialized and illicit sex with harsh penalties for rape, adultery, fornication and seduction.<sup>9</sup> The legal definition of obscenity reflected a view that sexually explicit materials were harmful, particularly for young people.

[OBSCENITY:] Offensive to chastity of mind or to modesty, expressing or presenting to the mind or view something that delicacy, purity and decency forbids to be exposed; calculated to corrupt, deprave, and debauch the morals of the people, and promote violation of the law; licentious and libidinous and tending to excite feelings of an impure or unchaste character; tending to stir the sex impulses or to lead to sexually impure and lustful thoughts; tending to corrupt the morals of youth or lower the standards of right and wrong especially as to the sexual relation.<sup>10</sup>

## 2. *Roth v. United States* Adopts Modern Definition of Obscenity.

In *Roth v. United States*,<sup>11</sup> the Supreme Court modified the definition of obscenity and explained the difference between sex and obscenity for purposes of the First Amendment.<sup>12</sup>

Obscene material is material which deals with sex in a manner appealing to prurient interest. The portrayal of sex, e.g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press. Sex, a great and mysterious motive force in human life, has indisputably been a

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<sup>6</sup> ANDREA TONE, *DEVICES AND DESIRES A HISTORY OF CONTRACEPTIVES IN AMERICA* 6, 7 (2001).

<sup>7</sup> JUDITH REISMAN, *STOLEN HONOR STOLEN INNOCENCE* 123 (4th ed. 2013).

<sup>8</sup> Postal Laws Act, 38th Cong. §16 (1865).

<sup>9</sup> *Obscene*, BLACK'S LAW DICTIONARY (4th ed. 1968).

<sup>10</sup> REISMAN, *supra* note 7, at 238 (quoting *Obscene*, BLACK'S LAW DICTIONARY (4th ed. 1968)).

<sup>11</sup> *Roth v. United States*, 354 U.S. 476 (1957).

<sup>12</sup> *Id.* at 487.

subject of absorbing interest to mankind through the ages; it is one of the vital problems of human interest and public concern.<sup>13</sup>

“Prurient interest,” the Court explained, means, “material having a tendency to excite lustful thoughts.”<sup>14</sup>

Webster’s New International Dictionary (Unabridged, 2d ed., 1949) defines prurient, in pertinent part, as follows: “. . . Itching; longing; uneasy with desire or longing; of persons, having itching, morbid, or lascivious longings; of desire, curiosity, or propensity, lewd . . . .” Pruriency is defined, in pertinent part, as follows: “. . . Quality of being prurient; lascivious desire or thought. . . .”<sup>15</sup>

Justice William O. Douglas dissented from the Court’s determination that obscenity was not protected by the First Amendment. Notably, his dissent was based upon Alfred Kinsey’s research, discussed *infra*, which Justice Douglas said disproved that obscene literature excited lustful thoughts.<sup>16</sup> Justice Douglas also cited a 1954 *Minnesota Law Review* article that he said similarly disputed the connection between sexually explicit literature and lustful thoughts.<sup>17</sup>

‘The Kinsey studies show the minor degree to which literature serves as a potent sexual stimulant. And the studies demonstrating that sex knowledge seldom results from reading indicates (sic) the relative unimportance of literature in sex thoughts as compared with other factors in society.’<sup>18</sup>

### 3. *Miller v. California* Establishes Test to Define Obscenity.

The Supreme Court adopted the modern constitutional test for determining whether material is obscene and therefore not protected by the First Amendment in 1973 in *Miller v. California*.<sup>19</sup> The Court explained how obscenity is antithetical to the purposes of the First Amendment and, therefore, not protected.

“[T]o equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a misuse of the great guarantees of free speech and free press.”<sup>20</sup>

“The First Amendment protects works which, taken as a whole, have serious literary, artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent.”<sup>21</sup>

“The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” . . .  
But the public portrayal of hard-core sexual conduct for its own sake, and for the ensuing

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at n.20.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 511 (Douglas, J., dissenting).

<sup>17</sup> William B. Lockhart & Robert C. McClure, *Literature, The Law of Obscenity and the Constitution*, 38 MINN. L. REV. 295, 387 (1954).

<sup>18</sup> *Roth*, 354 U.S. at 511 (Douglas, J., dissenting) (quoting Lockhart & McClure, *supra* note 17, at 385-86).

<sup>19</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>20</sup> *Id.* at 34 (quoting *Breard v. Alexandria*, 341 U.S. 622, 645 (1951)).

<sup>21</sup> *Miller*, 413 U.S. at 34.

commercial gain, is a different matter.<sup>22</sup>

While the Court has categorically settled that obscene material is unprotected by the Constitution, it has not settled on a uniform definition of when material is deemed obscene.<sup>23</sup> Instead, it has left the definition to individual states based the particular characteristics of the communities in which the materials are disseminated.<sup>24</sup> In fact, the *Miller* Court specifically eschewed a “national” definition of obscenity, which could result in burdening protected speech.<sup>25</sup>

Nothing in the First Amendment requires that a jury must consider hypothetical and unascertainable ‘national standards’ when attempting to determine whether certain materials are obscene as a matter of fact. Mr. Chief Justice Warren pointedly commented in his dissent in *Jacobellis v. Ohio, supra*, at 200, 84 S.Ct., at 1685: “It is my belief that when the Court said in *Roth* that obscenity is to be defined by reference to ‘community standards,’ it meant community standards—not a national standard, as is sometimes argued. I believe that there is no provable ‘national standard’ . . . . At all events, this Court has not been able to enunciate one, and it would be unreasonable to expect local courts to divine one.”<sup>26</sup>

“It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City.”<sup>27</sup> “People in different States vary in their tastes and attitudes, and this diversity is not to be strangled by the absolutism of imposed uniformity.”<sup>28</sup>

The three-pronged “test” announced in *Miller* remains the standard for analyzing whether materials are “obscene” and, therefore, not protected by the First Amendment: (1) whether the average person, applying contemporary adult community standards, finds that the matter, taken as a whole, appeals to prurient interests (i.e., an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion); (2) whether the average person, applying contemporary adult community standards, finds that the matter depicts or describes sexual conduct in a patently offensive way (i.e., ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, or sado-masochistic sexual abuse); and (3) whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>29</sup>

Acknowledging the special vulnerability of children, the Court has clarified that children are not to be considered part of the “community” when applying contemporary standards but that “the community includes all adults who constitute it, and a jury can consider them all in determining relevant community standards.”<sup>30</sup> That recognition of the differential sensitivity of children has carried through into federal and state obscenity statutes.

B. *Federal and State Statutes Prohibit Sale, Distribution of Obscene Matter, with Particular Protections for Children.*

Adults can legally *possess* obscene materials for private use.<sup>31</sup> In *Stanley v. Georgia*, the Supreme

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<sup>22</sup> *Id.* at 34-35 (citations omitted).

<sup>23</sup> *Id.* at 23-24.

<sup>24</sup> *Id.*

<sup>25</sup> *Miller v. California*, 413 U.S. 15, 31-32 (1973).

<sup>26</sup> *Id.* (citing *Jacobellis v. Ohio*, 378 U.S. 184, 200 (1964) (Warren, C.J., dissenting)).

<sup>27</sup> *Miller*, 413 U.S. at 32 (citations omitted).

<sup>28</sup> *Id.* at 33 (citations omitted).

<sup>29</sup> *Id.* at 24-25.

<sup>30</sup> *Pinkus v. United States*, 436 U.S. 293, 300 (1978).

<sup>31</sup> *Stanley v. Georgia*, 394 U.S. 557, 568 (1969).

Court said that “the First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime.”<sup>32</sup> Because the individual’s right to read or observe what he pleases is so fundamental to the scheme of individual liberty, it cannot be infringed even as part of efforts to ease the administration of criminal laws.<sup>33</sup> “As we have said, the States retain broad power to regulate obscenity; that power simply does not extend to mere possession by the individual in the privacy of his own home.”<sup>34</sup>

That power, however, does extend to prohibiting the sale or distribution of such materials, particularly to children, as provided in federal and state statutes. Federal law imposes fines and imprisonment for possession with intent to sell or distribute, transmission through the mail, broadcast, importation, transportation and production for sale or distribution of obscene material.<sup>35</sup> Heightened protections are provided for children under federal law, which prohibits transferring or attempting to transfer obscene material to anyone under age sixteen,<sup>36</sup> and producing, distributing, receiving or possessing with intent to distribute: “visual representations, such as drawings, cartoons, or paintings that depicts a minor engaging in sexually explicit conduct; and are deemed obscene.”<sup>37</sup> Notably, the test for obscenity under the latter statute is less stringent than the *Miller* test:

The matter involving minors can be deemed obscene if it (i) depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse and (ii) if the image lacks serious literary, artistic, political, or scientific value.<sup>38</sup>

Most states and the District of Columbia have adopted similar laws which define obscenity and prohibit its distribution, transmission or sale.<sup>39</sup> Most have adopted some or all of the language from the American Law Institute’s (“ALI”) Model Penal Code (“MPC”). Provisions related to sexual offenses were formally adopted by the ALI Board of Directors in 1962. Section 251.4 of the 1962 MPC defined obscene as:

Obscene Defined. Material 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 in addition it goes substantially beyond customary limits of candor in describing or representing such matters. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> 18 U.S.C. §§1460-66.

<sup>36</sup> 18 U.S.C. §1470.

<sup>37</sup> 18 U.S.C. §1466A.

<sup>38</sup> *Citizen’s Guide to U.S. Federal Law on Obscenity*, DEPARTMENT OF JUSTICE, <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity>.

<sup>39</sup> ALA. CODE § 13A-12-200.3; ALASKA STAT. § 11.61.128; ARIZ. REV. STAT. § 13-3502; ARK. CODE ANN. §§ 5-68-302, 5-68-303; CAL. PENAL CODE § 313.1; COLO. REV. STAT. § 18-7-102; CONN. GEN. STAT. § 53a-194; DEL. CODE ANN. tit. 11 § 1361; D.C. CODE § 22-2201 (2013); FLA. STAT. § 847.011 (2008); GA. CODE ANN. § 16-12-80; HAWAII REV. STAT. §§ 712-1211, 712-1214; IDAHO CODE §§ 18-4103, 18-4105; 720 ILL. COMP. STAT. 5/11-20 (2011); IND. CODE §§ 35-49-2-1, 35-49-3-1 (2014), 35-49-3-2 (2014); IOWA CODE § 728.1 (2012); KAN. STAT. ANN. § 21-6401; KY. REV. STAT. ANN. § 531.060; LA. STAT. ANN. § 14:106; MD CODE ANN., CRIM. LAW § 11-202; MASS. GEN. LAWS ANN. ch. 272, § 29; MICH. COMP. LAWS ANN. § 752.365; MINN. STAT. § 617.241 (2014); MISS. CODE ANN. § 97-29-101; MO. ANN. STAT. § 573.020; MONT. CODE ANN. § 45-8-201; NEB. REV. STAT. § 28-813; NEV. REV. STAT. § 201.249; N.H. REV. STAT. ANN. § 650:2; N.J. STAT. ANN. 2C:34-2; N.M. STAT. ANN. § 30-38-1; N.Y. PENAL LAW §§ 235.05, 235.07; N.C. GEN. STAT. § 14-190.1; N.D. CENT. CODE § 12.1-27.1-01; OHIO REV. CODE ANN. § 2907.32; OKLAHOMA. STAT. tit. 21, § 1040.8; OR. REV. STAT. § 167.090; 18 PA. CONS. STAT. § 5903 (2012); 1956 R.I. GEN. LAWS § 11-31-1; S.C. CODE ANN. §16-15-305; S.D. CODIFIED LAWS § 22-24-58; TENN. CODE ANN. § 39-17-902 (2014); TEX. PENAL CODE ANN. § 43.22; UTAH CODE ANN. §§ 76-10-1203, 76-10-1204; VT. STAT. ANN. tit. 13 § 2803; VA. CODE ANN. § 18.2-374; WASH. REV. CODE § 9.68.140; W. VA. CODE § 61-8A-2; WIS. STAT. § 944.21; WYO. STAT. ANN. § 6-4-302.

dissemination to be designed for children or other specially [sic] susceptible audience. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

The *Roth* Court referenced the 1957 tentative draft of the ALI-MPC definition of obscenity, saying, “We perceive no significant difference between the meaning of obscenity developed in the case law and the definition of the A.L.I., Model Penal Code, s 207.10(2) (Tent.Draft No. 6, 1957).”<sup>40</sup>

Most state obscenity statutes include provisions specifically prohibiting the dissemination of materials deemed “harmful to minors” or use similar phrasing.<sup>41</sup> These establish criminal sanctions for exposing children to material that, while perhaps not obscene or indecent for adults under contemporary community standards, is obscene or indecent, and, therefore, harmful to children.<sup>42</sup> However, forty-four states have enacted exemptions to the prohibition against dissemination of obscene or indecent materials, even those “harmful to minors,” if the materials are labeled as or used by individuals or organizations for “educational, scientific, artistic” or similar purposes.<sup>43</sup> These exemptions are largely based on Section 251.4(3) of the 1962 MPC. The final version of the provision reads:

(3) Justifiable and Non-Commercial Private Dissemination.

It is an affirmative defense to prosecution under this Section that dissemination was restricted to:

- (a) institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or
- (b) non-commercial dissemination to personal associates of the actor.

An earlier tentative draft of the proposed section addressing obscenity (then Section 207.10) included a third exemption: “dissemination, not for gain, by an actor below the age of 21 to a child not more than 5 years younger than the actor.”<sup>44</sup> The drafters of the provision described that exemption as “non-criminal circulation of obscenity among youths and children of approximately the same age even where the

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<sup>40</sup> *Roth v. United States*, 354 U.S. 476, 487 n.20 (1957).

<sup>41</sup> ALASKA STAT. § 11.61.128; ARIZ. REV. STAT. § 13-3506; CAL. PENAL CODE § 313.1; COLO. REV. STAT. § 18-7-502; DEL. CODE ANN. TIT. 11 § 1361; D.C. CODE § 22-2201 (2013); FLA. STAT. § 847.012 (2013); GA. CODE ANN. § 16-12-103; HAW. REV. STAT. § 712-1215; IDAHO CODE § 18-1515; IND. CODE §§ 35-49-2-2, 35-49-2-3, 35-49-3-3 (2014); IOWA CODE § 728.2; KAN. STAT. ANN. § 21-6402; KY REV. STAT. ANN. § 531.030; LA. STAT. ANN. § 14:106 (2014); ME STAT. tit. 17, § 2911 (2012); MD CODE ANN., CRIM. LAW § 11-203; MINN. STAT. § 617.293; MO. REV. STAT. § 573.040; MONT. CODE ANN. § 45-8-201; N.H. REV. STAT. ANN. § 650:2; N.J. STAT. ANN. 2C:34-3; N.M. STAT. ANN. § 30-37-2; N.Y. PENAL LAW § 235.15; N.C. GEN. STAT. § 14-190.15; N.D. CENT. CODE § 12.1-27.1-03.1; OKLA. STAT. tit. 21, § 1040.76; OR. REV. STAT. § 167.080; 18 PA. CONS. STAT. § 5903 (2012); 11 R.I. GEN. LAWS § 11-31-10; S.C. CODE ANN. § 16-15-385; S.D. CODIFIED LAWS § 22-24-28; TENN. CODE ANN. § 39-17-902 (2014); TEX. PENAL CODE ANN. § 43.24 (West 2011); UTAH CODE ANN. § 76-10-1206; 13 VT. STAT. ANN. tit. 13 §§ 2802, 2804b; W. VA. CODE § 61-8A-2; WIS. STAT. § 944.21(4)(b).

<sup>42</sup> See *supra* text accompanying note 41.

<sup>43</sup> ALA. CODE § 13A-12-200.4; ARK. CODE ANN. § 5-68-308; CAL. PENAL CODE § 313.3; COLO. REV. STAT. § 18-7-503; CONN. GEN. STAT. § 53a-195; DEL. CODE ANN. tit. 11, § 1362; D.C. CODE § 22-2201(c); FLA. STAT. § 847.011 (2008); GA. CODE ANN. § 16-12-104; HAW. REV. STAT. § 712-1215(2); IDAHO CODE § 18-1517; 720 ILL. COMP. STAT. 5/11-20(f) (2011); IND. CODE § 35-49-3-4; IOWA CODE § 728.7; KAN. STAT. ANN. § 21-6401(g); KY. REV. STAT. ANN. § 531.070; LA. REV. STAT. § 14:106 (2014); ME. STAT. tit. 17 § 2911 (2012); MD. CODE ANN., CRIM. LAW, § 11-210; MASS. GEN. LAWS ch. 272, § 29; MICH. COMP. LAWS § 752.367; MINN. STAT. § 617.295; MISS. CODE ANN. § 97-29-107; MONT. CODE ANN. § 45-8-201; NEB. REV. STAT. § 28-815; NEV. REV. STAT. § 201.237; N.H. REV. STAT. ANN. § 650:4; N.M. STAT. ANN. § 30-37-5; N.Y. PENAL LAW § 235.15; N.C. GEN. STAT. § 14-190.15; N.D. CENT. CODE § 12.1-27.1-11; OHIO REV. CODE ANN. § 2907.32(B); OR. REV. STAT. § 167.085; 18 PA. CONS. STAT. § 5903(j) (2012); S.C. CODE ANN. § 16-15-385(C); S.D. CODIFIED LAWS § 22-24-31; TENN. CODE ANN. § 39-17-902(e) (2014); TEX. PENAL CODE § 43.24(c) (West 2011); UTAH CODE ANN. § 76-10-1208; VT. STAT. ANN. tit. 13, § 2805; VA. CODE ANN. § 18.2-383 (2017); WASH. REV. CODE § 9.68.015; W. VA. CODE § 61-8A-3; WIS. STAT. § 944.21(8)(b) (2017); WYO. STAT. ANN. § 6-4-302(c).

<sup>44</sup> MODEL PENAL CODE § 207.10(4) (AM. LAW INST., Tentative Draft No. 6 1957).

material is passed around indiscriminately, as might happen in a high school or college.”<sup>45</sup> They commented that it was “related to our decision elsewhere not to make sexual behavior of adolescents criminal, except where disparity of age suggests imposition or seduction.”<sup>46</sup> That proposal and how it represents the overall worldview of the drafters of the MPC is discussed *infra*.

The drafters further explained that the provision regarding educational institutions, which is the subject of this Article, was included in recognition of the fact that “*universities*, law enforcement authorities, anthropologists, and others may have legitimate reasons to procure obscene materials. If so, it should not be criminal to furnish them.”<sup>47</sup> Notably, the tentative draft version of the exemption read: “dissemination to institutions or individuals having scientific or other special justification for possessing such material,”<sup>48</sup> and the additional language of “educational or governmental” was added to the final version. Although the drafters claimed to be concerned about universities, neither version of the exemption was limited to higher education facilities, which would be primarily populated by adults. This left the door open for legislatures to broadly exempt any person or organization claiming educational use. Many legislatures have done just that, and in some cases opened the door even wider, granting exemptions to third party contractors who provide materials or make presentations to elementary and secondary schools, libraries, and similar institutions.<sup>49</sup> As discussed *infra*, that broadening of the exemption has had significant adverse consequences for children.

Wisconsin attempts to justify its broad exemption by appealing to free speech and financial stewardship concerns:

The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.<sup>50</sup>

The legislature uses buzzwords such as “balanced,” “diverse” and “pluralistic” curriculum to clothe the exemption in a robe of legitimacy. Similarly, the American Library Association leans upon First Amendment protections against censorship to justify the obscenity exemption for libraries, often offering derisive remarks about parents’ efforts to use “harmful to minors” statutes to remove inappropriate books.<sup>51</sup>

Lost in the attempts to legitimize the exemptions is the fact that the statutes are dealing with materials that are, by nature, obscene and, therefore, outside of the protection of First Amendment free speech guarantees. Furthermore, the materials which the legislature and librarians are claiming should be part of a balanced and diverse curriculum are, by definition, “harmful to minors.” The legislatures and librarians purported interests in academic freedom does not change the nature of the materials, i.e., does not make them any less harmful to children. “[P]icture[s], photograph[s], drawing[s], sculpture[s], . . . or

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<sup>45</sup> MODEL PENAL CODE § 207.10 cmt. 4 on obscenity (AM. LAW INST., Tentative Draft No. 6 1957).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> MODEL PENAL CODE § 207.10 cmt. 4 on obscenity (AM. LAW INST., Tentative Draft No. 6 1957).

<sup>49</sup> See, e.g., S.D. CODIFIED LAWS §22-24-31(4) (“In any prosecution for disseminating material harmful to minors, it is an affirmative defense that: . . . [t]he defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.”).

<sup>50</sup> WIS. STAT. § 944.21(8)(a) (2017).

<sup>51</sup> See, e.g., AMERICAN LIBRARY ASSOCIATION, THE STATE OF AMERICA’S LIBRARIES REPORT, 20 (2008), [http://www.ala.org/news/sites/ala.org.news/files/content/mediapresscenter/americaslibraries/soal\\_archive/state\\_of\\_americas\\_libraries\\_report\\_2008%20.pdf](http://www.ala.org/news/sites/ala.org.news/files/content/mediapresscenter/americaslibraries/soal_archive/state_of_americas_libraries_report_2008%20.pdf).



[other] visual representation[s],” and “book[s], pamphlet[s], magazine[s], or [other written or] printed matter” that “depicts sexually explicit nudity, sexual conduct, sexual excitement or sadomasochistic abuse . . . which . . . is harmful to children”<sup>52</sup> do not transform into non-harmful “educational” materials merely by being so labeled, used by an “educator” or located in a library or classroom.

Rather than protecting the noble cause of academic freedom, the educational obscenity exemptions are designed to further a socio-political agenda aimed at fundamentally transforming society. This is apparent not only from the text of the ALI-MPC, but also and especially from the historical underpinnings of the model code.

### III. THE MODEL PENAL CODE AND ITS OBSCENITY EXEMPTIONS WERE SET IN MOTION BY THE KINSLEY REPORTS

#### A. *The Kinsey Reports Claim to be Scientific Studies of Actual Sexual Behavior of Men, Women and Children.*

Schools and libraries are exposing children to materials explicitly labeled “harmful to minors” with impunity because of statutory exemptions based upon a fraudulent “understanding” that “children are sexual from birth,” propounded by Indiana University gall wasp zoologist Dr. Alfred Kinsey. Kinsey and a team of researchers produced what they called the first “scientific” studies of human sexual behavior, on male and female sexuality in 1948 and 1953, respectively.<sup>53</sup> The reports claimed that virtually all American men and women were secretly engaging in what was then criminal sexual conduct, including fornication, adultery, homosexual sodomy, sex with prostitutes, and bestiality.<sup>54</sup> Kinsey bemoaned the fact that this conduct was illegal, espousing the idea that all manner of sexual activity should be regarded as normal and harmless.<sup>55</sup> Kinsey drew up what has become known as the “Kinsey Scale” to represent what he called the continuum of human sexual behavior that alternated between solely heterosexual (a zero) to solely homosexual (a six), with most people being somewhere in-between, i.e., bisexual, throughout their lives.<sup>56</sup> Kinsey used that scale and his “data”<sup>57</sup> to claim that ten to thirty-seven percent of males are homosexual during at least some point in their lives, figures that continue to be cited today.<sup>58</sup>

As well as discussing adult sexual behavior, Kinsey’s reports offered “data” on children’s “sexual experiences,” what he called “orgasms,” recorded for infants and children as young as two months old.<sup>59</sup> Kinsey’s *Male* volume included five tables entitled: “Ages of pre-adolescent orgasm,” “Speed of pre-adolescent orgasm,” “Multiples orgasm in pre-adolescent males,” and “Examples of multiple orgasm in pre-adolescent males.”<sup>60</sup> Tables 31 and 34 featured columns listing the ages of the “pre-adolescents” when “observed,” showing ages from two months to fifteen years in Table 31 and five months to fourteen years in Table 34, the number of “orgasms” and the time involved in “observing” the children.<sup>61</sup> In two cases, the time involved was listed as twenty-four hours, once for a four year old and once for a ten

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<sup>52</sup> COLO. REV. STAT. § 18-7-502(1). *See, e.g.*, D.C. CODE § 22-2201(b) (2013); FLA. STAT. § 847.012(3) (2013); GA. CODE ANN. § 16-12-103(a); IDAHO CODE § 18-1515; MINN. STAT. § 617.293(1); N.M. STAT. ANN.; § 30-37-2; VT. STAT. ANN. tit. 13, § 2802.

<sup>53</sup> ALFRED KINSEY ET. AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948) [hereinafter *MALE*]; ALFRED KINSEY ET. AL., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE* (1953) [hereinafter *FEMALE*].

<sup>54</sup> *MALE*, *supra* note 53, at 392, 585-87, 650-51, 671; *FEMALE*, *supra* note 53, at 286, 416, 458.

<sup>55</sup> *MALE*, *supra* note 53, at 641.

<sup>56</sup> *Id.* at 638-41.

<sup>57</sup> “Data” is placed in quotes to denote that the statistics, facts and figures presented in the two volumes have been seriously questioned by scientists and statisticians who found significant flaws in Kinsey’s methods and conclusions. *See e.g.*, RENE A. WORMSER, *FOUNDATIONS: THEIR POWER AND INFLUENCE* 104 (1993) (describing congressional testimony of Dr. Albert Hobbs); JAMES H. JONES, *ALFRED C. KINSEY: A PUBLIC/PRIVATE LIFE*, 638-48, 653-65, 683 (1st ed. 1997) (describing questions raised by the American Statistical Association).

<sup>58</sup> *MALE*, *supra* note 53, at 650.

<sup>59</sup> *Id.* at 176-80.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 176, 180.

year old.<sup>62</sup> While the books did not reveal the sources for the information for the tables, it is now known that at least some of the material was obtained from serial child rapist Rex King and Nazi Fritz von Balluseck, who provided Kinsey's team with diaries of their sex abuse of infants and children.<sup>63</sup> In the *Female* volume, Kinsey claimed that children suffer little harm from such early "sexual contacts," saying that children harmed from sexual contact "are in the minority, and the public should learn to distinguish such serious contacts from other adult contacts which are not likely to do the child any appreciable harm if the child's parents do not become disturbed."<sup>64</sup> Co-author Wardell Pomeroy developed what has become a mantra for today's educators: "Kinsey numbered himself among those who contended that, as far as so-called molestation of children was concerned, a great deal more damage was done to the child by adult hysteria."<sup>65</sup>

Kinsey included the information on "childhood sexuality" as part of his mission to convince the public that human beings are sexual from "womb to tomb."<sup>66</sup> His co-author Paul Gebhard told a television interviewer that they accomplished their goal, thanks in large part to Rex King who "contributed a fair amount to our knowledge . . . and medicine's knowledge of sexuality in children" by providing his detailed reports to Kinsey.<sup>67</sup> "We made our point that children are sexual from birth."<sup>68</sup>

#### B. *Kinsey's Reports Prompt Call for Revision of American Criminal Law.*

Social scientists, psychiatrists, judges, and legal scholars used Kinsey's books, particularly the *Male* volume, to push for wholesale revision of the criminal law, and in particular, the laws related to sexual offenses. Within months of the 1948 release of the *Male* volume, four books analyzing it and calling for radical criminal law reforms based upon it were published.<sup>69</sup> One of the authors of the MPC, Judge Morris Ploscowe, said that Kinsey's findings meant that "[w]hen a total clean-up of sex offenders is demanded, it is in effect a proposal to put ninety-five percent of the male population in jail."<sup>70</sup> According to Ploscowe,

One of the conclusions of the Kinsey report is that the sex offender is not a monster . . . but an individual who is not very different from others in his social group, and that his behavior is similar to theirs. The only difference is that others in the offender's social group have not been apprehended. This recognition that there is nothing very shocking or abnormal in the sex offender's behavior should lead to other changes in sex legislation.

. . . .

In the first place, it should lead to a downward revision of the penalties presently imposed on sex offenders.<sup>71</sup>

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<sup>62</sup> *Id.* at 180.

<sup>63</sup> REISMAN, *supra* note 8, at 162-68.

<sup>64</sup> FEMALE, *supra* note 53, at 121-22.

<sup>65</sup> WARDELL B. POMEROY, DR. KINSEY AND THE INSTITUTE FOR SEX RESEARCH 207-08 (1972) [hereinafter POMEROY].

<sup>66</sup> REISMAN, *supra* note 7, at 149 (quoting SECRET HISTORY: KINSEY'S PAEDOPHILES (Yorkshire Television Aug. 10, 1998) (the quote is from Kinsey biographer Jonathan Gathorne-Hardy's interview on the documentary.)).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> ABOUT THE KINSEY REPORT: OBSERVATIONS BY 11 EXPERTS ON "SEXUAL BEHAVIOR IN THE HUMAN MALE" (Donald Porter Geddes & Enid Curie eds., 1948) [hereinafter ABOUT THE KINSEY REPORT]; MORRIS L. ERNST & DAVID LOTH, AMERICAN SEXUAL BEHAVIOR AND THE KINSEY REPORT (1948) [hereinafter ERNST]; RENE GUYON, THE ETHICS OF SEXUAL ACTS (1958) [hereinafter GUYON]; SEX HABITS OF AMERICAN MEN: A SYMPOSIUM ON THE KINSEY REPORT (Albert Deutsch ed., 1948).

<sup>70</sup> Morris Ploscowe, *Sexual Patterns and the Law*, in SEX HABITS OF AMERICAN MEN: A SYMPOSIUM ON THE KINSEY REPORT 125 (Albert Deutsch ed., 1948).

<sup>71</sup> *Id.* at 133-34.

Dr. Harry Benjamin, who would go on to be instrumental in fashioning the concept of transgenderism,<sup>72</sup> wrote: “[Rene] Guyon, [a famous pedophile jurist] speaking as a philosopher, and Kinsey, judging merely by empirical data” are “upsetting our most cherished conventions.”<sup>73</sup>

Many . . . sex activities, illegal and “immoral,” but widely practiced, are recorded by both investigators . . . . Unless we want to close our eyes to the truth or imprison ninety-five per cent of our male population, *we must completely revise our legal and moral codes.*

. . . .

It comes probably as a jolt to many, even open-minded people, when they realize that chastity cannot be a virtue because it is not a natural state.<sup>74</sup>

Law professor Karl Llewellyn said that Kinsey’s “carefully and shrewdly gathered and analyzed body of fact” should compel “severe rethinking of deep-cutting problems of our law.”<sup>75</sup> He called for sane people to organize and pressure lawmakers to carry out Kinsey’s recommendations which he said should “be taken very seriously.”<sup>76</sup>

Morris Ernst, who was Kinsey’s attorney and also represented Planned Parenthood, Margaret Sanger and the ACLU,<sup>77</sup> presaged Kinsey’s findings in a 1945 memoir.<sup>78</sup>

Soon it will be proved that homosexuality, masturbation, and petting are more prevalent among the sophisticated, or what is called the upper stratum of society, than among other people, who show a higher percentage of premarital sexual relationship. The figures on sexual relations with girls under eighteen years of age—which acts, no doubt, run into millions of incidents a year—may cause a reappraisal of headlines concerned with juvenile delinquency. But the law in the main . . . is administered by judges stemming from one stratum of life, unconsciously applying their codes vis-à-vis the other stratum. All of which not yet reduced to scientific terms is nevertheless the ever-changing basis of the law of changing obscenity.<sup>79</sup>

Ernst’s predictions came true in Kinsey’s *Male* volume three years later, and Ernst immediately called for the decriminalization or diminution of penalties for fifty-two sex crimes, including sodomy, bestiality, adultery, pornography, obscenity, bigamy, fornication, abortion, seduction, rape, prostitution, indecent exposure and cohabitation.<sup>80</sup> Also included in his list of sex crimes that should be abolished or accorded lower penalties were incest, lewd acts with infants, impairing the morals of a minor, statutory rape, and compulsory prostitution by parents of children (in today’s parlance, sex trafficking).<sup>81</sup> This latter list points to his embrace of Kinsey’s concept that “children are sexual from birth”<sup>82</sup> and unharmed by sex with adults, a concept embraced by other influential scholars.

C. *Kinsey’s “Children are Sexual from Birth” Claim Prompts Calls for Diminution or Elimination of Penalties for Sex with Children.*

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<sup>72</sup> HARRY BENJAMIN, *THE TRANSSEXUAL PHENOMENON* (1966).

<sup>73</sup> Harry Benjamin, *Introduction*, in GUYON, *supra* note 69, at h-i.

<sup>74</sup> *Id.* at i (emphasis added).

<sup>75</sup> Karl N. Llewellyn, *The Limits of Sexual Law*, in ABOUT THE KINSEY REPORT 113, *supra* note 69, at 114.

<sup>76</sup> *Id.* at 116.

<sup>77</sup> POMEROY, *supra* note 65, at 344.

<sup>78</sup> See MORRIS L. ERNST, *THE BEST IS YET . . .* (1945).

<sup>79</sup> *Id.* at 113-14.

<sup>80</sup> ERNST, *supra* note 69, at 126-27.

<sup>81</sup> *Id.* at 127.

<sup>82</sup> REISMAN, *supra* note 7, at 149 (citing Paul Gebhard interview on *Kinsey’s Paedophiles*, Yorkshire Television, London, United Kingdom, broadcast August 10, 1998 (transcript on file with author)).

Those pushing for legal reform also capitalized on the “children are sexual from birth” claims to call for lowering of the age of consent and lessening or eliminating penalties for sex crimes against children. For example, in 1950, the Group for the Advancement of Psychiatry (“GAP”) claimed that by age seven, some children can accept “responsibility” for sex with an adult:

### 3. Age Disparity (Relations Involving One Adult)

This criterion rests upon the legal definition of minority and consent.

No uniformity exists in this part of the law. The Committee proposes that in remedy the legal status of persons under 21 years of age relating to sexual behavior be clarified. In general, persons under the age of 7 are legally regarded as not responsible. On the one hand this age group stands at the extreme in the scale of age disparity. On the other hand the legal definition of the minor ignores the intervening events of puberty and the large variations in physical and emotional maturity observed in many persons stamped as minors. It may be true that such persons cannot enter into contracts, but many are by endowment and training fully capable of part or exceptionally even full responsibility for sexual behavior. Thus, in the later years of childhood age disparity may diminish to a point of a day or even hours. By the same token in the later age levels the legal concepts of rape and of contributing to delinquency become increasingly untenable. The foregoing comments on the legal status of persons under 21 reflect the Committee's need for further study with the help of the legal profession. At best, these are matters which call for considerable research, reinterpretation and application on the part of the legal profession.<sup>83</sup>

As Guttmacher, the Chair of GAP explained, “Kinsey’s findings were the points by which we steered”<sup>84</sup> to reach the group’s conclusion.

Kinsey’s data were also reflected by the drafters of the MPC sex offense provisions, who determined not to criminalize “consensual” sex between adolescents. The comments for the sections related to sexual contact with children illustrate how the drafters accepted Kinsey’s claims that children are not harmed by sexual activity. The drafters decided that sexual contact with a child should be subject to criminal sanction only “if the victim is less than 10 years old despite consent and regardless of the actor’s lack of knowledge that the victim is below the prescribed age.”<sup>85</sup>

Where the child is between 10 and 16, the actor must be at least 5 years older. It is imperative that normal adolescent sex play between males and females not carried so far as intercourse or attempted intercourse remain free of the taint of criminality, and where consensual sexual contact takes a deviate form, the 5-year age differential provides some objective basis for distinguishing between victim and victimizer.<sup>86</sup>

Kinsey’s influence was also apparent in the drafters’ comments about adolescent “promiscuity.” “Current law dealing with indecent liberties with children does not consider the previous promiscuity of the child. Thus, Section 207.6(1)(d) narrows existing liability by making it a defense that the 10-16 ‘victim’ had previously engaged in promiscuous sexual activity.”<sup>87</sup> Their reasoning was that a “young person who is accustomed to sexual activity (1) would suffer little or no psychological harm from consensual

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<sup>83</sup> Committee on Forensic Psychiatry, *Psychiatrically Deviated Sex Offenders*, 9 GROUP FOR THE ADVANCEMENT OF PSYCHIATRY 1, 2 (Feb. 1950).

<sup>84</sup> David Allyn, *Private Acts/Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality*, 30 J. OF AM. STUD., 405, 420 (1996) (quoting Manfred S. Guttmacher, *The Kinsey Report and Society*, 70 SCI. MONTHLY 291, 291-94 (1950)).

<sup>85</sup> MODEL PENAL CODE § 207.6 cmt. 4 at 295 (AM. LAW INST., Tentative Draft No. 4 1955).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* § 207.6 cmt. 5 at 295.

sexual contact, and (2) might well be the seducer rather than the seduced.”<sup>88</sup> Implicit in their discussion was acceptance of the idea that children are sexual from birth, so a ten-year-old might already be sexually experienced.

That viewpoint was echoed, almost verbatim, by legal scholars who advocated for lessened penalties for adult-child sex.<sup>89</sup>

The sometimes extreme seductiveness of a young female is a factor which has no place in the law, but it certainly affects motivation. Even at the age of four or five, this seductiveness may be so powerful as to overwhelm the adult into committing the offense. The affair is therefore not always the result of the adult’s aggression; often the young female is the initiator and seducer.<sup>90</sup>

Similarly, Judge Ploscowe argued that:

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. Only where the age disparity between the man and the girl are very great is it possible to say that the rape may be the work of a mentally abnormal individual, a psychopath, or a potentially dangerous sex offender.<sup>91</sup>

It is from this worldview that the “obscenity exemptions” were born and incorporated in the penal codes of at least forty-four states and the District of Columbia. Those pushing for adoption of the MPC language into state laws would point to the Kinsey Reports, scholarly articles representing many disciplines, and the comments from the drafters of the MPC to argue that since children were promiscuous and unharmed by sexual activity, there would be no harm, but in fact benefit, from early and frequent exposure to sexual activity and to materials illustrating and discussing such activity.

#### IV. KINSEY’S REPORTS BIRTH SEXOLOGY, WHICH CAPITALIZES ON OBSCENITY EXEMPTIONS TO INUNDATE SCHOOLS AND LIBRARIES WITH SEXUALLY EXPLICIT MATERIALS THAT TRAUMATIZE CHILDREN

##### A. *Kinsey-Trained Sexologists Supplant Parents as Sex Educators.*

Sexology as a field did not exist prior to Alfred Kinsey’s books on human sexuality in 1948 and 1953, but quickly developed as his books were promoted as the “scientific data” needed to prove that comprehensive, i.e., explicit, “sex education” should be implemented in schools and administered by professionally trained teachers. Kinsey advocated for “scientific” sex education even before his books were released.<sup>92</sup> Lecturing to the National Association of Biology in 1940, Kinsey condemned the sorry state of morality-based sex education.<sup>93</sup> Using some of the figures that would later appear in his *Male* volume, Kinsey told the group that ninety-eight percent of adolescent boys “will find masturbation a source of outlet; for two-thirds of them masturbation will provide the chief source of outlet.”<sup>94</sup> He claimed that eighty-five percent of boys will engage in “petting,” fifty percent will have intercourse, thirty-three percent will have “homosexual contacts” and if they are raised on the farm, fifty percent “will add sexual

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<sup>88</sup> *Id.*

<sup>89</sup> Ralph Slovenko & Cyril Phillips, *Psychosexuality and the Criminal Law*, 15 VAND.L.REV. 797, 809 (1962).

<sup>90</sup> *Id.*

<sup>91</sup> MORRIS PLOSCOWE, *SEX AND THE LAW* 217 (1951).

<sup>92</sup> CORNELIA V. CHRISTENSON, *KINSEY: A BIOGRAPHY* 209-19 (1971).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 213.

contacts with other animals to the list of possible outlets.”<sup>95</sup> “Whatever the moral implications, these are the sexual problems of the adolescent boy. These are the realities which our instruction, if it is at all adequate, must face when we engage as teachers of sex.”<sup>96</sup> With no proofs for these false data, Kinsey insisted sexuality education only be taught by specially trained teachers, based entirely on what he said was science, with no infusion of morality or other psychic considerations.<sup>97</sup> Indeed the Kinsey team’s moral compus was evident as criminals and homosexuals (his research was largely carried out during WWII) included “1,400 convicted sex offenders.”<sup>98</sup>

Much of the funding for Kinsey’s efforts came from the Rockefeller Foundation, which said that Kinsey contributed greatly to society’s understanding of sex, giving us “a statistical basis from which to draw conclusions about the sexual experiences of Americans.”<sup>99</sup> In 1952, David Rockefeller, serving as head of the Population Council announced the council would create “scientific training and study in population matters[,] . . . fostering research, training . . . in the social and bio-medical sciences.”<sup>100</sup> The council called for “[i]ntensified [e]ducational [c]ampaigns . . . Inclusion of population materials in primary and secondary schools systems . . . materials on . . . family planning and sex education as well; introduced at the secondary level in order to reach next waves of public school teachers throughout the country.”<sup>101</sup>

1. The Sexuality Information and Education Council of the United States, “SIECUS,” is established at the Kinsey Institute to create sex education curriculum.

In February 1964, the UNESCO-sponsored International Symposium on Health Education, Sex Education and Education for Home and Family Living discussed some of the principles underlying the concept of school-based sex education,

“Children learn about sex elsewhere . . . rarely in the home”; sex education is needed because “sex is emphasized commercially in the mass media”; “sex education should begin at an early age” and be “integrated into the whole curriculum”; “boys and girls should be taught together”; “antidogmatic methods of teaching” must be used; and “moral norms are relative concepts which change with time.”<sup>102</sup>

Later that year, those principles became part of the mission statement of the Sex Information and Education Council of the United States (“SIECUS”), which was launched at the Kinsey Institute.<sup>103</sup> SIECUS’s objective was to create sex education curricula and other resources, including journals, research studies, and training materials.<sup>104</sup> In 1966, Dr. Mary Calderone, SIECUS director and former medical director for Planned Parenthood, spoke at a sex education seminar at Princeton University.<sup>105</sup> She discussed the new paradigm for sex education and complained about the dearth of non-traditional information available for the new paradigm that was designed to replace parental instruction in human

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> POMEROY, *supra* note 65, at 208. Kinsey states he has data in the *Male* volume on “1200 persons who have been convicted of sex offenses.” MALE, *supra* note 53, at 392. Wardell Pomeroy records that they obtained 1,400 sex offenders. POMEROY, *supra* note 65, at 208. See Reisman’s books for a full analysis of the implications of Kinsey’s research conducted during WWII.

<sup>99</sup> *Kinsey Reports*, THE ROCKEFELLER FOUNDATION: A DIGITAL HISTORY, <http://rockefeller100.org/exhibits/show/health/kinsey-reports> (last visited Mar. 8, 2018).

<sup>100</sup> Bernard Berelson, *Beyond Family Planning*, *STUD. FAM. PLAN.*, 1, 16 (Feb. 1969).

<sup>101</sup> *Id.* at 1-2 (emphasis omitted).

<sup>102</sup> CLAIRE CHAMBERS, *THE SIECUS CIRCLE 11-12 (1977)* (quoting UNESCO INST. FOR EDUC., *HEALTH EDUCATION, SEX EDUCATION AND EDUCATION FOR HOME AND FAMILY LIFE, REP. ON EXPERT MEETING 5, 23-25, 42 (1964)*).

<sup>103</sup> REISMAN, *supra* note 7, at 177.

<sup>104</sup> *Id.*

<sup>105</sup> *SEX EDUCATION AND THE SCHOOLS*, at ix, 1 (Virginia Hilu ed., 1967).

sexuality.<sup>106</sup> Although SIECUS had “six professionals” on its board and “several representatives of the Kinsey group,” Calderone stated *three times* that there were, as yet, no “authorities” on sex: “There are no authorities—believe me—in this field. . . . I have already mentioned that there are no *authorities in this field. We in SIECUS have published three discussion guides: Sex Education, Homosexuality, and Masturbation . . . . Yet we are not authorities.*”<sup>107</sup>

By 1979, “Calderone likened this task to the spreading of a ‘new religion’ . . . first to make its adults convert . . . [so] children will flourish.”<sup>108</sup> In a speech before the 1980 meeting of the Association of Planned Parenthood Physicians, now the Association of Reproductive Health Physicians, SIECUS’s Dr. Calderone explained that SIECUS’s primary goal is “providing today’s society ‘very broadly and deeply with awareness of the vital importance of infant and childhood sexuality.’”<sup>109</sup> In 1983, Calderone wrote that “parents need to be made aware of the importance to the child’s future of the evolution of—rather than the suppression of—the child’s sexuality . . . . Do they really want to pass on to the next generation the damaging chain of negative sexual conditionings that they themselves have undoubtedly experienced?”<sup>110</sup>

What is needed is to teach them that sexuality is a marvelous natural phenomenon, to be developed in the same way as the child’s inborn human capacity to talk or to walk, and that their role should relate only to teaching the child the appropriateness of privacy, place, and person—in a word, socialization. Parents can be helped to comprehension of this if they will only recognize that, from the very beginning of its life, a child’s sexuality is an integral part of its being—that it is meant to function along with, rather than apart from, its mind and body, with each inherently influencing and being influenced by the other two.<sup>111</sup>

## 2. Kinsey Co-Author Founds Institute for Advanced Study of Human Sexuality (IASHS) to Train Sex Educators.

In 1968, Wardell Pomeroy, co-author of the Kinsey Reports, was named academic dean at the Sex and Drug Forum, which was later named the Institute for Advanced Study of Human Sexuality (“IASHS”) in San Francisco.<sup>112</sup> IASHS became the leading institution in the new sexology “field” (directing studies, reports, conference selections, lectures, journal publications, etc.) and by 1980 trained more than 100,000 sex educators, AIDS and “safe sex” instructors, and others to provide children with explicit sexual materials made possible by the obscenity exemptions.<sup>113</sup> IASHS pioneered the Sexual Attitude Restructuring (“SAR”) using multiple screens of pornographic films to desensitize students and professionals, a primary part of formal “sexology” training.<sup>114</sup> Journalist George Leonard offered a first-hand account of the actual content of the SAR course in a 1982 article in *Esquire*:

[O]ver a period of several hours, there came a moment when the four images on the wall were of a gay male couple, a straight couple, a lesbian couple, and a bisexual group. The subjects were nude . . . . I felt myself becoming disoriented . . . . [W]as she kissing a man or a woman? I struggled to force the acts I was watching into their proper boxes . . . .

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<sup>106</sup> *Id.* at 1-6.

<sup>107</sup> *Id.* at 3, 5-6 (emphasis added).

<sup>108</sup> JUDITH A. REISMAN & EDWARD W. EICHEL, *KINSEY, SEX AND FRAUD: THE INDOCTRINATION OF A PEOPLE* 129 (1990) (quoting Mary S. Calderone, *Major Sex Education Study Conducted*, SIECUS REPORT, Nov. 1979, at 6).

<sup>109</sup> *Id.* at 112 (citing OB/GYN NEWS, December 1, 1980, at 10).

<sup>110</sup> Mary S. Calderone, *Fetal Erection and Its Message to Us*, SIECUS REPORT, May-July 1983, at 9 [hereinafter Calderone].

<sup>111</sup> *Id.* at 9-10.

<sup>112</sup> REISMAN, *supra* note 7, at 171.

<sup>113</sup> *Id.* at 82.

<sup>114</sup> *Courses at IASHS*, IASHS (Jan. 29, 2018) <http://www.humansexualityeducation.com/courses.html> (last visited Mar. 3, 2018).

[A]nd now I couldn't remember which was which. Wasn't I *supposed* to make these discriminations? I searched for clues. There were none. I began to feel uncomfortable.

Soon I realized that to avoid vertigo and nausea I would have to give up the attempt to discriminate and simply surrender to the experience . . . . The differences, for which lives have been ruined, were now not only trivial but invisible.

The sensory overload culminated on Saturday night in a multimedia event called the F—korama. . . . [I]n the darkness . . . images of human beings—and sometimes even animals—engaging in every conceivable sexual act, accompanied by wails, squeals, moans, shouts, and the first movement of the Tchaikovsky Violin Concerto . . . . some seventeen simultaneous moving pictures . . . . By the end . . . [n]othing was shocking but nothing was sacred either.

. . . .

But as I drove home I began to get a slightly uneasy feeling. It was almost as if I had been conned . . . by my own conditioned response of taking the most liberated position . . . whatever my deeper feelings . . . . [L]ove had not been mentioned a single time during the entire weekend.<sup>115</sup>

Other IASHS courses include “sexological body therapy,” pornographic films, use of surrogates (prostitutes) in sex therapy, “analysis of the Kinsey reports,” creation of “sex education programs,” child sexuality, “forensic sexology,” “male homosexual erotica,” and how to give expert-witness testimony supporting obscenity and pornography, and reduced penalties for sex crimes.<sup>116</sup>

The founding of SIECUS and IASHS provided those seeking to supplant parental authority over the upbringing of their children with regard to instruction on human sexuality the tools they needed. Armed with degrees from IASHS and SIECUS curriculum, newly minted experts could argue that something as important as the evolution of children's sexuality should not be left to non-expert parents who might suppress the children's sexual expression.<sup>117</sup> That effort had already begun in inner city Washington, D.C.

#### B. *Inner City Children: First Test Subjects for Educator Obscenity Exemptions*

Even before the MPC sexual offense provisions were approved, SIECUS began drafting curriculum and IASHS began training sex educators, advocates for replacing parent-directed sex education with Kinseyan based sex education introduced the new sexually explicit paradigm in inner city Washington, D.C. public schools.<sup>118</sup> In 1958 “comprehensive sex education” was introduced in inner city Washington, D.C., where the minority population was near eighty percent. The family life education program was an “integral part of the curriculum of eleven pilot schools since September 1958. In the fall of 1959 the number of pilot schools was increased to forty-one. An additional thirty-one schools were added in September of 1960.”<sup>119</sup>

Initially, the predominantly minority school board voted against talk about contraception or sexual intercourse in the public schools. However, administrators prevailed and, over the objections of parents, children were shown “explicit” films with “frank and direct” narratives on “barnyard animals mating”—recommended for three- to ten-year-olds.<sup>120</sup> Children viewed: “animated drawings, of the male ejaculation. The narrator says, ‘It is nature's way of passing the sperm into the female body during sexual

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<sup>115</sup> George Leonard, *The End of Sex*, 98 *ESQUIRE* 70, 72 (Dec. 1982).

<sup>116</sup> *Courses at IASHS*, IASHS (Jan. 29, 2018), <http://www.humansexualityeducation.com/courses.html> (last visited Mar. 3, 2018).

<sup>117</sup> Calderone, *supra* note 110, at 9-10.

<sup>118</sup> Public Schools of the District of Columbia, curriculum in health and family life education, Kindergarten -- Grade 12, 1961-1962.

<sup>119</sup> *Id.*

<sup>120</sup> *Sex Education Films Candid, Explicit*, *THE SUNDAY STAR*, June 29, 1969.



intercourse.”<sup>121</sup> In the late 1960s Washington D.C. school administrators purchased a torso model “with male and female genital organs” for use in the “sex education” process.<sup>122</sup>

The introduction of sexually explicit materials into inner city Washington D.C. occurred only four years after the Supreme Court ended decades of race-based school segregation based in part on evidence that segregation caused psychological damage to by minority children.<sup>123</sup> The Court found that because of the racially segregated educational environment, black children had a well-developed belief that black children were inferior to white children.<sup>124</sup> This was established through Drs. Kenneth and Mamie Clark’s research on emotional factors in racial identification, which used studies showing that black children preferred white dolls over black dolls to show the psychologically damaging effects of racial segregation.<sup>125</sup> Drs. Clark concluded:

These results seem most significant from the point of view of what is involved in the development of a positive, constructive program for more wholesome education . . . . They would seem to point strongly to the need for a definite mental hygiene and educational program that would relieve children of the tremendous burden of feelings of inadequacy and inferiority which seem to become integrated into the very structure of the personality as it is developing.<sup>126</sup>

Minority children did not get a chance to experience that wholesome educational environment. Within four years, before school integration could be fully implemented, psychologically damaging racial discrimination was replaced by psychologically damaging explicit sexuality.<sup>127</sup> That new form of psychological experimentation soon spread nationwide as obscenity exemptions were used by the newly minted sex education specialists to wrest teaching on human sexuality away from parents and to the schools.

C. *The Explicit Sex Education Experiment Spreads Nationwide Thanks To Obscenity Exemptions For “Educational” Materials.*

The spread of the social experiment known as sex education made possible by obscenity exemptions beyond inner city Washington D.C. to public schools nationwide illustrates the phenomenon that John Stuart Mill warned against:

A general State education is a mere contrivance for moulding people to be exactly like one another: and as the mould in which it casts them is that which pleases the predominant power in the government . . . it establishes a despotism over the mind, leading by natural tendency to one over the body.<sup>128</sup>

In this case, it pleased the predominant powers in the educational establishment to mold all public school students into the Kinseyan-based paradigm that children are sexual from birth and, therefore, need

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *See Brown v. Board of Education*, 347 U.S. 483, 494 (1954).

<sup>124</sup> *Id.*

<sup>125</sup> Kenneth B. Clark, *Some Principles Related to the Problem of Desegregation*, 23 J. NEGRO EDUC. 339, 339-47 (1954) (discussing his testing of African-American children, which was used in *Brown* to overturn *Plessy v. Ferguson*, 163 U.S. 537 (1896)).

<sup>126</sup> Kenneth B. Clark & Mamie P. Clark, *Emotional Factors in Racial Identification and Preference in Negro Children*, 19 J. OF NEGRO EDUC. 341, 350 (1950).

<sup>127</sup> *See Sex Education Films Candid, Explicit*, THE SUNDAY STAR, June 29, 1969.

<sup>128</sup> JOHN STUART MILL, ON LIBERTY 158 (1859).

early and frequent exposure to sexual imagery so that their sexuality can, in the words of Dr. Calderone, evolve.<sup>129</sup> SIECUS promoted the use of sexually exploitative media as classroom aids:

When sensitively used in a manner appropriate to the viewer's age and developmental level, sexually explicit visual, printed, or on-line materials can be valuable educational or personal aids, helping to reduce ignorance and confusion and contributing to a wholesome concept of sexuality.<sup>130</sup>

Students were also encouraged to use sexually explicit entertainment as learning tools:

When talking to a friend or a possible sex partner, speak clearly . . . Movies, music and TV . . . often have a message about sexuality and can help possible sexual partners express their affection and sexual interest . . . Use entertainment to help talk about sexuality, TV, music videos . . . magazines are a good way to begin to talk about sexuality . . .<sup>131</sup>

Such advice is only possible under the guise of "educational purposes" under the statutory obscenity exemptions. Without those exemptions, the presentation of sexually explicit materials to children would be a criminal offense.<sup>132</sup> As a result, students are exposed to sexually explicit films and instruction, and books such as *You've Changed the Combination*<sup>133</sup> which advises:

Do you want a warm body? Buy one. That's right. There are women who have freely chosen that business, buy one . . . Do you want a virgin to marry? Buy one. There are girls in that business too. Marriage is the price you'll pay, and you'll get the virgin. Very Temporarily.<sup>134</sup>

It also advises that "Sex is best between friends. Not quickest, just best. Ask anyone who knows,"<sup>135</sup> and "[t]here are only two basic kinds of sex: sex with victims and sex without. Sex with victims is always wrong. Sex without is always right."<sup>136</sup>

Likewise, *It's Perfectly Normal* features cartoons of children masturbating, examining their sexual organs and engaging in sexual activities under the mantra that all of these activities are "perfectly normal," despite what they might have heard from parents or others.<sup>137</sup> The book is aimed children ages ten and above.<sup>138</sup>

Similarly, *Let's Talk about S-E-X* is promoted as a "Read-Together Book for Kids 9-to-12 and their Parents."<sup>139</sup> Like *It's Perfectly Normal*, this book features graphic drawings of boys and girls at various stages of sexual development and drawings of male genitalia during sexual arousal.<sup>140</sup> It also offers boys and girls instructions on ways to masturbate and assures them that despite what their parents or church may say, masturbation is normal, non-addictive and never causes physical or mental harm.

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<sup>129</sup> Calderone, *supra* note 110, at 9-10.

<sup>130</sup> SIECUS, *Position Statements On Human Sexuality, Sexual Health And Sexuality Education And Information 1995-96*, in SIECUS REPORT 21 (February/March 1996).

<sup>131</sup> REISMAN, *supra* note 8, at 180 (citing SIECUS, TALK ABOUT SEX (1992)).

<sup>132</sup> See *supra* text accompanying notes 42, 44.

<sup>133</sup> ROCKY MOUNTAIN PLANNED PARENTHOOD, YOU'VE CHANGED THE COMBINATION! (1974).

<sup>134</sup> *Id.* at 18.

<sup>135</sup> *Id.* at 9.

<sup>136</sup> *Id.* at 10.

<sup>137</sup> ROBIE HARRIS, IT'S PERFECTLY NORMAL CHANGING BODIES, GROWING UP, SEX & SEXUAL HEALTH 22, 25, 48, 54-55 (2004).

<sup>138</sup> *Id.* This is apparent on the cover of the book.

<sup>139</sup> SAM GITCHEL & LORRI FOSTER, LET'S TALK ABOUT S-E-X: A GUIDE FOR KIDS 9-TO-12 AND THEIR PARENTS (Planned Parenthood Mar Monte, 2d ed. 2005).

<sup>140</sup> *Id.* at 22, 24, 27.

Indeed, solo-stimulation then mutual masturbation, the authors claim, aids children in learning how their bodies respond to sexual stimulation, never citing the extensive research that proves the contrary.<sup>141</sup> Children are also given the following graphic description of sexual intercourse:

When a man and woman are attracted to each other, being close and touching can make them feel sexually excited. This means they have good feelings all over . . . If they decide to have sexual intercourse, they put their bodies close together, so that the men's [sic] penis can slide into the woman's vagina. This is actually pleasurable to both, and they continue moving in ways that feel good.<sup>142</sup>

Beyond materials marked as "sex education," obscenity exemptions also expose children access to sexually explicit material marked as children's "literature" and, therefore, outside the scope of any parental "opt out." In fact, children excused from "sex education" who spend the time in the library would be able to read books that include 275 "F" words and their variations in one 183-page book,<sup>143</sup> the story of how a protagonist got carded at a sex shop,<sup>144</sup> and a novel about a party where the plan is that underage girls perform oral sex on underage boys.<sup>145</sup>

The exemptions also mean that children are exposed to events such as a drag queen PTA president "surprise" at an elementary school talent show:

Kiddie choirs. Children's piano recitals. And a full-on, erotic drag show complete with gyrations, tongue gymnastics and a flashed G-string. Families at a Manhattan public school talent show got an unexpected lesson in human sexuality when a grown man took the stage in a black, sequined dress and flaming red wig and performed a raunchy drag number where he grinded the stage and spread his legs.<sup>146</sup>

Additionally, an after-school surprise party for eleven-year-olds featuring dildos as party favors:

Students who walked into a Florida grade school classroom were greeted by a shocking scene: an X-rated party reportedly featuring dildos, penis candles and lollipop vaginas.

Parents at the Mater Lakes Academy in Hialeah are furious after a dance teacher threw a surprise party at school Wednesday that included phallic party favors, news station WSVN reported. The after-school celebration was supposedly for a former student, but hosted guests as young as 11-years-old. "In the videos, we see how they were preparing for the surprise party. And as the boy walked in, they surprised him with a hat that had a penis attached to the top and a string to be able to pull it so it can get erected," said an outraged mother, who declined to be identified to WSVN.<sup>147</sup>

Furthermore, the advent of online research coupled with obscenity exemptions means that children are only a few clicks away from online hard-core pornography and advertisements for vibrators, dildos and sado-masochistic "accessories."<sup>148</sup> Middle school students, using third-party content providers

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<sup>141</sup> *Id.* at 26, 30.

<sup>142</sup> *Id.* at 37-38.

<sup>143</sup> RACHEL COHN & DAVID LEVITHAN, NICK AND NORAH'S INFINITE PLAYLIST (2006).

<sup>144</sup> DAVID LEVITHAN, THE REALM OF POSSIBILITY 172-77 (2004).

<sup>145</sup> PAUL RUDITIS, RAINBOW PARTY (2005).

<sup>146</sup> Ben Chapman, *Parents 'Horrified' After Man Performs Surprise Drag Show at Manhattan School Talent Event*, N.Y. DAILY NEWS (June 1, 2017), <http://www.nydailynews.com/new-york/education/parents-horrified-man-performs-drag-show-nyc-school-article-1.3213718>.

<sup>147</sup> Jackie Salo, *Teacher Fired for Throwing Dildo-filled Classroom Party*, N.Y. POST (October 20, 2017), <http://nypost.com/2017/10/20/teacher-fired-for-throwing-dildo-filled-classroom-party/>.

<sup>148</sup> Bob Unruh, *New Alert Over X-rated Materials ...in School!*, WND (June 30, 2017), <http://www.wnd.com/2017/06/new-alert-over-x-rated-materials-in-school/>; MASS RESISTANCE, *How schools and libraries across the country bring in hardcore*

on their school library websites, can click onto sites offering stories on “How to have oral sex,” “How to have anal sex,” and “How to have vaginal sex.”<sup>149</sup> Students receive sites of sexual violence, “such as a link to a story depicting the rape of a woman using the barrel of a gun, as well as sites that normalize risky sexual behaviors such as public, anal and group sex.”<sup>150</sup>

These are only a few examples of the anxiety inducing sexual materials permeating public, even parochial and private, school classrooms, libraries, and websites as a result of the obscenity exemptions for “educational” materials. Books, images, videos and demonstrations that would get any other adult arrested and possibly jailed are freely distributed by those who can call themselves educators or label the materials as “educational” or “scientific.” Most of the materials could not even be flashed on a television screen by broadcasters if it were possible that children would be in the audience.<sup>151</sup> However, those same children can be exposed to the images and books constantly throughout the school day under the guise of “education.” Absent from the legislative histories of the exemptions is any explanation of how materials that are harmful to children when provided by neighbors or projected on a television screen at home are somehow magically unharmed if they are called educational and projected on a screen at school.

D. *Broadcasters Are Prohibited From Doing Even A Fraction Of What Educators Are Permitted To Do.*

The Supreme Court’s analysis of the dangers of even “fleeting” explicit content for children<sup>152</sup> demonstrates the obscenity exemptions’ fallacious premise that labeling something “educational” somehow dissipates its harmful effects. Upholding an FCC regulation banning even “fleeting expletives” during times when children are expected to be in the audience, the Court said that even fleeting references to explicit language can harm children.<sup>153</sup> “[E]ven in the absence of evidence, the agency’s predictive judgment (which merits deference) makes entire sense. To predict that complete immunity for fleeting expletives, ardently desired by broadcasters, will lead to a substantial increase in fleeting expletives seems to us an exercise in logic rather than clairvoyance.”<sup>154</sup> Justice Scalia, writing for the Court, suggested that gathering evidence of harm to children would be unconscionable. “One cannot demand a multiyear controlled study, in which some children are intentionally exposed to indecent broadcasts (and insulated from all other indecency), and others are shielded from all indecency.”<sup>155</sup>

Here it suffices to know that children mimic the behavior they observe—or at least the behavior that is presented to them as normal and appropriate. Programming replete with one-word indecent expletives will tend to produce children who use (at least) one-word indecent expletives. Congress has made the determination that indecent material is harmful to children . . . .<sup>156</sup>

A “multiyear controlled study” of exposing children to indecent content is precisely what has occurred under the obscenity exemptions. Since 1958, public school children have been exposed to increasing amounts of sexually explicit material in all subject areas and in all media formats. The materials have gone from teaching about anatomy and physiology to normalizing sexual experimentation,

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*pornography through commercial databases. Under the radar of parents!* (February 28, 2017), <http://www.massresistance.org/docs/gen3/17> [hereinafter *Unruh*].

<sup>149</sup> *Unruh*, *supra* note 148.

<sup>150</sup> *Id.*

<sup>151</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 518-19 (2009).

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 521.

<sup>155</sup> *Id.* at 519.

<sup>156</sup> *Id.*

various sexual “orientations” and “alternatives” such as sado-masochism,<sup>157</sup> experienced not merely during classroom instruction, but during leisure time in the form of children’s and young adult novels.<sup>158</sup> If even hearing a “fleeting expletive” is harmful, then how much more so is a steady diet of such materials? That has been shown true, as the Supreme Court predicted, as children have mimicked the behavior presented to them as normal and appropriate and are paying a devastating price.

## V. CONSEQUENCES OF SEXUALIZED EDUCATION SPAWNED BY OBSCENITY EXEMPTIONS

Just as psychological studies established that African-American children suffered assaults on their minds, bodies, and memories as a result of racial segregation in *Brown*,<sup>159</sup> so too do studies and discoveries by neuroscientists establish the mental and emotional, not to mention physical, harm that children will suffer as a result of exposure to explicit sexualized education via obscenity and indecency exemptions. In both cases, children’s values (i.e., their sense of identity, self-control and judgment) are impeded, “lessening the security” of their lives,<sup>160</sup> liberty, and mental property. As discussed below, in the case of sexualized education, the psychological assault also exposes children to the risk of becoming victims of predators or, in increasing cases, child predators themselves.

The *Brown* Court found that:

To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system.<sup>161</sup>

In finding that segregated schools violated African-American children’s rights under the Equal Protection Clause, the *Brown* Court relied upon extensive psychological studies conducted by Drs. Kenneth and Mamie Clark and others which demonstrated that attending segregated schools had led to African-American children internalizing feelings of inferiority that conflicted with what they were taught at home, church and elsewhere in their communities.<sup>162</sup>

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<sup>157</sup> See, e.g., Unruh, *supra* note 148; MASS RESISTANCE, *How Schools and Libraries Across the Country Bring in Hardcore Pornography through Commercial Databases. Under the Radar of Parents!* (February 28, 2017), <http://www.massresistance.org/docs/gen3/17>.

<sup>158</sup> See, e.g., RUDITIS, *supra* note 145.

<sup>159</sup> It is important to note that while the authors are using *Brown v. Board of Education* as a foundational case in their analysis, they are not seeking to draw comparisons between the struggles endured by black children, their families, or their communities during segregation and the trauma children experience when exposed to sexually explicit material packaged as sex education. Instead, the authors focus and rely on *Brown* because of the Court’s clear finding that any educational environment that demonstrably traumatizes children, regardless of the intent of the school system and supposed justification to achieve some other politically desired outcome, violates the children’s constitutional rights.

<sup>160</sup> *Brown v. Board of Education*, 347 U.S. 483, 492 n.5 (1954).

<sup>161</sup> *Id.* at 494.

<sup>162</sup> *Id.* (citing K. B. CLARK, *EFFECT OF PREJUDICE AND DISCRIMINATION ON PERSONALITY DEVELOPMENT* (1950); WITMER &

The same can be said for experimental, sexualized classrooms that introduce invasive traumatic stimuli into the minds of children too young to understand the concepts or properly label and process the complex emotions aroused and archived in memory by said materials. These promiscuous, heterosexual and LGBTQ images and lessons, likely conflict with what the children learn at home, church, and community, leading to psychological and emotional trauma that, as the *Brown Court* said of the harm caused by segregation, will likely never be undone. Advances in neuroscience have provided scientific proof of the damage done by the early sexualization of children made possible by obscenity exemptions.

A. *Neuroscience Research Proves That Sexual Stimuli Harmfully Wires and Traumatizes Undeveloped Young Brains.*

Brain science confirms that premature exposure to sexual stimuli creates values conflicts causing problems of inferiority in children’s “hearts and minds in a way unlikely ever to be undone.”<sup>163</sup> As documented earlier, legislators have long recognized the need to protect children from harmful materials and activities as seen in the enactment of the “harmful to minors” statutes. For example, “Minnesota law prohibits young people from performing certain activities . . . due to the harmful nature of the activity and the immature judgment of young people, it is necessary to place stricter controls on youths than adults.”<sup>164</sup> Brain research has demonstrated the wisdom of increased protection by showing that exposing children to profanity and obscenity threatens their physical and psychological well-being. While a recitation of innuendo-laden literature such as Geoffrey Chaucer’s *Miller’s Tale* would hardly interest most children,<sup>165</sup> brain research confirms that dramatizing its sexual content would indeed spark their interest. Unlike Chaucer’s *Miller’s Tale*, written for adults, today’s sex education curriculum is designed to be understood and mimicked by even the youngest elementary school student. Furthermore, with today’s youth widely exposed to pornography, it is likely that children even under the age of twelve would understand sexual innuendo, meaning recitation of even innuendo-laden literature, let alone explicit sex education materials, would have a “negative effect.”<sup>166</sup>

Brain studies show that obscene images trigger an endogenous neurochemical cocktail of “naturally occurring psychoactive substances.”<sup>167</sup> Neuroscientist Joseph LeDoux’s observations below illustrate the effects of materials introduced via obscenity exemptions on children and youth.

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KOTINSKY, PERSONALITY IN THE MAKING (1952); Deutscher & Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J.PSYCHOL. 259 (1948); Isidor Chein, *What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?*, 3 INT. J. OPINION AND ATTITUDE RES. 229 (1949); THEODORE BRAMELD, *Educational Costs, in DISCRIMINATION AND NATIONAL WELFARE* 44-48 (MacIver ed., 1949); E. FRANKLIN FRAZIER, *THE NEGRO IN THE UNITED STATES* 674-81 (1949); see generally MYRDAL, *AN AMERICAN DILEMMA* (1944)).

<sup>163</sup> *Id.*

<sup>164</sup> *Youth and the Law: A Guide for Legislators*, House Research Department at 75 (Revised December 2012).

<sup>165</sup> See *FCC v. Fox*, 556 U.S. 502, 520 (2009) (“‘Even a prime-time recitation of Geoffrey Chaucer’s *Miller’s Tale*,’ we have explained, ‘would not be likely to command the attention of many children who are both old enough to understand and young enough to be adversely affected.’”).

<sup>166</sup> A 2000 survey of 1,501 U.S. children ages ten to seventeen showed that about one in four had unwanted exposure to an image of naked people or people having sex in the previous year. COUNTER PEDOPHILIA INVESTIGATIVE UNIT, *Statistics on Pedophiles*, <http://www.cpiu.us/statistics-2/>. A 2016 study by the Barna Group found twenty-seven percent of “older millennials,” age twenty-five to thirty began viewing pornography before puberty. Barna Group, *The Porn Phenomenon* 115 (2016). This is contrary to Justice Breyer’s statement in *FCC* that “[i]t is doubtful that children under the age of 12 understand sexual language and innuendo; therefore it is unlikely that vulgarities have any negative effects.” *FCC*, 566 U.S. at 564 (Breyer, J., dissenting) (citing Kaye & Sapolsky, *Watch Your Mouth! An Analysis of Profanity Uttered by Children on Prime-Time Television*, 7 MASS COMMUNICATION & SOC’Y 429, 433 (2004)).

<sup>167</sup> Donald L. Hilton, Jr & Clark Watts, *Pornography addiction: A neuroscience perspective*, 2 SURG. NEUROL. INT. 19 (2011). Natural drugs that induce arousal experience a burst of excitatory transmitters and an emotional cocktail mix of psychoactive drugs, including but not limited to testosterone (a steroid), dopamine, norepinephrine (adrenalin), serotonin, oxytocin, and endorphins (“endogenous morphines”). CANDACE PERT, *The Chemical Communicators, in BILL MOYERS, HEALING AND THE MIND* 177 (1993).

LeDoux discovered . . . something like a neural back alley—[that] allows the amygdala to receive some direct inputs from the senses and start a response *before* they are fully registered by the neocortex . . . . The amygdala can have us spring to action while the slightly slower . . . neocortex unfolds its more refined plan for reaction. LeDoux overturned the prevailing wisdom about the pathways traveled by emotions through his research on fear . . . .<sup>168</sup>

The effects of this “back alley” are particularly significant for children and teens whose immature brains render them unable to make fully rational decisions:

Why do most 16-year-olds drive like they’re missing a part of their brain? Because they are. The next time your teenager behaves inexplicably, remember: his brain is like a car without brakes. The more primitive parts of the brain are well developed, acting like a powerful accelerator encouraging teens to take risks, act on impulse and seek novel experiences. But the areas that control planning and reasoning have not yet matured. As a result, teens are less likely to stop, think things through, modify their behavior or fully consider the consequences of their actions.<sup>169</sup>

Advances in digital imaging have given neuroscientists the ability to prove that teenagers are unable to make rational decisions because, contrary to popular belief, their brains are not fully developed. Scientists have been able to digitally map brain development, and found that the portions of the brain that permit processing of complex concepts, evaluating risk—including the risks of premature premarital sexual activity—and making informed decisions is the brain structure that is the last to mature, usually in the early twenties.<sup>170</sup> Dr. Jay Giedd, Chief of Brain Imaging at the Child Psychiatric Branch, National Institutes of Health, developed a number of images illustrating what digital imaging demonstrated regarding the development of the brain (See Appendices II-IV).<sup>171</sup> Dr. Giedd’s research demonstrates the fallacy of concepts often utilized to justify sexually explicit education, such as “mature minors” and “informed consent.” The neuroscience evidence shows that there is no justification for permitting introduction of sexually explicit materials in K-12 educational settings. Science has shown that children cannot process sexually oriented text or images, let alone discern between their intended use for “education,” as opposed to stimulation.<sup>172</sup>

Neuroscientists have also developed a more detailed understanding of how deeply and completely certain stimuli, including disgust, sexual arousal, fear and shame can conjoin and hijack cognitive and archival memory, causing children to mislabel their emotions.<sup>173</sup> Neuropsychologists believe that emotion (arousal) is mediated by two factors: physiological arousal and cognition.<sup>174</sup> People often cannot tell what emotion they are experiencing based on physical arousal alone.<sup>175</sup> Therefore, cognition of the situational context is needed to understand the emotion.<sup>176</sup> Children have not developed the cognitive skills necessary

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<sup>168</sup> DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* 18 (1995).

<sup>169</sup> David Fassler, *Your Teen’s Brain: Driving without the Brakes*, SCIENTIFIC AMERICAN BLOG NETWORK (March 15, 2012), <https://blogs.scientificamerican.com/guest-blog/your-teens-brain-driving-without-the-brakes/>.

<sup>170</sup> Mary Beckman, *Crime, Culpability and the Adolescent Brain*, 305 SCIENCE 596 (2004) (citing neuroscientific developments which establish that the portions of the brain responsible for decision-making and risk-taking are not fully developed until ages twenty to twenty-five). See also Jay N. Giedd et al., *Brain Development during Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE 861-63 (1999).

<sup>171</sup> Brain images by Dr. Jay Giedd, Chief of Brain Imaging, Child Psychiatric Branch, National Institutes of Health. Reprinted May 2/10, 2003 in *TIME Magazine*.

<sup>172</sup> See Giedd, *supra* note 170, at 861-63.

<sup>173</sup> *Id.*

<sup>174</sup> Romeo Vitelli, *William James and the Bear*, EZINE ARTICLES (November 24, 2007), <http://ezinearticles.com/?William-James-And-The-Bear&id=827882>.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

to process the situational context hence often confuse their bodies' emotion. Therefore, stimuli such as sexually explicit images traumatically overwhelm children's undeveloped prefrontal cortex.

Research on adults has shown that physiological changes occur as the body experiences arousal to sexual stimuli; arousal is largely "automatic . . . pulse rate, which normally stands at 70-80 per minute, has increased to around 90 . . . blood pressure has increased," breathing is rapid and muscles tense as though ready for battle. In such an aroused state the person "is distracted and slightly 'agitated.'"<sup>177</sup> Even adults' fully developed cognitive abilities commonly mislabel their reactions. Children certainly do not properly assess arousal origins.<sup>178</sup> Consequently, children cannot logically process sexual matter as they do history or arithmetic because sex information is never mere "education." Instead, such shocking stimuli imprint and alter the brain, triggering an instant, involuntary, but lasting, biochemical memory trail in child "subjects."<sup>179</sup>

Sexualized words and images commonly trigger the "fight or flight" phenomenon, which leads to children becoming hyper-aroused and creating coping mechanisms which cause confusion, emotional and developmental problems.<sup>180</sup> Scientists have also determined that shocking images spark "action potentials," defined as "transient electrical signal[s] about 1/10 of a volt in amplitude and 1 to 2 milliseconds in duration that propagate[] along the axon to the neuron's presynaptic terminal [where it] triggers the release of neurotransmitter onto target neurons."<sup>181</sup> With sexual stimuli, the target neurons reside in the genitals, so signals will arouse those areas in the body, leaving children with sensations that their undeveloped brains cannot properly process and certainly cannot label as "educational" input instead of sexual stimulation.<sup>182</sup>

These discoveries regarding brain function explain why professionals who must view obscenity (police, the medical community, and others) operate under strict standards limiting their time viewing images and mandating counseling in order to mediate harm from exposure.<sup>183</sup> While these trained professionals have safeguards in place to avoid harm from over-exposure to obscene images, educators, librarians, and most importantly children have no such safeguards, but can be bombarded by such images throughout the school day for days or weeks at a time, so long as it is labeled "educational." Notably, no exposure to such images is permissible for children outside of the educational context.<sup>184</sup> There is no evidence or explanation of how simply labeling something educational strips it of its harmful effects, particularly for children whose undeveloped brains cannot process complex concepts.

B. *Schools Acknowledge and Seek to Diminish the Trauma of Cultural Clashes Due to Cultural Diversity, but Wholly Ignore Trauma Caused by Cultural Dissonance in Explicit Sexual Presentations.*

Following the Supreme Court's decision in *Brown*, schools facing integration were met with challenges related to the increased cultural diversity and the possibility of conflicts between family values and school culture. To address the problem, state departments of education developed guidelines to reduce the potential clashes between children's home, community and church cultures and the school culture. For example, in 1998 Minnesota's department of education developed judicious, sensible and precautionary guidelines for *Reducing Bias in Special Education Assessment for American Indian and African American Children A Vision For A Better Education*. The department cautioned school

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<sup>177</sup> NICOLAS WRIGHT, UNDERSTANDING HUMAN BEHAVIOR 28 (1974).

<sup>178</sup> Jay N. Giedd, *The Teen Brain: Insights from Neuroimaging*, 42 J. OF ADOLESCENT HEALTH 335-43 (2008); Elizabeth R. McAnarney, *Adolescent Brain Development: Forging New Links?*, 42 J. OF ADOLESCENT HEALTH 321-23 (2008).

<sup>179</sup> B.D. PERRY, *The neurodevelopmental impact of violence in childhood*, in TEXTBOOK OF CHILD AND ADOLESCENT FORENSIC PSYCHIATRY 221-38 (D. Schetky & E.P. Benedek eds., 2001).

<sup>180</sup> *Id.*

<sup>181</sup> ERIC KANDEL, IN SEARCH OF MEMORY: THE EMERGENCE OF A NEW SCIENCE OF MIND 431 (2006).

<sup>182</sup> See Giedd, *supra* note 178.

<sup>183</sup> Judith Reisman, *Picture Poison: Viewing Pornography for a Living Can be Deadly*, 10 SALVO 23 (Autumn 2009).

<sup>184</sup> See *supra* text accompanying note 42.



administrators and teachers to beware of “new expressions” that challenged the cultural, emotional, spiritual and religious stability students bring with them to the classroom from their families and communities. For example, the guidelines advised:

[B]e mindful that students as well as teachers are unique individuals who are also members of groups . . . . [S]piritual, emotional, and intellectual attributes, personal history, and environmental experiences . . . . Sattler (1998) defines acculturation as “the process of cultural change that . . . leads individuals to adopt elements of another culture, such as values and social behaviors.” [Students may] adopt the behavioral norms and values of the dominant culture . . . . This cultural dissonance *often creates conflict and stress within families...loss of a traditional way of life, religion, or language may cause strong emotional responses lasting several generations.*<sup>185</sup>

Professionally supervised distribution of sexually charged matter labeled “sex education” or placed on the library shelves pose the same threat of cultural dissonance between the modern educators’ worldview and parental worldview. As has been recorded in the media in several instances, educators teach masturbation, mutual masturbation, anal sex, oral sex, vaginal sex and other explicit topics as normal and acceptable behavior for pre-teens and teens.<sup>186</sup> As was true of the ethnic and racial differences addressed in post-*Brown* guidelines, presenting sexually charged matter as normal and appropriate creates “*conflict and stress within families . . . loss of a traditional way of life . . . [which] may cause strong emotional responses lasting several generations.*”<sup>187</sup> As was true of the children in *Brown*, the conflict between the school values and that of parents, community and church related to human sexuality “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>188</sup>

Indeed, in its bias guidelines state education officials described how a culturally dissonant learning environment can reshape students in ways that cause “dysfunctional and self-abusive behaviors[,] . . . delayed posttraumatic responses, [and] generation gaps . . . .”<sup>189</sup> As a result:

Cultural stress and conflict can be an underlying cause of academic and/or behavioral problems . . . . Research has shown that single cultural responses to acculturation can result in an increase in dysfunctional and self-abusive behaviors[,] . . . delayed posttraumatic responses, [and] generation gaps . . . [and] may include: [h]eighted anxiety[, c]onfusion in locus of control[, w]ithdrawal[, s]ilence or unresponsiveness[, r]esponse fatigue[, c]ode-switching[, d]istractibility[, r]esistance to change[, d]isorientation[, and r]elated behaviors. . . . [T]he student’s lack of success [can be] related to a cultural difference or difficulty with acculturation.”<sup>190</sup>

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<sup>185</sup> MINNESOTA DEPARTMENT OF EDUCATION, *Reducing Bias in Special Education Assessment for American Indian and African American Children A Vision For A Better Education* 15 (1998) (emphasis added), <http://www.education.state.mn.us/.../idcplg?...GET...RevisionSelectionMethod> (this document recognized that many youth were entering school in states of “depression and anxiety” and/or using prescription drugs or other substances).

<sup>186</sup> Sara Gonzales, *Parents infuriated after controversial sex worksheet given out at Oklahoma middle school*, THE BLAZE (October 23, 2017), <http://www.theblaze.com/news/2017/10/23/parents-infuriated-after-controversial-sex-worksheet-given-out-at-oklahoma-middle-school/>; NEW YORK POST, *Teacher Fired for throwing dildo filled classroom party* (October 20, 2017), <http://nypost.com/2017/10/20/teacher-fired-for-throwing-dildo-filled-classroom-party/>; Steve DeVane, *Sex ed program under review after parents raise concerns*, FAYETTEVILLE OBSERVER (October 18, 2017), <http://www.fayobserver.com/news/20171017/sex-ed-program-under-review-after-parents-raise-concerns>.

<sup>187</sup> MINNESOTA DEPARTMENT OF EDUCATION, *supra* note 185, at 15 (emphasis added).

<sup>188</sup> *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). This would also be the outcome of experimenting on Minnesota children with the passage of the “Safe and Supportive MN Schools Act – SF783.” That bill would create one universal value system for everyone by rewiring the minds of all children. Anyone who opposes will be silenced through remediation and re-education.

<sup>189</sup> See MINNESOTA DEPARTMENT OF EDUCATION, *supra* note 185, at 15.

<sup>190</sup> *Id.*

The 1998 guidelines confirmed that educators are fully aware that some children silently suffer trauma due to conflict between their home community and church cultures and the school culture.<sup>191</sup> That conflict will be even more pronounced with the explicit sex talks and media children endure as a result of obscenity exemptions in light of what is now known about the under-development of the teen brain and the effect of sexual stimuli on brain function.<sup>192</sup> The distress caused by these conflicts will likely be more pronounced in the minority communities as seen in a 1998 Minnesota Student Survey which asked participants whether they experienced emotional distress. Students of minority race or cultural backgrounds were more likely to report that they felt “stressed, sad, discouraged or hopeless, nervous or worried all or most of the time.” For African American students, the total was nineteen percent; for American Indian, twenty-one percent, for Asian/Pacific Islander, twenty-two percent, for Chicano/Latino, twenty-two percent, and for Whites, fourteen percent.<sup>193</sup>

Notably, the guidelines for reducing bias address drug or alcohol use, but avoid questions about the children’s exposure to “soft” or “hard” pornography or other inappropriately stimulating obscenity, media, or sexual abuse. This is especially pronounced as the Internet and film also pressure youth to sexually experiment. Still schools apparently ignore established research findings that the classroom statistically includes roughly one in four girls and one in six boys who are sexual abuse victims and who may experience suicidal ideation.<sup>194</sup> “Sex education” further traumatizes children by exposing them to sex talk technically cloaked as, e.g., “diversity” and AIDS education or “bullying” prevention and the like.

C. *Dysfunction, Disease Increase Exponentially as Sexually Explicit Materials and Presentations Lead to Acting Out*

Since obscenity exemption-driven explicit sexuality has entered the classroom, every measure of sexual disease, despair, and crime has skyrocketed statistically as children mimic what they were taught.<sup>195</sup> Elayne Bennett writes, “Of all the major cities, Washington, D.C. leads the country with out-of-wedlock teen births, soaring to a rate of ninety-five percent just three years ago.”<sup>196</sup> So, the black parents with “only” M.O.M and D.A.D. degrees,<sup>197</sup> who had trained their children with strongly held morals and values and opposed the “professional” mostly white, liberal elite, sex educators, were proven correct.

Nationwide, the failure of those sex educators is seen in the tragically high rate of abortion among young black women: “today the illegitimacy rate among African Americans is nearly seventy percent, a figure far higher than had ever existed even in the days of Jim Crow segregation or, before that, slavery.”<sup>198</sup> These effects of explicit sex education, while tragic, are not entirely unexpected in light of the fact that sex education regularly points children to pornography for information.<sup>199</sup>

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<sup>191</sup> *Id.*

<sup>192</sup> Watts, *supra* note 167.

<sup>193</sup> MINNESOTA DEPARTMENT OF EDUCATION, *The ELL Companion to Reducing Bias in Special Education Evaluation* at 125, <http://www.asec.net/Archives/Manuals/ELL%20companion%20Manual%20020212%5B1%5D.pdf>.

<sup>194</sup> Angela Browne & David Finkelhor, *Impact of child sexual abuse: A review of the research*, 99 PSYCHOLOGICAL BULLETIN 66, 66-77 (1986).

<sup>195</sup> See Judith Reisman & Margaret Bocek, *Backgrounder on Marketing of Sexual Reeducation* (October 1989), [http://www.drjudithreisman.com/archives/2012/08/backgrounder\\_on.html](http://www.drjudithreisman.com/archives/2012/08/backgrounder_on.html); see also CENTERS FOR DISEASE CONTROL AND PREVENTION, DIVISION OF STD PREVENTION, *Sexually Transmitted Disease Surveillance 2013* (December 2014), <https://www.cdc.gov/std/stats13/surv2013-print.pdf>.

<sup>196</sup> ELAYNE BENNETT, *DAUGHTERS IN DANGER: HELPING OUR GIRLS THRIVE IN TODAY’S CULTURE* 4 (2014).

<sup>197</sup> In other words, the only “education” that these parents had (or needed) was that they were “mom” and “dad,” and therefore knew what was best for their children as opposed to the professionals with their Ph.D. and M.S. degrees.

<sup>198</sup> John Perazzo, *Black Americans As Victims Of The Left*, DISCOVER THE NETWORKS (June 2008), <http://www.discoverthenetworks.org/viewSubCategory.asp?id=1258#Crusade>.

<sup>199</sup> REISMAN, *supra* note 8, at 178: “When sensitively used in a manner appropriate to the viewer’s age and developmental level, sexually explicit visual, printed, or on-line materials can be valuable educational or personal aids helping to reduce ignorance and confusion and contributing to a wholesome concept of sexuality. It is still illegal to sell ‘sexually explicit materials’

Pornography can be viewed as “informal” sex education that has become increasingly a part of the lives of children. Its harmful effects on family life, particularly for African-Americans,<sup>200</sup> have been seen as cause for concern:

*As Playboy, Penthouse, and Hustler have a sizeable Black male readership, and as these materials undeniably suggest a “perfect” or “ideal” beauty (white, generally blonde, young), it is reasonable to speculate about the ramifications on Black wives and girlfriends of Black men and boys reading such magazines or viewing similar films and videos . . . . [that] essentially engaged in a marketing or advertising activity for the white female as both “ideal” and as the ultimate object of sexual/genital arousal and gratification. The impact of such pictorial stimuli on Black adults and juvenile male and female perspectives of beauty and desirability is a crucial area of needed speculation and research . . . . Current concerns raised by the Black community regarding disintegrating heterosexual harmony and the vanishing Black family focuses on a crisis in personal identity. Certainly there is a need for research in this area.*<sup>201</sup>

This erotic training has had appalling consequences for *all* public school children.

A 13-year-old boy confessed in court that he raped a girl of the same age after they both had attended the mandatory sex education lessons . . . . [A] large majority of both boys and girls complained that sex education often presents promiscuity as normal, putting additional pressure on them to become sexually active before they might otherwise do so. . . . [Said one 18-year-old girl] “I always felt pressured by teachers, like, ‘sex is normal, just be safe OK’ when actually I wasn’t interested in having sex at the time and was happy to wait for the right person.”<sup>202</sup>

This sexual violence tragically is but one illustration of the psychological harm children experience resulting from the traumatic cultural identity conflicts caused by the unmonitored explicit “sex education” experiment.

The physical harm of engaging in the conduct depicted in material presented in school via obscenity exemptions is equally dramatic. Rates of sexually transmitted diseases among young people are increasing exponentially.<sup>203</sup> The CDC reports that:

Chlamydia is the most commonly reported STD, with approximately 1.6 million cases reported in 2016. Young women (ages 15-24) account for nearly half (forty-six percent) of reported cases and face the most severe consequences of an undiagnosed infection. Untreated STDs, like chlamydia and gonorrhea, put women at increased risk for pelvic inflammatory disease which may result in chronic pelvic pain, infertility, and potentially

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(pornography) to children under the age of 18 years.” *Id.* (citing the SIECUS REPORT February/March 1996 “Position Statement” on “Sexually Explicit Materials”).

<sup>200</sup> John Parker, *Sex, Lies, & Pornography in Black America*, DESTINY MAGAZINE (Aug./Sept. 1993), 21-22 [http://www.drjudithreisman.com/archives/2009/02/white\\_pornograp.html](http://www.drjudithreisman.com/archives/2009/02/white_pornograp.html).

<sup>201</sup> JUDITH A. REISMAN, IMAGES OF CHILDREN, CRIME AND VIOLENCE IN PLAYBOY, PENTHOUSE, AND HUSTLER 114 (1990) (“Alice Walker’s essays on erotica/ pornography in, *You Can’t Keep a Good Woman Down* (1981) are recommended for an insightful introduction to at least some Black men and women’s attitudes toward this material.”).

<sup>202</sup> *UK Girl, 13, Raped by Classmate After Sex Ed Lesson*, LIFESITE (Nov. 27, 2014), <https://www.lifesitenews.com/news/uk-girl-13-raped-by-classmate-after-sex-ed-lesson> (citing a poll put out by the Institute of Public Policy Research to all UK teenagers).

<sup>203</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION, *2016 Sexually Transmitted Disease Surveillance*, [www.cdc.gov/std/stats16/foreword.htm](http://www.cdc.gov/std/stats16/foreword.htm) (last updated Sept. 2017).

a life-threatening ectopic pregnancy. It is estimated that undiagnosed STDs cause infertility in more than 20,000 women each year.<sup>204</sup>

While syphilis was nearly eliminated a decade ago, today it is on the rise. Rates of primary and secondary syphilis, the most infectious stages of the disease, increased 18 percent from 2015 (approximately 7 cases per 100,000 people) to 2016 (approximately 9 per 100,000 people).<sup>205</sup>

Rates of syphilis in women increased by thirty-six percent between 2015 and 2016.<sup>206</sup> HPV, the human papilloma virus, is “responsible for 99.7% of cervical cancer cases and the deaths of nearly 5000 women each year . . . [as well as] head and neck cancers.”<sup>207</sup> Young women are also at risk for urinary tract infections:

The vast majority of those who get urinary tract infections [are] typically young, healthy women who’ve become sexually active . . . . [With] more than 3,000 deaths a year [resulting] from infections that started out in the urinary tract.<sup>208</sup>

These consequences account for the legal protections accorded to children by the “harmful to minors” statutes, banning the distribution of obscene materials to minors. What cannot be accounted for is the acceptance of distributing these materials under the guise of “education,” with no evidence that re-labeling the materials changes their harmful character.

## VI. LEGAL RESPONSES TO THE PROLIFERATION OF EROTIC PEDAGOGY VIA OBSCENITY EXEMPTIONS

This modern day psychologically damaging experimental “educational” environment should be eradicated starting with the repeal of obscenity exemptions, except in the context of law enforcement and medicine. This can be approached not only through grassroots activism by parents but also through legal challenges similar to that brought by the African-American parents in *Brown*. In addition to as constitutional challenges based upon the Fourteenth Amendment, parents should consider actions for civil rights violations under Title IX.

### A. Denial of Equal Protection

Exposing public school students to sexual stimuli under the guise of “sex education” can be said to violate their right to equal protection under the law. This was the successful approach in *Brown*. As discussed above, many of the concerns about trauma suffered by African-American children subjected to segregated education are as true or more true—for children exposed to sexually explicit stimuli in schools. Children not enrolled in school are protected from exposure to harmful sexual images by laws criminalizing such exposure. However, children who attend school are denied that legal protection by obscenity exemptions which permit educators to assault undeveloped brains with sexual imagery and language.<sup>209</sup>

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<sup>204</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION, *CDC Fact Sheet: Reported STDs in the United States, 2016* at 1 (Sept. 2017), <https://www.cdc.gov/nchhstp/newsroom/docs/factsheets/std-trends-508.pdf>.

<sup>205</sup> *Id.* at 2.

<sup>206</sup> *Id.*

<sup>207</sup> MEG MEEKER, *EPIDEMIC: HOW TEEN SEX IS KILLING OUR KIDS* 16 (Lifeline Press 2002).

<sup>208</sup> Jonel Aleccia, *Drug-resistant Bladder Bug Raises Growing Concerns*, NBC NEWS (Oct. 2010) [http://www.nbcnews.com/id/39504585/ns/health-infectious\\_diseases/t/drug-resistant-bladder-bug-raises-growing-concerns/#.WK5MEG8rLIV](http://www.nbcnews.com/id/39504585/ns/health-infectious_diseases/t/drug-resistant-bladder-bug-raises-growing-concerns/#.WK5MEG8rLIV).

<sup>209</sup> See Chyng Sun, et. al., *Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations*, 45 ARCHIVES OF SEXUAL BEHAV. 983, 991 (2014); see also Parker, *supra* note 200, at 15.

## B. *Violations of Title IX*

Schools can be liable under Title IX of the federal Civil Rights Act<sup>210</sup> for sexual harassment in the form of creating a hostile learning environment. The Department of Education states that: “Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the recipient’s education programs and activities (*i.e.*, creates a hostile environment).”<sup>211</sup> “Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”<sup>212</sup> “Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.”<sup>213</sup> Students who are exposed to a steady diet of sexually explicit materials that they are incapable of processing and that conflict with parental and community values will be psychologically and emotionally traumatized, as well as perhaps physically traumatized by fellow students or teachers. That trauma would make it difficult, if not impossible, for the students to focus on academic performance or otherwise benefit from the educational programs. This situation is the type of hostile learning environment that Title IX prohibits.

In *Brown*, the Court found that detrimental psychological effects<sup>214</sup> of racially segregated schools violated the civil rights of black children under the Fourteenth Amendment to the United States Constitution. Correspondingly, the detrimental psychological effects of erotically stimulating instruction violates the civil rights of all children so exposed, under the Fourteenth Amendment and under Title IX of the Civil Rights Act of 1967.

## C. *Educational Malpractice*

Another avenue would be a legal challenge for civil rights violations and other damages against departments of education based upon educational malpractice.<sup>215</sup> Professor Rena Lindevaldsen at Liberty University School of Law summarized this approach:

[S]chool districts have an obligation to provide accurate information to the students entrusted to their care. When they abdicate that responsibility, they should be held liable in tort and for violating the fundamental liberty interest of parents who expect schools to educate and not harm their children.<sup>216</sup>

All of these approaches involve novel legal theories, but so too did *Lawrence v. Texas*, and *Roe v. Wade*, which furthered the Kinseyan worldview and which have been used to further the leftist agenda. More notably, recent victories in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*,<sup>217</sup>

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<sup>210</sup> See *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 632-33 (1999) (allowing an action under Title IX for student harassment when the “funding recipient acts with deliberate indifference.”).

<sup>211</sup> UNITED STATES DEPARTMENT OF EDUCATION, *Title IX Resource Guide* at 15 (Apr. 2015), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Brown*, 347 U.S. at 494-95 n.11 (listing the support of several authorities that discussed the “[p]sychological [e]ffects” of racial segregation).

<sup>215</sup> Rena M. Lindevaldsen,  *Holding Schools Accountable for Their Sex-Ed Curricula*, 5 LIBERTY U. L. REV. 463, 463 (2011).

<sup>216</sup> *Id.* at 504.

<sup>217</sup> *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188-192 (2012) (the Supreme Court, for the first time, finding that the “ministerial exception” for religious discrimination claims against religious employers could be applied to a teacher in a denominational school, when the denomination treated its teachers as ministers on par with pastors and other leaders).

and *Burwell v. Hobby Lobby Stores, Inc.*,<sup>218</sup> demonstrate how novel legal theories can be used to help restore the Judeo-Christian worldview.

## VII. CONCLUSION

Armed with the new empirical evidence regarding the psychological trauma imposed by the eroticized classroom, those who want to protect children and begin the process of healing should take action by seeking the repeal of all state laws that exempt schools, libraries, museums and those in an undefined “parental relationship” with a child from exposing children to obscenity. In addition, those interested in change should institute procedural actions to prevent surreptitious introduction of eroticized material in schools. Distributors of materials used in schools must assure the lawfulness and conditionality of their material. *Before funding is approved, all* human sexual materials should be screened and approved by a panel of twelve parents, the same number as a jury in court. Such a panel should review and approve not only “sex education” curriculum, but also speakers, videos, and other materials like young adult literature that is made available via the classroom or library. Guidelines identifying the history of American sexually associated health prior to the 1950s (when chastity, virginity were common until marriage) and today, as well as other critical facts (like the fact that no condom has *ever* passed the test for use for anal or oral sodomy)<sup>219</sup> and relevant issues should be developed, so that information provided in the future is medically accurate and evidence-based.

History is made and positive change is realized when novel legal theories are developed and boldly presented. Those who seek to protect children must not shy away from being catalysts for such change. We argue that the “obscenity exception” was a legal fiction and mislabeled sex education, being a flagrant example of the charms by which the property of youth and maidhood may indeed be abused.

Is there not charms  
By which the property of youth and maidhood  
May be abused? Have you not read, Roderigo,  
Of some such thing?

Shakespeare, *Othello, the Moor of Venice Act I, Scene I.*

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<sup>218</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2775 (2014) (the Supreme Court, for the first time, determining that the Religious Freedom Restoration Act protects for-profit closely held corporations, not just nonprofits and individuals, from laws that substantially burden the free exercise of religion).

<sup>219</sup> Judith Reisman, *Condoms Never FDA-Approved for Sodomy*, WND (Mar. 14, 2014), <http://www.wnd.com/2014/03/condoms-never-fda-approved-for-sodomy>.

Exhibit I

Page 180, *Sexual Behavior in the Human Male* (1948)

One of five tables depicting systematic sexual abuse of infants and boys in the name of “science.” Kinsey’s description of child “orgasm” can be found on pages 160-161.

**TABLE 34. EXAMPLES OF MULTIPLE ORGASM IN  
PRE-ADOLESCENT MALES  
SOME INSTANCES OF HIGHER FREQUENCIES**

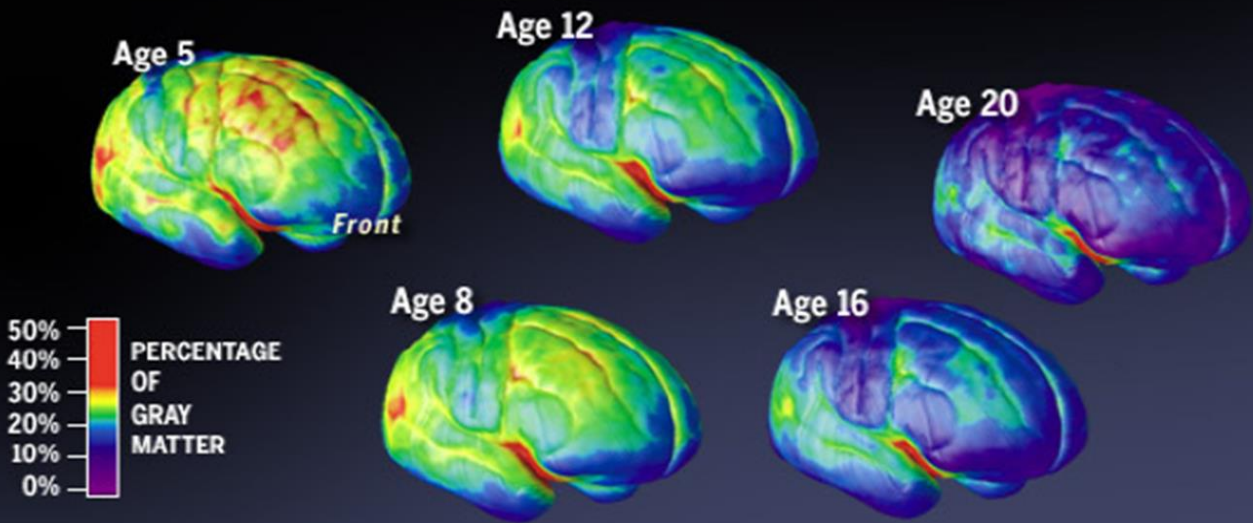
Age	No. of Orgasms	Time Involved	Age	No. of Orgasms	Time Involved
5 mon.	3	?	11 yr.	11	1 hr.
11 mon.	10	1 hr.	11 yr.	19	1 hr.
11 mon.	14	38 min.	12 yr.	7	3 hr.
2 yr.	7	9 min.	12 yr.	3	3 min.
	11	65 min.		9	2 hr.
2½ yr.	4	2 min.	12 yr.	12	2 hr.
4 yr.	6	5 min.	12 yr.	15	1 hr.
4 yr.	17	10 hr.	13 yr.	7	24 min.
4 yr.	26	24 hr.	13 yr.	8	2½ hr.
7 yr.	7	3 hr.	13 yr.	9	8 hr.
8 yr.	8	2 hr.		3	70 sec.
9 yr.	7	68 min.	13 yr.	11	8 hr.
10 yr.	9	52 min.		26	24 hr.
10 yr.	14	24 hr.	14 yr.	11	4 hr.

Pedophile Orgasm Torture of 30 Boys Up to 24 Hours around the Clock, The Youngest 5 Months, Suggesting Other Victim as “Some Instances of Higher” Responses

# THE SECRETS OF THE TEEN BRAIN

## Time-Lapse Brain

■ Gray matter wanes as the brain matures. Here 15 years of brain development are compressed into five images, showing a shift from red (least mature) to blue.

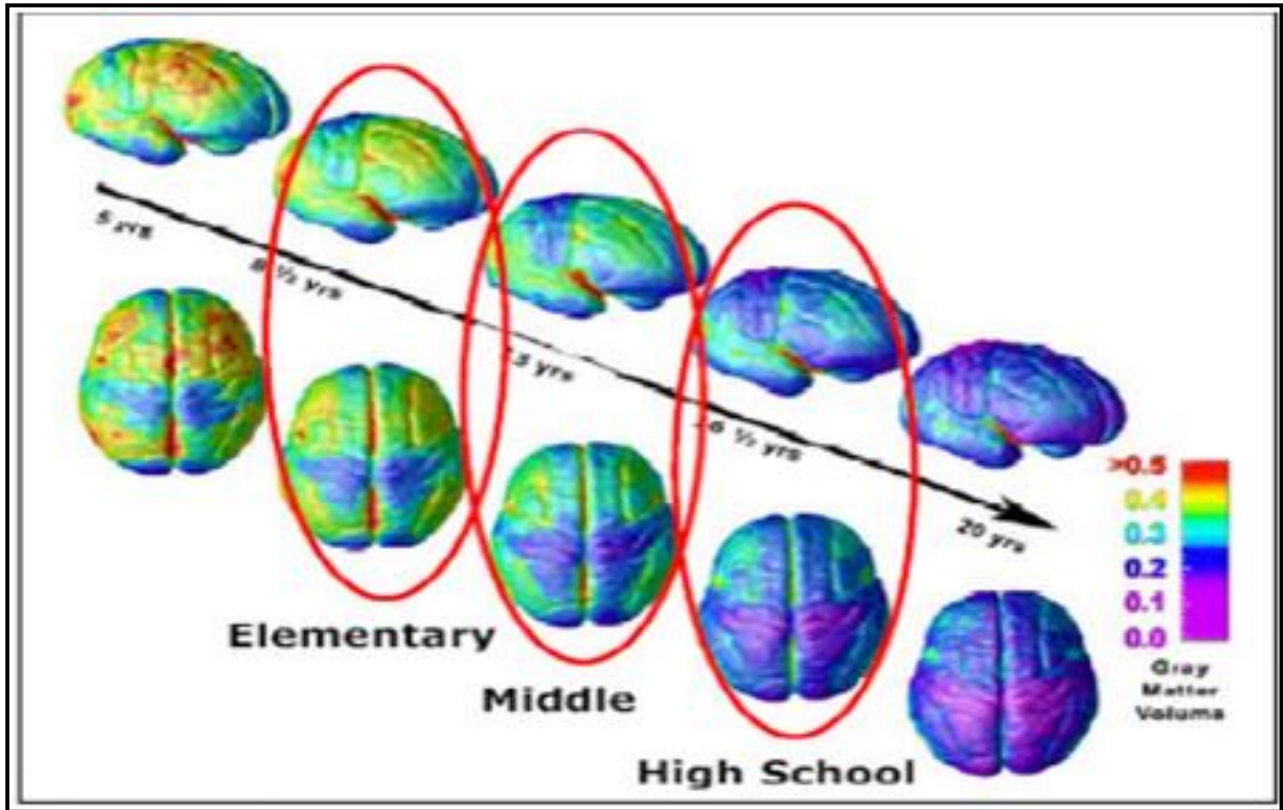


[« PREVIOUS](#)

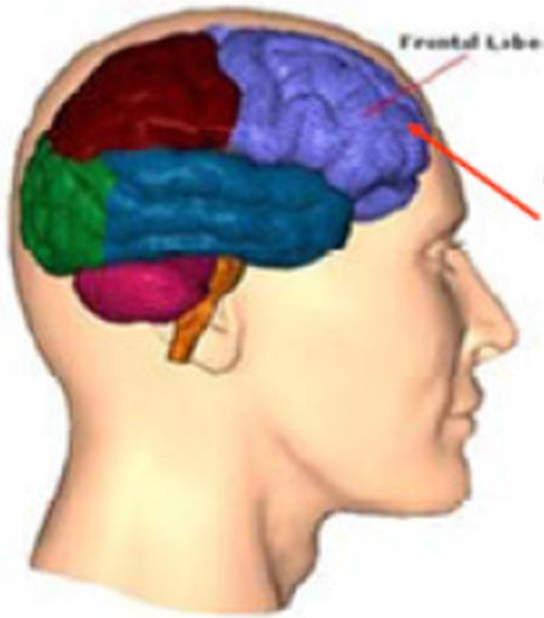
[NEXT: Launch Flash Movie »](#)



Exhibit III



**The teenage brain's "self-control" center is responsible for:**



- **risk-taking control**
- **impulse control**
- **emotional control**
- **self-restraint**
- **judgment**

**These are NOT yet developed!**

Dr. Jay Giedd, NIH 2003

Exhibit V

