



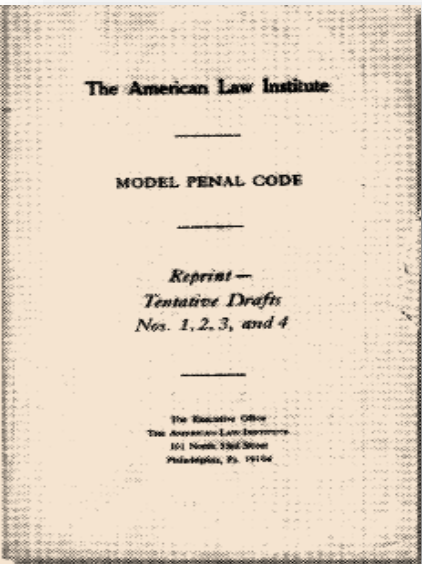
# Repealing Obscenity Exemptions Workshop

## Introductory Overview of Educational Obscenity Exemptions



**Mary E. McAlister, Esq.**  
**Child & Parental Rights Campaign**

# Genesis of the Educational Obscenity Exemptions: Model Penal Code Based on Kinsey



- Kinsey Reports cited as “scientific proof” that sex offense criminal laws were outdated, ineffective and must be completely overhauled.
- A select group of legal scholars, judges, psychiatrists, other academics, including Kinsey team members, gathered to compile model laws regarding criminal conduct, especially sexual offenses.
- Result was the Rockefeller funded ALI Model Penal Code, which proposed decriminalization or reduction in punishment for sex offenses in accordance with Kinsey model.
- Obscenity was redefined and an exemption from prosecution added for “institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material”

# “Miller” Test for “Obscenity” (unprotected by the First Amendment):



1. Whether ‘the average person, applying **contemporary community standards\*** would find that the work, taken as a whole, appeals to the prurient interest;
2. Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
3. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

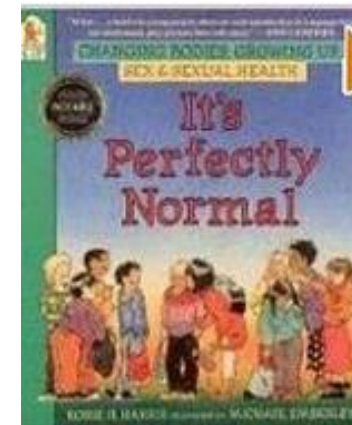
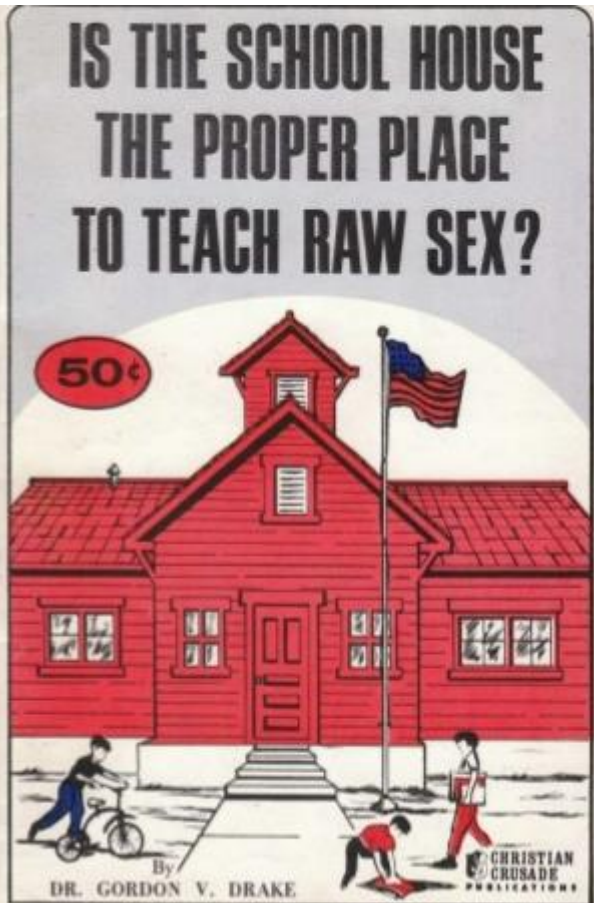
*Miller v. California*, 413 U.S. 15, 24, 31-32 (1973).

➤ **Modified for minors:** “harmful to minors” laws imposing increased fines, jail time for providing obscene/indecent materials to children even if the materials would not be obscene for adults:

- ❖ “Appealing to the prurient interest in sex of minors;
- ❖ Patently offensive to **prevailing standards in the adult community** with respect to what is suitable material for minors; and
- ❖ Lacking serious literary, artistic, political, or scientific value for minors.

# Model Penal Code: Obscenity OK in Schools, Libraries

- 43 states adopted the MPC exemptions for providing obscene/indecent materials to children if the materials are used by “educators” and/or for “educational” purposes, as part of courses of instruction and/or in libraries in K-12 schools and in public libraries.
- Therefore, in these states, a person providing obscene/indecent materials to a child faces fines and jail time for “harming” the child, EXCEPT when the person is a teacher, librarian, lecturer, consultant, etc. providing the materials in an “educational” context!



## If Obscenity Exemptions Are Repealed:

- Schools, libraries, etc. will be subject to the same “harmful to minors” laws as are other people.
- Materials used in schools would have to be defined as “harmful to minors” under the state law definition. Not a simple proposition.
- Must establish that the materials are harmful to minors according to “contemporary community standards” which has not been defined. It would likely have to be determined by a jury drawn from the relevant community, which is also not defined.
- The Supreme Court has sided with those producing content over those offended with the content because of misapplication of the First Amendment.
- Important to engage publicly in the community to set some boundaries for what is appropriate for children to begin to define the standard.
  - If we don't define the standard, then those making the materials will.
  - Read/show actual materials to parents, legislators, organizations and encourage them to object.

# Before Repeal or If Not Repealed...



Keep your *heart*  
with all vigilance,  
for from it flow the  
*springs of life.*  
Proverbs 4:23

## Be Vigilant:

Constant monitoring of what is being assigned, taught in all courses.

See Debbie DeGroff's book

**ETERNAL VIGILANCE  
IS THE PRICE OF  
LIBERTY.**

Wendell Phillips

## Educate Parents & Community:

- Shine the light of truth onto school board meetings: Use public comment periods to present materials.
- Educate fellow parents, churches, organizations; encourage making voices heard about what is appropriate/inappropriate for the community's children. This will help establish "community standards" for possible future use to challenge materials.

**The way to  
right wrongs is  
to turn the  
LIGHT of TRUTH  
upon Them.**