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## NEARLY 60 YEARS AFTER HIS DEATH, ALFRED KINSEY'S PANSEXUAL WORLDVIEW TAKES ROOT IN MARRIAGE DECISIONS

*U.S. federal appellate courts' judicial rewriting of constitutional provisions memorializing marriage as the union of one man and one woman relies upon fraudulent sex "science" which has been used to fundamentally transform law and society.*

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### INTRODUCTION

In *Obergefell v. Hodges*, the United States Supreme Court joined the Fourth, Seventh, Ninth, and Tenth circuit courts of appeal in overturning state statutes and constitutional amendments that memorialized the definition of marriage as one man and one woman.<sup>3</sup> In so doing, the courts purport to replace a millennia old institution based upon the inherent complementarity and biological realities of human beings with an artificial social construct based upon the fraudulent, criminal child sexual abuse "scientific" research of Alfred C. Kinsey<sup>4</sup> and the international institute that bears his name.<sup>5</sup>

Recent decisions purporting to legalize same-sex "marriage" are merely the latest examples of a concerted effort to replace the Judeo-Christian worldview of the Constitution with a pansexual<sup>6</sup> worldview based upon Kinsey and his contemporaries. Following in the footsteps of *Roe v. Wade*, in which the Supreme Court legalized abortion,<sup>7</sup> *Lawrence v. Texas*, in which the Supreme Court de-criminalized sodomy,<sup>8</sup> and myriad other decisions, the U.S. Circuit Court's marriage decisions are part of a progressive dismantling foundational moral precepts that have permitted American society to flourish.

Contrary to the rhetoric offered by those advocating for same-sex "marriage" and the concomitant societal changes, memorializing marriage as the union of one man and one woman is

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<sup>3</sup> *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015); *see Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014), *cert denied sub nom Rainey v. Bostic*, 135 S.Ct. 286 (2014); *see Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *cert denied sub nom Herbert v. Kitchen*, 135 S.Ct. 265 (2014) ; *see Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014); *rehearing en banc denied 2015 WL 128117* (Jan. 9, 2015).

<sup>4</sup> *See generally* ALFRED C. KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE* (W.B. Saunders, Phila. 1948); ALFRED C. KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN* (W.B. Saunders, Phila. 1953). Kinsey's research as chronicled in his two books on human sexual behavior are credited with launching the "sexual revolution" of which the ongoing debate regarding same-sex "marriage" is merely one manifestation.

<sup>5</sup> Since Kinsey's death in 1956, his research has continued under the auspices of the Kinsey Institute for the Study of Sex, Gender and Reproduction at Indiana University in Bloomington, Indiana.

<sup>6</sup> *See* Paul Robinson, *THE MODERNIZATION OF SEX*, 59 (Harper & Row, 1976). "Pansexual" is used here to refer to Kinsey's philosophy that any kind of sexual conduct is "normal," as exemplified in his description of homosexuality, heterosexuality, bisexuality and bestiality as "sexual outlets," *i.e.*, normal variations of sexuality.

<sup>7</sup> *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973).

<sup>8</sup> *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472 (2003).

not the a scheme contrived by “maniacal moralists”<sup>9</sup> or “prudish Neo-Puritans”<sup>10</sup> to discriminate against homosexuals. On the contrary, state statutes and constitutional amendments stating that marriage is the union of one man and one woman, such as Virginia’s amendment struck down by the Fourth Circuit, memorialize a social institution that transcends religion, politics, economic status and geography and exists in all or nearly all known human societies.<sup>11</sup> Dismantling marriage by erasing its objective structure creates disorder, instability and cultural dissonance that harms adults, children and society as a whole.

The cultural dissonance resulting from the dismantling of marriage is but one aspect of a fundamental societal transformation which has been under way for decades. One of the most significant pivot points for the societal shift was publication of the Kinsey Reports on male and female sexuality in 1948 and 1953, respectively.<sup>12</sup> The books burst onto an unsuspecting post – World War II American public amid a well-orchestrated media frenzy.<sup>13</sup> Touted as the first “scientific” studies of human sexual behavior, the Kinsey reports libeled the “Greatest Generation” by purporting to show that most were *secretly* sexually promiscuous.<sup>14</sup> Americans still reeling from the horrors of World War II were told that Kinsey’s “scientific research” proved that 95 percent of men engaged in criminal – purportedly harmless sexual behavior, including fornication, adultery, homosexual sodomy, sex with prostitutes and bestiality.<sup>15</sup> American women were also libeled as predominantly – and harmlessly – fornicators, adulterous, and procurers of illegal abortions from 20 percent to as much as 95 percent of the time.<sup>16</sup> According to Kinsey’s “scientific data,” no women reported being harmed by rape, what Kinsey called unwanted sexual contact.<sup>17</sup> Kinsey told the country “[t]hat all types of sexual activity – sex with the opposite sex, sex with the same sex, sex with both sexes, sex with children, sex with whips and chains, sex with animals – any kind o sex was normal and common.”<sup>18</sup>

Kinsey’s research on “males” and “females” was not limited to adults, but included “data” on “sexual experiences,” what he called “orgasms,” for infants and children as young as two months old.<sup>19</sup> Hidden in plain sight within the pages of his Reports, but totally ignored by the thousands of analysts and scholars who have relied on Kinsey’s research for more than 60 years,

<sup>9</sup> See Orville Richardson, *Sexual Offenses Under the Proposed Missouri Criminal Code*, 38 MO. L. REV. 371 (1973), (calling those who do not support liberalization or even elimination of criminal laws against rape and other sexual offenses, as touted by Kinsey and others as “maniacal moralists”), *see infra*.

<sup>10</sup> See note, *Pedophilia, Exhibitionism and Voyeurism: Legal Problems in the Deviant Society*, 4 GA. L. REV. 149, 150 (1969) (quoting the “absurdity of enforcing most of our sex laws...should be obvious, even to the most prudish Neo-Puritans,”), *see infra*.

<sup>11</sup> Sherif GIRGIS ET AL.,, WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE 11 (Encounter Books 2012).

<sup>12</sup> KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE (1948); SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953), *supra* note 4.

<sup>13</sup> JUDITH A. REISMAN, SEXUAL SABOTAGE: HOW ONE MAD SCIENTIST UNLEASHED A PLAGUE OF CORRUPTION AND CONTAGION ON AMERICA 5, 20 (WND Books 2010).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 20-21, citing KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE, *supra* note 4, at 392, 585-87, 650-51, 671.

<sup>16</sup> *Id.* at 22-23, citing KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN FEMALE, *supra* note 4, at 286, 416, 458; *see* PAUL H. GEBHARD ET AL., PREGNANCY BIRTH AND ADOPTION 197 (1958); *see also* MARTIN S. WEINBERG, SEX RESEARCH FROM THE KINSEY INSTITUTE 102 (1976).

<sup>17</sup> *Id.* at 23, (citing KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN FEMALE, *supra* note 4, at 122).

<sup>18</sup> *Id.* at 20, (citing Interview with Charles Sociarides, M.D., President, NARTH (Sept. 20, 2014).

<sup>19</sup> KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE, *supra* note 4, Tables 30-34, pp. 176-80.

are tables chronicling systematic “scientific” oral, anal and vaginal sodomy of as many as 2,000 boys and 145 girls.<sup>20</sup> Presented as merely part of his “scientific” compilation of information, are tables labeled “Pre-Adolescent Experience in Orgasm,” chronicling information gathered from “actual boys and 64 “cases timed,” and “examples of multiple orgasms in pre-adolescent males” (ages 5 months to 14 years).<sup>21</sup> Based upon these tables, which described infants and children being sexually violated by adults repeatedly, sometime 24 hours around the clock, Kinsey claimed that children are *sexual from birth*.<sup>22</sup> Kinsey reported that, based on these “data” he collected, it was “certain that many infant males and young boys are capable of orgasm.”<sup>23</sup> Furthermore, Kinsey further revealed his secret closeted bias and invalid research when he claimed that young girls who had been the victims of incest “actively sought repetitions of their experience,” and suffered no “appreciable damage.”<sup>24</sup>

Armed with his revolutionary (Kinsey was called the father of the “sexual revolution”) “scientific data,” cultural change agents immediately began campaigning for fundamental cultural transformation.<sup>25</sup> This includes a complete overhaul of the criminal justice system to eliminate the laws that criminalized sexual behavior Kinsey had “proven” to be “normal,” “commonplace” and not harmful, including sex with children.<sup>26</sup> Even before the publication of the Kinsey’s report on female sexual behavior, legal scholars, legislators and judges were heralding his findings as much needed catalysts for change.<sup>27</sup> By 1955, the American Law Institute had used Kinsey’s findings, *inter alia*, to rewrite criminal laws related to sexual offenses in the first “draft” version of the Model Penal Code that was distributed to legislators nationwide.<sup>28</sup>

<sup>20</sup> KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE*, *supra* note 4 pp. 127, 177, 180.

<sup>21</sup> KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 4, Tables 30-34, pp. 176-80. Table 34 is reproduced in the Appendix.

<sup>22</sup> *Id.* at 181; Table 34 describes a four-year-old and thirteen-year-old having twenty-six “orgasms” over a twenty-four hour period and a ten-year-old having fourteen “orgasms” in a twenty-four hour period. This meant that the boys were experimented upon continuously around the clock.

<sup>23</sup> *Id.* at 178. Kinsey constructed definitions of “six kinds of orgasm,” which included spasms, convulsions, hysteria, trembling, collapse and screaming in pain. *Id.* at 160-61.

<sup>24</sup> KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE*, *supra* note 4 pp. 118, 122.

<sup>25</sup> “Cultural change agents” will be used to refer to social leaders, those 2.5 percent of the population who can rapidly sway roughly 13 percent of the public into adopting innovative beliefs or products, who in turn can sway another 34 percent, etc. until an innovation is accepted by a majority, as described by Philip Kotler in *MARKETING MANAGEMENT* 345 (Prentice Hall, 1998).

<sup>26</sup> Four books touting Kinsey’s findings and calling for fundamental legal and social changes based upon them were released within months of the 1948 release of Kinsey’s first report. *See* Albert Deutsch, ed., *SEX HABITS OF AMERICAN MEN, A SYMPOSIUM ON THE KINSEY REPORT* (Prentice-Hall, 1948); Morris Ernst, & David Loth, *AMERICAN SEXUAL BEHAVIOUR AND THE KINSEY REPORT* (Graystone Press, 1948); Rene Guyon, *THE ETHICS OF SEXUAL ACTS* (Alfred A. Knopf, 1948); and Donald Porter Geddes & Enid Currie eds. *ABOUT THE KINSEY REPORT* (The New American Library of World Literature, 1948).

<sup>27</sup> *See, e.g.,* Frank E. Horack Jr., *Sex Offenses and Scientific Investigations*, 44 *ILL. L. REV.* 156, 158 (1950) (noting the principle effect of the Kinsey report will be statistical report from judging criminal cases); Edwin H. Sutherland, *The Sexual Psychopath Laws*, 40 *J. OF CRIMINAL LAW AND CRIMINOLOGY* 543, 544-45 (1950) (relying upon Kinsey to call for re-examination of sexual psychopath laws); Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 *HARVARD L. REV.* 1097, 1106 (1952) (citing Kinsey’s data and “other modern insight with respect to sexual activity” as some of the factors showing the need for a Model Penal Code).

<sup>28</sup> Linda Jeffrey & Col. Ronald D. Ray, *A History of the American Law Institute’s Model Penal Code: The Kinsey Reports’ Influence on “Science-based” Legal Reform 1923-2007*, RSVP America (Aug. 2007), [http://www.rjudithreisman.com/archives/monograph\\_opt.pdf](http://www.rjudithreisman.com/archives/monograph_opt.pdf).

The changes to the criminal law were just one aspect of the fundamental cultural transformation sparked by Kinsey's reports. Kinsey dismissed any labeling of sexual activity as "normal" or "abnormal," creating a seven-point 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>29</sup> Kinsey used that scale and his "data" to claim that 10 percent to 37 percent of males are homosexual during at least some point in their lives.<sup>30</sup> Kinsey espoused the principle of "outlet sex," claiming "all orgasms were equal, regardless of how one came by them [so] there were no grounds for placing heterosexual intercourse in a privileged position."<sup>31</sup>

"The notion of outlet, for all its apparent innocence, performed important critical services for Kinsey. Principal among these was the demotion of heterosexual intercourse to merely one among a democratic roster of six possible forms of sexual release....[M]artial intercourse....received about one third the attention devoted to homosexual relations.... *a remarkable feat of sexual leveling . . . the fundamental categories of his analysis clearly worked to undermine the traditional [marital]sexual order.*"<sup>32</sup>

Traditional sexual order and the social institutions built upon it were under attack on a variety of fronts, as legal scholarship continued to focus on the need to fundamentally change statutory and case law to correspond to the Kinseyan worldview.<sup>33</sup> Other change agents also began advocating for wholesale social change. In 1950, the Group for the Advancement of Psychiatry asserted that the question of whether an adult may have sex with children should be "classified" because some "persons" even under age 7 can be fully capable of part or exceptionally even full responsibility for sexual behavior.<sup>34</sup>

That same year, Communist Party member Henry Hay, buoyed by Kinsey's 10 percent homosexuality claim, launched the Mattachine Society, the pioneering homosexual rights group instrumental in convincing the American Psychiatry Association to declassify homosexuality as an aberration in 1973.<sup>35</sup> After reading and doing a research paper on Kinsey's report in college,

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<sup>29</sup> KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE* 641 (1998).

<sup>30</sup> *Id.*

<sup>31</sup> PAUL ROBINSON, *THE MODERNIZATION OF SEX* 59 (1989); *See also* Judith A. Reisman & Mary E. McAlister, *Judge Posner's Erroneous Kinsey-Based Marriage Decision*, Stop the Kinsey Institute (2015), <http://www.stopthekinseyinstitute.org/more/undermining-laws/judge-posners-short/judge-posners-erroneous-kinsey-based-marriage-decision/>.

<sup>32</sup> *Id.* at 58-59; *See also* Judith A. Reisman & Mary E. McAlister, *Judge Posner's Erroneous Kinsey-Based Marriage Decision*, Stop the Kinsey Institute (2015), <http://www.stopthekinseyinstitute.org/more/undermining-laws/judge-posners-short/judge-posners-erroneous-kinsey-based-marriage-decision/>.

<sup>33</sup> *See supra* notes 27-28; Frank E. Horack, Jr., *Sex Offenses and Scientific Investigation*, Maurer Sch. of Law: Ind. Univ., 149, 153 (1949) <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2213&context=facpub>.

<sup>34</sup> Manfred Guttmacher, *Psychiatrically Deviated Sex Offenders, Report No. 9* (Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry 1950).

<sup>35</sup> JUDITH A. REISMAN & EDWARD W. EICHEL, *KINSEY, SEX AND FRAUDS THE INDOCTRINATION OF A PEOPLE*, 102, 105, 143 (John H. Court & J. Gordon Muir, eds., Lochinvar, 1990); *See also* Judith A. Reisman & Edward W. Eichel, *Kinsey, Sex and Fraud The Indoctrination of People*, 1, 143 (1990), [http://www.drjudithreisman.com/archives/Kinsey\\_Sex\\_and\\_Fraud.pdf](http://www.drjudithreisman.com/archives/Kinsey_Sex_and_Fraud.pdf).

Hugh Hefner, a virgin until age 22,<sup>36</sup> like most college men of the time, brought the Kinseyan worldview into the mass media by launching *Playboy* magazine in 1953, fulfilling his promise to become Kinsey's "pamphleteer."<sup>37</sup> Hefner's role as a Kinseyan change agent was apparent from the first issue of *Playboy*, which featured attacks on virginity and marriage.<sup>38</sup>

Like dominoes, societal norms and institutions began falling as the Kinseyan worldview permeated legislation, public policy and judicial decisions. Marriage is the latest institution being dismantled by the Kinseyan-based change agents. Citing to the societal changes wrought by Kinsey, legislators and courts, now including the Fourth Circuit, have sought to erase the final vestiges of the traditional sexual order by declaring "invalid" the millennial-old objective definition of marriage as the union of one man and one woman.

This article will show how the courts' decision invalidating state marriage laws is part of a criminally derived Kinseyan-based cultural revolution aimed at dismantling Judeo-Christian and constitutional foundations in favor of an amoral, humanistic philosophy built upon deception and fraud. Part I will examine the nature and history of marriage as the foundational social institution. Part II will examine the Kinsey Reports and reveal the fraudulent and criminal conduct underlying their claims of scientific objectivity. Part III will examine how the Kinsey Reports have affected societal transformation, emphasizing the continuing widespread reliance upon Kinsey and his disciples in "sexology" as well as in the allied disciplines of psychiatry, psychology, sociology, anthropology, education and the law, leading up to the marriage decisions. Part IV will examine the evolution of the marriage decisions. Part V will briefly examine the consequences of the widespread adoption of the pansexual worldview.

## **I. THE NATURE AND HISTORY OF MARRIAGE AS THE UNION OF ONE MAN AND ONE WOMAN PREDATES GOVERNMENT AND TRANSCENDS RELIGION, CULTURE AND GEOGRAPHY.**

The statutes and constitutional amendments which memorialize that marriage is the union of one man and one woman are not, as characterized by the Fourth Circuit, "efforts to ban same-sex marriage,"<sup>39</sup> nor, as characterized by Judge Posner in the Seventh Circuit, "discrimination against the small homosexual minority in the United States."<sup>40</sup>

Instead, they are, as the Sixth Circuit said, "a norm that our society (like all others) has accepted for centuries."<sup>41</sup> Indeed, marriage, *i.e.* the union of one man and one woman predates the founding

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<sup>36</sup> Charles McGrath, *How He Got His Groove Back*, N.Y. TIMES (Feb. 3, 2011), [http://www.nytimes.com/2011/02/06/magazine/06Hefner-t.html?\\_r=0](http://www.nytimes.com/2011/02/06/magazine/06Hefner-t.html?_r=0).

<sup>37</sup> Judith A. Reisman, *Implication of the Kinsey Reports on Child Custody Cases*, The Liz Library, [www.thelizlibrary.org/liz/ImplicationsOfKinseyReports.doc](http://www.thelizlibrary.org/liz/ImplicationsOfKinseyReports.doc).

<sup>38</sup> JUDITH A. REISMAN, *KINSEY: CRIMES AND CONSEQUENCES* 101 (4th ed. 2012).

<sup>39</sup> *Bostic v. Schaefer*, 760 F.3d.352, 368 (4th Cir. 2014); *See also, Kitchen v. Herbert*, 755 F.3d 1193, 1198 (10th Cir. 2014) (referring to Utah's and Oklahoma's marriage laws as "same-sex marriage bans"); *Latta v. Otter*, 771 F.3d 456, 482 (referring to Idaho's and Nevada's marriage laws as "same-sex marriage bans").

<sup>40</sup> *Baskin v. Bogan*, 766 F.3d 648, 654 (7th Cir. 2014).

<sup>41</sup> *DeBoer v. Snyder*, 772 F.3d 388, 406 (6th Cir. 2014).

of the United States and transcends religion, culture and geography, as John Locke indicated when he called marriage “the First Society.”<sup>42</sup> Locke described marriage as:

[A] voluntary Compact between Man and Woman; and tho’ [sic] it consist chiefly in such a Communion and Right in one another’s Bodies, as is necessary to its chief end, Procreation; yet it draws with it mutual Support, and Assistance, and Community of Interest too, as necessary to unite not only their Care and Affection, but also necessary to their common Off-spring, who have a right to be nourished and maintained by them, till they are able to provide for themselves.<sup>43</sup>

That description has carried across time and cultures, as all human societies recognize marriage as a social institution based upon the biological and social *facts* of sexuality and reproduction, enabling society to continue.<sup>44</sup> It is upon that foundation that American society has been built.

#### **A. THE FOUNDERS RECOGNIZED THAT THE UNION OF ONE MAN AND ONE WOMAN IS THE FOUNDATION OF SOCIETY.**

The Founders and the early Supreme Court recognized and respected the transcendence of marriage as the union of one man and one woman, as signers of the Declaration of Independence and the Constitution and one of the first Supreme Court justices, James Wilson, said:

Whether we consult the soundest deductions of reason, or resort to the best information conveyed to us by history, or listen to the undoubted intelligence communicated in holy writ, we shall find, that to the institution of marriage the true origin of society must be traced...[T]o that institution, more than any other, have mankind been indebted for the share of peace and harmony which has been distributed among them...The most ancient traditions of every country ascribe to its first legislators and founders, the regulations concerning *the union between the sexes*.<sup>45</sup>

Since then, the Supreme Court has consistently confirmed that marriage is a fundamental social institution, which by definition is the union of a man and a woman. Marriage thus fosters responsible procreation and child-rearing, “fundamental to the very existence and survival of the race.”<sup>46</sup> Marriage “is an institution in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.”<sup>47</sup> Marriage is not merely a creation of any one civilization or its statutes, but is an institution older than the Constitution and indeed of any laws of any nation.<sup>48</sup>

We deal with a right of privacy older than the Bill of Rights – older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral

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<sup>42</sup> John Locke, TWO TREATIES OF GOVERNMENT 138 (1689).

<sup>43</sup> *Id.*

<sup>44</sup> JOHN CORVINO & MAGGIE GALLAGHER, DEBATING SAME-SEX MARRIAGE 34-35 (1st ed. 2012).

<sup>45</sup> James Wilson, *Of the Natural Rights of Individuals*, Teaching American History (1790), <http://teachingamericanhistory.org/library/document/of-the-natural-rights-of-individuals/>.

<sup>46</sup> *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

<sup>47</sup> *Maynard v. Hills*, 125 U.S. 190, 211 (1888).

<sup>48</sup> *See Griswold v. Connecticut*, 381 U.S. 479, 486 (1965).

loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.<sup>49</sup>

Statutes such as those ostensibly struck down by courts of appeal, “regulate the mode of entering into the contract, but they do not confer the right.”<sup>50</sup>

For, certainly, no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate states of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.<sup>51</sup>

“Marriage is the foundation of the home, and upon it is [built] the entire superstructure of society.”<sup>52</sup> “It finds its defense in every human heart, which jealously guards the one object of its affection.”<sup>53</sup> It is much more than merely gratification of passion, but is an equalizing relationship through which future generations are birthed and educated.<sup>54</sup> “Society, with all its ramifications, being founded upon marriage, it is upon grounds of public policy that it is regulated and protected.”<sup>55</sup>

**B. MILLENIA OF HISTORY HAVE DISTINGUISHED THE  
COMPLEMENTARY, COMPREHENSIVE UNION  
OF ONE MAN AND ONE WOMAN FROM ALL OTHER UNIONS.**

“The principle that marriage is the foundation of society did not originate with the Supreme Court, but reflects millennia of history that have distinguished “those uniquely comprehensive unions consummated by coitus from all others.”<sup>56</sup> In fact, “legal and philosophical traditions have, significantly, long termed [coitus] the *generative* act,” as without coitus, organic conception is impossible.<sup>57</sup> Marriage is a sacred obligation and a civil contract and “[u]pon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal.”<sup>58</sup>

However, “marriage is not a legal construct with totally malleable contours – it is not ‘just a contract.’ Instead, some sexual relationships are of a distinctive kind of bond that has its own value and structure, which the state did not invent and has no power to redefine.”<sup>59</sup> Marriage is

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<sup>49</sup> *Id.*

<sup>50</sup> *Meister v. Moore*, 96 U.S. 76, 78-79 (1877).

<sup>51</sup> *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885) (emphasis added).

<sup>52</sup> *United States v. Cannon*, 7 P.369, 382 *aff’d*, 4 Utah 122 (1885).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> SHERIF GIRGIS ET AL., *WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE* 50 (Encounter Books 2012) (emphasis in original).

<sup>57</sup> *Id.* at 26 (emphasis in original).

<sup>58</sup> *Reynolds v. United States*, 98 U.S. 145, 165 (1878).

<sup>59</sup> GIRGIS ET AL., *WHAT IS MARRIAGE*, *supra* note 56 at 80.



more than merely a name that society gives to the relationship that matters most between two adults:

Marriage is, of its essence, a comprehensive union: a union of will (by consent) and body (by sexual union); inherently ordered to procreation and thus the broad sharing of family life; and calling for permanent and exclusive commitment,...it is also a moral reality: a human good with an objective structure, which is inherently good for us to live out.<sup>60</sup>

In other words, “marriage is a *natural* bond that society or religion can only ‘solemnize.’”<sup>61</sup> “[G]overnments got into the business of defining marriage, and remain in the business of defining marriage, not to regulate love but to regulate sex, most especially the intended and unintended effects of male–female intercourse.”<sup>62</sup>

Once one accepts a need to establish such ground rules, and most especially a need to create a stable family unit for the planned and unplanned creation of children, one can well appreciate why the citizenry would think that a reasonable first concern of any society is the need to regulate male–female relationships and the unique procreative possibilities of them. One way to pursue this objective is to encourage couples to enter lasting relationships through subsidies and other benefits and to discourage them from ending such relationships through these and other means. People may not need the government’s encouragement to have sex. And they may not need the government’s encouragement to propagate the species. But they may well need the government’s encouragement to create and maintain stable relationships within which children may flourish. It is not society’s laws or for that matter any one religion’s laws, but nature’s laws (that men and women complement each other biologically), that created the policy imperative.<sup>63</sup>

Indeed, the importance of maintaining marriage’s complementary structure has been recognized through history. “Important philosophical and legal traditions have long distinguished friendships of all kinds from those special relationships that extend two people’s union along the childrearing.”<sup>64</sup> In fact, “even in cultures very favorable to homoerotic relationships something akin to the conjugal view [marriage as comprehensive union] has prevailed – and nothing like same–sex marriage was even imagined.”<sup>65</sup>

Consequently, laws protecting marriage as the union of one man and one woman are not projecting animus, or in Judge Posner’s words, “discriminat[ing] against the small homosexual minority in the United States.”<sup>66</sup> Instead, they are advocating for social good. “[I]f the law were just targeting homosexual relationships for exclusion, it would have counted *any* sexual act

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<sup>60</sup> *Id.* at 6 (emphasis added).

<sup>61</sup> *Id.* at 2 (emphasis in original).

<sup>62</sup> DeBoer, 772 F.3d. at 404.

<sup>63</sup> *Id.* at 404–05.

<sup>64</sup> GIRGIS, WHAT IS MARRIAGE, *supra* note 58 at 49.

<sup>65</sup> *Id.* at 11.

<sup>66</sup> Baskin, 766 F.3d at 654.

between a man and a woman as adequate to consummate marriage.”<sup>67</sup> However, it did not. Instead, the “law reflected the rational judgment that unions consummated by coitus were valuable in themselves, and different in kind from other bonds.”<sup>68</sup> It is that unique, complementary and procreative bond that is at the heart of the millennia-old recognition that marriage is a union between one man and one woman.

## II. KINSEY’S REPORTS USED FRAUDULENT PSEUDO-SCIENCE TO SPARK CULTURAL TRANSFORMATION, INCLUDING REPLACING COMPLEMENTARY NATURAL MARRIAGE WITH PANSEXUALITY.

If every society for millennia has recognized that marriage is the unique complementary union of one man and one woman and “nothing like same–sex marriage was even imagined,”<sup>69</sup> how has the country come to the point where defining marriage as the union of one man and one woman is condemned as constitutionally irrational?<sup>70</sup> The history of the judicially implemented redefinition of marriage is little more than a decade old.<sup>71</sup> However, it is just part of a several decades-old effort to fundamentally transform society by replacing its Judeo-Christian foundation with the Kinseyan pansexual worldview.

Kinsey’s reports were, and are still, praised as the first “scientific” studies of human sexuality and the catalyst for the sexual revolution. In fact, Judge Posner, who authored the Seventh Circuit decision invalidating Indiana and Wisconsin’s marriage laws, has written that “[t]he two Kinsey reports remain the high-water mark of descriptive sexology” and Kinsey is the “central figure” in the “scholarly science” of sexology.<sup>72</sup> That “scholarly science” was birthed in 1948 when Kinsey and his team of researchers presented the American people with “statistical data” purporting to prove that men and women were far sexually permissive, even promiscuous, than anyone had believed possible.<sup>73</sup> A nation still reeling from the horrors of World War II and enamored with scientific advances was convinced that everything they were told about human sexuality was untrue because a team of “scientists” presented hundreds of pages of data seeming to show what men and women “really” did sexually was far different from what they said they did.<sup>74</sup> Few people realized then or now that the data he presented were neither scientific nor representative of societal norms. More tragically, few, if any, people understood that Kinsey’s claim that children are “sexual from birth” was based upon criminal serial abuse of infants and children as young as two months old.<sup>75</sup> Although presented openly in tables describing “multiple

<sup>67</sup> GIRGIS ET AL., WHAT IS MARRIAGE, *supra* note 56 at 50.

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

<sup>69</sup> *Id.* at 11; *see also*, *De Boer*, 772 F.3d at 404.

<sup>70</sup> *Bostic*, 760 F.3d at 384, *Baskin*, 766 F.3d at 672, *Kitchen*, 755 F.3d at 1229-30; *Latta*, 771 F.3d at 456.

<sup>71</sup> The Massachusetts Supreme Judicial Court invalidated the Commonwealth’s definition of marriage as the union of one man and one woman in 2003 in *Goodridge v. Dep’t of Pub. Health*, 440 Mass. 309, 798 N.E.2d 941 (2003), which prompted the constitutional amendment in Michigan which was upheld in *DeBoer* and Virginia’s Affirmation of Marriage Act, Va.Code Ann. § 20-45 3, which, along with the 2006 voter approved constitutional amendment, was struck down by the Fourth Circuit in *Bostic*, 760 F.3d at 368.

<sup>72</sup> Richard A. Posner, *SEX AND REASON*, 19 (Harvard Univ. Press, 1992).

<sup>73</sup> Ernst & Loth, *AMERICAN SEXUAL BEHAVIOR AND THE KINSEY REPORT*, *supra* note 28 at 81, 83.

<sup>74</sup> Morris Ploscowe, *Sexual Patterns and the Law*, in *SEX HABITS OF AMERICAN MEN*, *supra* note 28, at 126 (Deutsch, ed.).

<sup>75</sup> KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6, Tables 30-34, pp. 176-80.

orgasms” by infants and toddlers over the course of several hours,<sup>76</sup> no one apparently realize that was presented as experimental data was in fact evidence of sexual abuse.

**A. KINSEY’S REPORTS WERE NEITHER SCIENTIFIC NOR OBJECTIVE.**

Kinsey and his research team were convinced that the failure to learn more about human sexuality was the result of repressive religious and social strictures and concomitant legislation that restricted “scientific investigation in this field.”<sup>77</sup> He and his team purported to remedy that problem: “[t]he present study, then, represents an attempt to accumulate an objectively determined body of fact about sex which strictly avoids social or moral interpretations of the fact.”<sup>78</sup> Kinsey’s stated objective was to establish “sexuality as a legitimate objective of scientific inquiry.”<sup>79</sup>

The Kinsey reports were imbued with a façade of scientific objectivity and are still revered by many, including Judge Posner as the “high water mark” in the scientific study of human sexuality.<sup>80</sup> However, the reports were neither scientific nor objective. In a 1949 review of the first Kinsey report, statistician W. Allen Wallis said that “very little is revealed in the statistical data about the number of males covered in the volume.”<sup>81</sup> A map purporting to show the geographic breakdown of the interviewees depicts 21,350 subjects,<sup>82</sup> while another chart shows 12,214 interviewees.<sup>83</sup> Still other statements placed the total number at “about” 6,300<sup>84</sup> or 6,200.<sup>85</sup> Wallis’ own conclusion based upon reading the report was the Kinsey interviewed, as most 4,120 “men.”<sup>86</sup> Kinsey’s co-author Clyde Martin, whom Kinsey designated as his statistician, admitted that the basic sample “is nowhere well described,” leading to continuing confusion.<sup>87</sup> Martin further stated:

I am certain there wasn’t a code to designate which of the case histories were included in the male volume or used in computing prevalence data. [N]ew case histories were being added during preparation of the 1948 publication and some cases were included in some calculations which were not included in prevalence calculations.<sup>88</sup>

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

<sup>77</sup> *Id.* at 3.

<sup>78</sup> *Id.* at 5.

<sup>79</sup> *Id.* at 45.

<sup>80</sup> Posner, *SEX AND REASON*, *supra* note 83 at 19.

<sup>81</sup> W. Allen Wallis, *Statistics of the Kinsey Report*, 248 *JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION*, 463-84 (1949).

<sup>82</sup> *Id.* at 474, citing Kinsey, et. al. *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6 at 5.

<sup>83</sup> KINSEY ET AL., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6 at 10.

<sup>84</sup> *Id.* at 5.

<sup>85</sup> *Id.* at 29.

<sup>86</sup> Wallis, *Statistics of the Kinsey Report*, *supra* note 93, at 463-84. Of course, as discussed *supra*, Kinsey’s definition of men included infants as young as two months old, toddlers and teenagers.

<sup>87</sup> Judith Reisman, *STOLEN HONOR, STOLEN INNOCENCE, HOW AMERICA WAS BETRAYED BY THE LIES AND SEXUAL CRIMES OF A MAD “SCIENTIST”* 52 (New Revolution Publishers 2013), citing Dec. 31, 1990 letter from Clyde Martin to June Reinisch, head of the Kinsey Institute, available in Dr. Reisman’s archive.

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

Fellow co–author Wardell Pomeroy said that they deliberately did not publish the exact figures of the constitution of the population of interviewees because they anticipated that people reviewing the reports would have their own ideas of what percentages of various types of people should be included and the team did not want to spend time defending their numbers.<sup>89</sup> “We anticipated that we would spend the rest of our lives arguing exactly who should be accepted as a normal individual, and who should be ruled out as a low character.”<sup>90</sup>

Kinsey’s team also departed from accepted and sound scientific methodology as recorded in congressional testimony in which Dr. Albert Hobbs said that calling the Kinsey reports “scientific” was false.<sup>91</sup> In addition, he testified:

Apart from the doubtful veracity of the samples of men and women questioned by Kinsey, his statistical methods have been seriously criticized by organs of the American Statistical Association and several scholarly reviewers. But even if the sampling had been representative of American attitudes on sex, and even if all the persons interviewed had been willing to give truthful answers and were psychologically capable of doing so, it seems preposterous to propose that social change should be justified upon empirical inquiry alone.<sup>92</sup>

Most of the information obtained from interviewees was never used. Kinsey team member William Simon stated, “Kinsey interviewed 18,000 people and used only a quarter of the cases in his two reports. Some of the data are still on file, but haven’t ever been coded on the IBM cards for statistical study yet.”<sup>93</sup> The twenty–five percent of the cases that were included belie any claim of objectivity. As the American Statistical Association said, “[t]he ‘sampled populations’ are startlingly different from the composition of the U.S. white male population.”<sup>94</sup> “The inference from [Kinsey’s] sample to the (reported) behavior of all U.S. white males contains a large gap which can be spanned only by expert judgment.”<sup>95</sup> “[T]here was ‘substantial discussion’ of social and legal attitudes about sexual behavior not based on evidence presented.”<sup>96</sup>

#### **B. KINSEY’S SUBJECTS AND FINDINGS WERE ABERRANT BUT ACCEPTED AS REPRESENTATIVE.**

The “sampled populations” referenced by the statisticians for the male volume included about 1,400 convicted sex offenders, about 319 non-sex offender prisoners, 200 sexual psychopath patients, more than 450 homosexuals and about 300 people from what Kinsey called “the underworld,” *i.e.*, those who derive significant income from illicit activities.<sup>97</sup> The “sampled

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<sup>89</sup> Wardell Pomeroy, DR. KINSEY AND THE INSTUTUE FOR SEX RESEARCH 293 (Harper and Row 1972).

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

<sup>91</sup> Rene Wormser, ed. FOUNDATIONS 104 (Covenant House Books 1993).

<sup>92</sup> *Id.*

<sup>93</sup> As quoted in Arno Karlen, SEXUALITY AND HOMOSEXUALITY 456 (W.W. Norton, Inc. 1971).

<sup>94</sup> James H. Jones, ALFRED C. KINSEY, A PUBLIC/PRIVATE LIFE, 638-48, 653-65, 683 (W.W. Norton 1977).

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

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

<sup>97</sup> Reisman, STOLEN HONOR STOLEN INNOCENCE, *supra* note 99 at 91-92, citing Kinsey, et. al., SEXUAL BEHAVIOR IN THE HUMAN MALE, *supra* note 6 at 13-16, 78, 176.

populations” also included from 319 to 1,888 male infants and children.<sup>98</sup> For the female volume, Kinsey stated that he had interviewed 7,789 “females,” which included 216 underage girls, about seven of whom were under age four.<sup>99</sup> Of the 7,789, Kinsey removed 1,849, including 934 non-white women and girls and 915 prison inmates from the final sample from which he made his findings.<sup>100</sup>

Kinsey’s findings, upon which a fundamental societal transformation has been based, purported to show that ninety-five percent of American men were engaging in sexual conduct that was illegal under the existing criminal laws. In particular, Kinsey claimed that sixty-seven percent to ninety-eight percent of American men had premarital sex; sixty-nine percent of white men had at least one experience with a prostitute and fifty percent had committed adultery.<sup>101</sup> Among the more widely quoted of Kinsey’s findings are that from ten to thirty-seven percent of men engaged in homosexual sodomy at some point in their lives and that forty-seven percent “reacted to” both sexes at some point in their adult lives.<sup>102</sup> Kinsey also claimed that up to fifty percent of men raised on farms had sexual contact with animals.<sup>103</sup> In fact, Kinsey stated:

With most males, animal contacts represent a passing chapter in the sexual history. They are replaced by coitus with human females as soon as that is available. On the other hand, the male who has any considerable amount of animal experience may become aroused by contemplating such possibilities, even years after he has stopped having sexual contacts. All in all, there is probably no type of human sexual behavior which has been more severely condemned by that segment of the population which happens not to have had such experience, and which accepts the age-old judgment that animal intercourse must evidence a mental abnormality, as well as an immorality.<sup>104</sup>

In order to illustrate his conclusions regarding male sexuality, Kinsey developed a “scale” that has become a cornerstone for the subsequent transformative societal and legal changes, including the decisions dismantling natural marriage.<sup>105</sup> Kinsey placed individuals along a seven point scale for each period of their lives, with zero denoting solely heterosexual and six denoting solely homosexual.<sup>106</sup> In defining heterosexual and homosexual “experiences,” Kinsey included not only physical sexual contact, but also “psychic” or “socio-sexual” responses, which could include dreams and fantasies.<sup>107</sup> In addition, an individual would be considered as having one homosexual experience if he was an involuntary participant, such as being drunk, drugged or

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<sup>98</sup> *Id.* at 139-52, citing Kinsey, et. al., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra*, note 6, Tables 30-24, pp. 176-80.

<sup>99</sup> Kinsey, et al., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE*, *supra* note 6 at 22, 31-32, 105.

<sup>100</sup> *Id.* at 22.

<sup>101</sup> Kinsey, et. al., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6 at 549-552, 586-87, 597.

<sup>102</sup> *Id.* at 650-51, 656.

<sup>103</sup> *Id.* at 671.

<sup>104</sup> *Id.* at 677.

<sup>105</sup> *Id.* at 639

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 60-41.

asleep.<sup>108</sup> Based upon that rating system, Kinsey opined that ten percent to thirty-seven percent of men were “homosexual” during at least some part of their lives, and the majority of men were bisexual.<sup>109</sup> Notably, Kinsey concluded that sexuality was not a fixed constant, but a fluid continuum subject to change throughout an individual’s lifetime.<sup>110</sup>

Males do not represent two discrete populations, heterosexual and homosexual. The world is not to be divided into sheep and goats. Not all things are black nor all things white. It is a fundamental of taxonomy that nature rarely deals with discrete categories. Only the human mind invents categories and tries to force facts into separated pigeon-holes. The sooner we learn this concerning human sexual behavior, the sooner we shall reach a sound understanding of the realities of sex.<sup>111</sup>

Those realities with regard to women, according to Kinsey’s 1953 second volume, were that without social restrictions, girls and women would be sexually active from birth until death.<sup>112</sup> In particular, Kinsey claimed that forty percent of women engaged in premarital sex, twenty-six percent committed adultery and twenty-eight percent had a homosexual relationship lasting at least three years.<sup>113</sup> Notably, Kinsey, defined “married” for purposes of the report on female sexuality as “living with heir spouses either in a formally consummated legal marriages or in common-law relationships which had lasted for at least a year.”<sup>114</sup>

### C. KINSEY RECASTS STATUTORY RAPE, INCEST AND CHILD MOLESTATION AS “PRE-ADOLESCENT SEXUAL EXPERIENCES

Kinsey also recorder what he called “pre-adolescent sexual contact with adult males.”<sup>115</sup> He defines an adult male as: “one who has turned adolescent and who at least fifteen years of age; and in order to eliminate experiences that amount to nothing more than adolescent sex play, we have considered only those cases in which the male was at least five years older than the female, while the female was still pre-adolescent.”<sup>116</sup> Based upon that definition, Kinsey reported that twenty-four percent of the female interviewees had been approached for or actually had sexual contact, with eighty percent reporting one incidence, twelve percent reporting two, three percent reporting three to six incidents, and five percent reposting nine or more.<sup>117</sup> He reported that fifty-two percent of the “adult males” were strangers, thirty-two percent “friends or acquaintances,” and twenty percent family members, including fathers, grandfathers, uncles and brothers.<sup>118</sup> Kinsey claimed that repetitive incidents were most common with relatives living in the same household.<sup>119</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 90.

<sup>110</sup> *Id.* at 639.

<sup>111</sup> *Id.*

<sup>112</sup> Kinsey, et al., *SEXUAL BEHAVIOR IN THE HUMAN FEMALE*, *supra* note 6 at 115-16.

<sup>113</sup> *Id.* at 237.

<sup>114</sup> *Id.* at 53.

<sup>115</sup> *Id.*

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

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

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

He claimed that in “many instances, the experiences were repeated because the children had become interested in the sexual activity and had more or less actively sought repetitions of their experience.”<sup>120</sup>

Kinsey’s claim that the young girls “actively sought” sexual experiences was in keeping with his assertion in the *Male* volume that children are sexual from birth.<sup>121</sup> Kinsey stated that his data on “the sexual activities of the younger males provide an important substantiation of the Freudian view of sexuality as a component that is present in the human animal from earliest infancy....”<sup>122</sup> One table presents figures representing “pre-adolescent” sexual “experiences.”<sup>123</sup> One table presents figures representing “pre-adolescent eroticism and orgasm” showing “males” as young as one year old.<sup>124</sup> A table labeled “pre-adolescent experience in orgasm” describing data said to be based upon “actual observation of 317 males” from *two months old*.<sup>125</sup> Kinsey also included a table showing the “speed of pre-adolescent orgasm” describing 188 cases of “males” from *five months* to “adolescence” whose “duration of stimulation before climax[es]” were timed using “second hand or stop watch.”<sup>126</sup> Another table reported “multiple orgasms” of 182 “males,” which Kinsey said showed suggested “the capacities of pre-adolescent boys in general.”<sup>127</sup> A more detailed report of “multiple orgasm in pre-adolescent males” listed children from *five months* to fourteen years of age who were observed having from three to as many as twenty-six “orgasms” over the course of a few minutes to twenty-four hours.<sup>128</sup> Kinsey nonchalantly discusses the data in these charts:

Even the youngest males, as young as five months of age, are capable of such repeated reactions. Typical cases are shown in Table 34. The maximum observed was twenty-six climaxes in twenty-four hours, and the report indicates that still more might have been possible in the same period of time.<sup>129</sup>

Kinsey associates revealed years after the information was already being used to transform law and society that the data in the tables were compiled from records of serial child rapists, including Nazi Fritz von Balluseck and Rex King, who provided Kinsey with record detailing his sexual assaults on hundreds of children.<sup>130</sup> Those records provided the material for the chapter on “child sexuality” and also gave Kinsey the six-part definition of childhood “orgasm” that was reproduced in the *Male* volume.<sup>131</sup> According to Kinsey, children were experiencing “orgasm” when they exhibited: body tension, twitching, rigidity, extreme tension with violent convulsions,

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<sup>120</sup> *Id.* at 118.

<sup>121</sup> Kinsey, et.al., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6, especially, Tables 30-34, pp. 175-80.

<sup>122</sup> *Id.* at 180.

<sup>123</sup> *Id.*, Tables 30-34, pp. 175-80.

<sup>124</sup> *Id.* Table 30, p.175.

<sup>125</sup> *Id.* Table 31, p.176 (emphasis added).

<sup>126</sup> *Id.* Table 32, p.178.

<sup>127</sup> *Id.* Table 33, p.179.

<sup>128</sup> *Id.* Table 34, p. 180(emphasis added).

<sup>129</sup> Kinsey, et.al., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6 at 180.

<sup>130</sup> Reisman, *STOLEN HONOR, STOLEN INNOCENCE*, *supra* note 99 at 136-39.

<sup>131</sup> *Id.*

hysterical laughing or talking, extreme trembling, collapse fainting, excruciating pain and screaming, pulling away from the “partner” (Kinsey’s term for the adult rapist).<sup>132</sup> Kinsey added that the young boys “derive definite pleasure from the situation.”<sup>133</sup> Kinsey’s observations were gleaned from first-hand knowledge since he verified King’s information by “looking for himself,” *i.e.* conducting his own observations of young boys being assaulted by adults.<sup>134</sup>

Kinsey’s books were meant to convince the public that human beings are sexual from “womb to tomb.”<sup>135</sup> Kinsey’s co-author and successor as head of the Kinsey institute, Paul Gebhard told a television interviewer that they accomplished their goal, thanks in large part to King who “contributed a fair amount to our knowledge and medicine’s knowledge of sexuality in children.”<sup>136</sup> “We made our point that children are sexual from birth.”<sup>137</sup> Kinsey also purported to show that there was no appreciable harm from such early sexual experiences, saying in the *Female* volume that cases in which adults physically harm children during 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>138</sup> As co-author Wardell Pomeroy said: 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>139</sup>

Kinsey dismissed any categorization of sexual conduct as “normal” or “abnormal.”<sup>140</sup> Instead, he claimed that “science” had “proven” that individuals could obtain an orgasm, what he termed a “sexual outlet” from any, some or all six sources: “masturbation, spontaneous nocturnal emissions, petting, heterosexual intercourse, homosexual contacts and animal contacts,” which are merely variable reactions to particular stimuli.<sup>141</sup> Notions that a particular type of sexual individual conduct is “abnormal” arise from external factors such as religious belief, social pressures and individual experience, not from any moral imperative such as right or wrong.<sup>142</sup> According to Kinsey “the scientific data which are accumulating make it appear that, if circumstances had been propitious, most individuals might have become conditioned in any direction, even into activities which they now consider quite socially unacceptable,”<sup>143</sup> Kinsey’s closing comment in the *Male* volume appropriately summarized his underlying thesis: “there is an abundance of evidence that most human sexual activities would become comprehensible to

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<sup>132</sup> Kinsey, et. al., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6 at 160-161.

<sup>133</sup> *Id.* at 161.

<sup>134</sup> Reisman, *STOLEN HONOR, STOLEN INNOCENCE*, *supra* note 99 at 148, quoting Kinsey biographer Jonathan Gathorne-Hardy’s interview on the documentary *SECRET HISTORY: KINSEY’S PAEDOPHILES* (Yorkshire Television, August 10, 1998).

<sup>135</sup> *Id.* at 149.

<sup>136</sup> *Id.* quoting Gebhard’s interview on *KINSEY’S PAEDOPHILES*.

<sup>137</sup> *Id.*

<sup>138</sup> Kinsey, et. al. *SEXUAL BEHAVIOR IN THE HUMAN FEMALE*, *supra* note 6 at 121-22.

<sup>139</sup> Pomeroy, Dr. Kinsey and Institute for Sex Research, *supra* note 100 at 2017-08.

<sup>140</sup> Kinsey, et.al., *SEXUAL BEHAVIOR IN THE HUMAN MALE*, *supra* note 6 at 678.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*



most individuals, if they could know the background of each other individual's sexual behavior.<sup>144</sup>

**III. THE KINSEY REPORTS LAUNCHED A TSUNAMI AS CULTURAL CHANGE OF AGENTS CALLED FOR FUNDAMENTAL TRANSFORMATION OF BEHAVIORAL SCIENCES, LAW, AND OTHER DISCIPLINES TO CONFIRM TO KINSEY'S PANSEXUAL WORLDVIEW.**

As *Sexual Behavior in the Human Male* was released amid media frenzy, it soon became apparent that Kinsey did more than document American sexual behavior. He challenged the legitimacy of public regulation of sexual conduct through morality.<sup>145</sup> It did not take long for cultural change agents to recognize that and begin calling for a jettisoning of the Judeo-Christian worldview which underlay existing standards in the behavioral sciences, law, and other disciplines in favor of the pansexual worldview portrayed by Kinsey.

**A. The Behavioral Sciences Embrace Kinsey Based on Transformation**

Leaders in the behavioral sciences demonstrated their willingness to stand behind Kinsey's ideas regarding moral deregulation soon after the *Male* volume was released. Kinsey personally met with many of the leaders and helped shaped their recommendations for normalizing homosexuality and lessening penalties for child molestation and other conduct.

**i. The Group for the Advancement of Psychiatry**

Manfred Guttmacher, chair of the Group for the Advancement of Psychiatry ("GAP), met with Kinsey for two days to discuss a GAP paper on sexually deviant sex offender, which was released in 1949 and revised in 1950.<sup>146</sup> Kinsey's influence was apparent in the published paper: "The preponderance of persons who carry out sex offenses for which they are punishable by our current laws are not involved in behavior fundamentally different from taht commonplace in the population."<sup>147</sup> Based upon that, the psychiatrist group "urged a general decriminalization of illicit sexual behavior, saying that 'some laws should be revised and perhaps some entirely abandoned.'"<sup>148</sup> Echoing Kinsey's "child sexuality" data, GAP's suggestions including lessening penalties for sex with children, stating that the rules regarding the legal status of minors (which was then defined as under age twenty-one) regarding sexual relations be "clarified" because:

**3 Age Disparity (Relations Involving One Adult)**

In general, persons under the age of seven are legally regarded as not responsible... On the other hand the legal definition of the minor ignores the intervening events of puberty and

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<sup>144</sup> *Id.*

<sup>145</sup> David Allyn, *Private Acts/ Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality*, 30 J. OF AMERICAN STUDIES 416-17 (1996).

<sup>146</sup> *Id.* at 420, citing COMMITTEE ON FORENSIC PSYCHIATRY OF THE GROUP FOR THE ADVANCEMENT OF PSYCHIATRY, *Psychiatrically Deviated Sex Offenders*, REP NO. 9 (May 1949).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

the large variations in physical and emotional maturity observed in many persons stamped as minors... many are 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 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.<sup>149</sup>

GAP explicitly acknowledged “the invaluable assistance and guidance of its consultants respectively, Alfred C. Kinsey, Professor of Zoology, Indiana University...”<sup>150</sup> Guttmacher later wrote that “Kinsey’s findings were the points by which we steered. The debt that society will owe to Kinsey and his co-workers for their researches on sexual behaviour, will be immeasurable.”<sup>151</sup>

GAP continued to be involved in the transformation of the behavior sciences. In 1968, its President, Judd Marmor, hand-picked the members of the National Institute of Mental Health (NIMH) Task Force on Homosexuality, with the goal of normalizing homosexuality.<sup>152</sup> Marmor praised the Kinsey reports as scientific and objective studies of human sexuality.

[I]n the late 1940s and early 1950s, I was impressed by the publication of the Kinsey group’s historic studies of male and female sexuality which seemed to me to be praiseworthy efforts to study the problems of human sexuality more objectively and scientifically.<sup>153</sup>

His appreciation for Kinsey’s work extends to the member of the NIMH Task Force, which included Kinsey self defined, “amoral”<sup>154</sup> co-author Paul Gebhard and psychologist Dr. John Money, who pioneered transsexual surgery. Money said “adult sex with children was normal, often beneficial, that age of consent laws should be eliminated, and that he would never report anyone accused of child sex abuse.”<sup>155</sup> The Task Force was chaired by psychologist Evelyn Hooker, whose flawed 1957 article, *The Adjustment of the Male Overt Homosexual* is credited by homosexual activists as having proven that homosexuality is normal.<sup>156</sup>

The final report reflected the group’s admiration for and reliance upon Kinsey:

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 4.

<sup>151</sup> Allyn, *Private Acts/Public Policy*, *supra* note 155, at 420, citing Manfred Guttmacher, *The Kinsey Report and Society*, 70 *SCIENTIFIC MONTHLY* 291-94 (May 1950).

<sup>152</sup> Jeffrey Satinover, *The “Trojan Couch”: How the Mental Health Associations Misrepresent Science 2*, available at <http://narth.org/docs/TheTrojanCouchSatinover.pdf>. (last visited January 22, 2015).

<sup>153</sup> Vernon A. Rosario, *An Interview with Judd Marmor*, 7 *J. OF GAY & LESBIAN PSYCHOTHERAPY* 26 (2003), available at [vrosario.bol.ucla.edu/CV/Marmor.pdf](http://vrosario.bol.ucla.edu/CV/Marmor.pdf).

<sup>154</sup> William H. Masters, Virginia A. Johnson, & Robert C. Kolodny (eds.), *ETHICAL ISSUES IN SEX THERAPY AND RESEARCH, REPRODUCTIVE BIOLOGY RESEARCH FOUNDATION CONFERENCE* 13 (Little, Brown, 1977).

<sup>155</sup> Satinover, *The Trojan Couch*, *supra* note 162, at 2; Reisman, *SEXUAL SABOTAGE*, *supra* note 15, at 223, citing *Interview with John Money*, *PAIDIKA: THE JOURNAL OF PAEDOPHILIA* 12 (Spring 1991).

<sup>156</sup> *Id.* at 1; See also, William N. Eskridge, Jr., *Gadamer/Statutory Interpretation*, 90 *COLUM. L. REV.* 609, 671 (1990) (Dr. Evelyn Hooker first demonstrated that a representative sample of gay men had no more psychopathology than other men.).

In 1969, the Task Force issued its report. It claimed, parroting the Kinsey reports almost word-for-word, that sexuality was continuum from exclusive homosexuality to exclusive heterosexuality, and that some degree of bisexuality was the human norm. Without evidence, it stated that any homosexual suffering was caused by societal prejudice. (It avoided mentioning, however, that in Kinsey’s view, human sexual taste was almost infinitely malleable.) Thus, there was no problematic with homosexuality per se.<sup>157</sup>

**ii. Behavioral Science Professional Associations Use Kinsey to Normalize Homosexuality**

With GAP and NIMH Task Force reports in place, the next stop for the Kinsey worldview changed agents was the behavioral science professional associations, beginning with the American Psychiatric Associations (“APA”).<sup>158</sup> Marmor became vice-president of the APA and, quoting Kinsey’s data aided by Pomeroy and other Kinsey Institute members pressured the APA, to drop homosexuality as a psychiatric disorder from the Diagnostic and Statistical Manual (“DSM”) in 1973.<sup>159</sup> The APA used Kinsey’s “data” to argue “exclusive homosexuality was a normal part of the human condition and homosexuality did not meet the requirements of a psychiatric disorder because the “data” prove it does not cause “subjective distress or is regularly associated with some generalized impairment in social effectiveness or functioning.”<sup>160</sup>

The other leading behavioral science organizations, the American Psychological Association and National Association of Social Workers followed within two years.<sup>161</sup> In 1997, the APA further incorporated the Kinsey bogus worldview when it changed its classification system for paraphilias (*i.e.*, sado-masochism, pedophilia, fetishism) by saying these would be diagnosed as disorders “only if the impulses or activities in question interfered with other functioning or caused distress to the individual himself.”<sup>162</sup> Inevitably, in 2002 the American Psychological Association published an article arguing that pedophilia was not harmful.<sup>163</sup>

In 2003, the organizations would join together to transform law by submitting amicus curiae briefs in *Lawrence v. Texas*, which decriminalized homosexual sodomy.<sup>164</sup> By that time, legal change agents had already been hard at work for more than fifty years rewriting legal standards to conform to Kinsey’s worldview.

**B. Legal Scholars, Legislatures, and Courts Embrace Kinseyan Worldview**

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<sup>157</sup> *Id.* at 2.

<sup>158</sup> *Id.*

<sup>159</sup> Satinover, *The Trojan Couch*, *supra* note 162, at 3-4; Reisman, *SEXUAL SABOTAGE*, *supra* note 15 at 223, citing *Interview with John Money*, *PAIDIKA: THE JOURNAL OF PAEDOPHILIA* 12 (Spring 1991).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 4.

<sup>162</sup> *Id.* at 5.

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

<sup>164</sup> *Id.* at 5-6. *Lawrence v. Texas*, 539 U.S. 558 (2003).

As then President Ronald Reagan said in 1981, “For most of the past thirty years [since 1951] justice has been unreasonably tilted in favor of criminals and against their innocent victims. This tragic era can be fairly described as a period when victims were forgotten and crimes were ignored.”<sup>165</sup> That phenomenon can be traced to the dissemination and promotion of the Kinsey reports in academia, the legislatures and the courts.

Actually, the tilting of justice in favor of criminals with regard to sex offenses began in 1948 when legal experts rallied behind Kinsey, using his “expertise” to mount efforts to change the law to correspond with his worldview.<sup>166</sup> Four books analyzing the 804 page book called for fundamental social and legal changes based upon its findings within months of the *Male* 1948 publication.<sup>167</sup> By early 1949 Kinsey was meeting with leaders in politics and academia and testifying before legislative commissions helping to overhaul laws regulating sex offense crimes.<sup>168</sup> By March 10, 1949, the New Jersey Senate created a commission to study sex crimes and Kinsey was their key expert. Consider his influence on their findings of the benign nature of sex criminals and the ridicule of those who sought tough laws to protect the public:

It has been carefully estimated by Dr. Kinsey that not more than five percent of our convicted sex offenders are of a dangerous variety, exercising force or injury upon a victim.... The sex fiend as portrayed by Dr. Wittels, et al, is a rare phenomenon in the criminal history of any state: the tens of thousands that he hypothesizes are the much publicized creatures of his well stirred imagination.<sup>169</sup>

In 1949, Kinsey explained to California legislators that his extensive data on children proved they are unharmed by sex; that molesters do not repeat their crimes and therefore sex criminals should be paroled.<sup>170</sup> In 1951, Kinsey spent a day reviewing data with members of the Illinois Commission on Sex Offenders, whose chairman, Frank Allen, reported that Kinsey’s findings “permeate all presenting thinking on the subject.”<sup>171</sup> Allen’s commission recommended decriminalizing private consensual homosexual sodomy.<sup>172</sup> In 1955, Kinsey told the Congress of Correction - a four day meeting sponsored by the American Correctional Association in Des Moines, Iowa – that there was no evidence of either an increase or a decrease in sex crimes over the last fifty years.

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<sup>165</sup> Ronald Reagan, *Crime Victims Handbook* Preface (U.S. Department of Justice 1981).

<sup>166</sup> Allyn, *Private Acts/Public Policy*, *supra* note 155 at 421.

<sup>167</sup> Deutsch, ed., *SEX HABITS OF AMERICAN MEN*; Ernst, & Loth, *AMERICAN SEXUAL BEHAVIOR AND THE KINSEY REPORT*; Guyon, *THE ETHICS OF SEXUAL*; Geddes & Currie, eds. *ABOUT THE KINSEY REPORT*, *supra* note 27.

<sup>168</sup> Tamara Rice Lave, *Only Yesterday: The Rise And Fall Of Twentieth Century Sexual Psychopath Laws*, 69 *LA. L. REV.* 549, 561 (2009).

<sup>169</sup>*Id.* at 561-62, citing Paul W. Tappan, *The Habitual Sex Offender: Report And Recommendations Of The Commission On The Habitual Sex Offender* 13-14 (1950).

<sup>170</sup> THE SUBCOMMITTEE ON SEX CRIMES OF THE ASSEMBLY INTERIM COMMITTEE ON JUDICIAL SYSTEM AND JUDICIAL PROCESS (Preliminary Report), H. Res. 232-1949, 43-1949 at 103, 105, 117 (Cal.1949).

<sup>171</sup> William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws In America 1861-2003*, 120 (2008).

<sup>172</sup> *Id.* at 121.

Based upon these presentations, as well as the Kinsey reports, legal scholars began an orchestrated effort to fundamentally gut laws that had been based on longstanding Judeo-Christian principles “designed to protect the family.”<sup>173</sup>

**i. ACADEMIA CALLS FOR OVERHEAD SEX OFFENSE LAWS**

As noted, within months of the *Male* book’s release, books and law review articles were touting the Kinsey reports as authoritative evidence of the need for liberalizing sex laws. Perhaps one of the more revealing statements comes from Kinsey’s lawyer and a co-founder of the ACLU, Morris Ernst. “[O]ur laws and customs are designed to protect the family, and at the base of the family is the father.”<sup>174</sup> “Yet Kinsey found father is quite different from anything the general public has supposed....”<sup>175</sup> Pronouncing Kinsey’s data as representative and accurate, Ernst said Kinsey disproved what most Americans had believed:

...that sexual activity for men outside the marriage bond is as rare as it is offensive to the publicly proclaimed standards of the people... strengthened by the bulk of popular literature and entertainment... [and] the almost savage penalties which many State laws attach to such activities [adultery].<sup>176</sup>

Similarly, Judge Morris Ploscowe touted Kinsey’s data as authoritative; “virtually every page of the Kinsey Report touches on some section of the legal code... law, like our social pattern, falls lamentably short of being based on a knowledge of facts.”<sup>177</sup> Quoting Kinsey, Judge Ploscowe said that “a total cleanup of sex offenders...[would] put 95% of the male population in jail.”<sup>178</sup>

[E]nforcement of the prohibitions of sex legislation [are a] failure, our sex crime legislation is completely out of touch with the realities of [life]. [T]he law attempts to forbid an activity which responds to a wide human need.... [N]o bar association, law school journal, or lawyers’ committee can consider laws... on sexual matters without reference to the Kinsey study. Kinsey’s first volume ended an era.... [It is] the single greatest contribution of science to the ... law in my lifetime [more than] the Brandeis Brief.<sup>179</sup>

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<sup>173</sup> Ernst & Loth, *AMERICAN SEXUAL BEHAVIOR AND THE KINSEY REPORT*, *supra*, note 27 at 81,83.

<sup>174</sup> *Id.*

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

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

<sup>177</sup> Morris Ploscowe, *Sexual Patterns and the Law*, *SEX HABITS OF AMERICAN MEN* 125 (Albert Deutsch, ed., 1948).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 125-26

Among those contributions was “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.”<sup>180</sup>

The reference to social group is curious since Kinsey staffer William Simon reported that Kinsey never used seventy-five percent of his alleged 18,000 interviews.<sup>181</sup> Sixty-eight percent of the interviews were conducted when normal men were in the military.<sup>182</sup> Moreover, prisoners and at least 630 non-serving homosexuals were included in what Kinsey called the normal “data.”<sup>183</sup> Whose “social group” was represented? Plowscow did not mention that 1,400 sex criminals were part of Kinsey’s “normal” population.<sup>184</sup>

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>185</sup>

Plowscow renewed the call for fundamental changes in the criminal law in 1951: “The findings of the book by Kinsey, Pomeroy, and Martin, henceforth referred to as Kinsey report, would seem to require a drastic re-examination of our statutes relating to sexual offenses.”<sup>186</sup>

One commentator noted that “if Dr. Kinsey’s statistics are reasonably accurate, then the multitude of people in this country who do not conform to the sex laws either go undetected or are consciously ignored by the law enforcement agencies.”<sup>187</sup> The “absurdity of enforcing most of our sex laws... should be obvious, even to the most prudish Neo-Puritans.”<sup>188</sup>

Judge Orville Richardson also pushed for legal reform because “Kinsey reported in 1948 as to males and in 1953 as to females about one-half of all married makes and about one-quarter of all married females commit at least one adulterous act, and [s]ome 56 percent of all males have had some homosexual contact by age 55.”<sup>189</sup> According to Richardson, “the good people... speaking through their legislature, are as yet unwilling to grant sexual liberties to their neighbors, which, at least according to Dr. Kinsey, they allow themselves.”<sup>190</sup> “Only an intellectually numb person can still maintain that the criminal law, with the traditional means at its command, can enforce the sexual standard which it endorses. It cannot, and we must face the fact.”<sup>191</sup> Among

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

<sup>181</sup> Karlen, *SEXUALITY AND HOMOSEXUALITY*, *supra* note 104 at 456.

<sup>182</sup> Kinsey, et. al., *SEXUAL BEHAVIOR IN THE MALE*, *supra* note 6 at 10.

<sup>183</sup> Wardell Pomeroy, *Dr. Kinsey and the Institute for Sex Research*, Harper & Row, New York, 1972, at 70.

<sup>184</sup> *Id.*, at 144, 208, 211.

<sup>185</sup> *Id.* at 125-26, 133-34.

<sup>186</sup> Morris Plowscow, *Sex and the Law*, 130 (Ace Books revised and enlarged ed. 1962).

<sup>187</sup> Note, *Pedophilia, Exhibitionism and Voyeurism: Legal Problems in the Deviant Society*, 4 GA L. REV. 149 (1969).

<sup>188</sup> *Id.*

<sup>189</sup> Orville Richardson, *Sexual Offenses Under the Proposed Missouri Criminal Code*, 38 MO. L. REV. 371, 379 (1973).

<sup>190</sup> *Id.* at 371 n1.

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

the facts that Judge Richardson said society must face was that men punished under sex offenders statutes “are punished are dealt with cruelly, to the satisfaction of no one except a shrinking frenetic fringe of maniacal moralist.”<sup>192</sup>

Edwin Sutherland, a colleague of Kinsey’s at Indiana University, also joined the call for fundamental change based upon Kinsey’s studies, saying that hundreds of homosexuals can be found in any large city, few are arrested because their activities “constitute little danger to the rest of society.”<sup>193</sup> “Many of these perverts have good standing in society,” were of above average intelligence and education, and were generally “law-abiding and hard working.”<sup>194</sup> Since Kinsey had “indicated that more than fifty percent of the males studied, who had arrived at middle age, have had some homosexual experience in their lifetimes,” their conduct should not be punished.<sup>195</sup> Judge Ploscowe agreed. Sex offenders “are not for the most part degenerate sex fiends who are potential killers. Nor are they individuals with persistent patterns of illicit sexual activity who graduate from minor crimes to atrocious major offenses.”<sup>196</sup> Ploscowe suggested:

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 mentally abnormal individual, a psychopath, or a potentially dangerous sex offender.<sup>197</sup>

This perspective incorporates the Kinsey principle that children are sexual from birth, upon which other legal academicians relied in their calls for fundamental transformation of laws related to sexual offenses. For example, Tulane University professors Ralph Slovenko and Cyril Phillips based their call for reform, in part, on their claim that “[e]ven at the age of four or five,” a child’s “seductiveness may be so powerful as to overwhelm the adult into committing the offense.”<sup>198</sup>

Such statements permeated legal scholarship in the years immediately following the release of the Kinsey reports and for decades afterward. Among the commentators calling for reform of the laws to correspond to the Kinsey report was Hugh Hefner, who founded *Playboy* magazine to fulfill his mission as “Kinsey’s pamphleteer.”<sup>199</sup> Hefner authored a law review article in which he wrote;

Dr. Kinsey and his associates found that sexual activity varies greatly, in both form and incidence, depending upon educational and social background... virtually impossible to find a single male who has not had sexual intercourse by the time he

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<sup>192</sup> *Id.* at 372.

<sup>193</sup> Edwin H. Sutherland, *The Sexual Psychopath Laws*, 40 J. CRIM. L. & CRIMINOLOGY 543, 546 (1950).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> Lave, *Only Yesterday*, *supra* note 177, at 562, quoting Ploscowe, *Sex and the Law* at 202.

<sup>197</sup> *Id.*, quoting Ploscowe, *Sex and the Law* at 202.

<sup>198</sup> Ralph Slovenko & Cyril Phillips, *Psychosexuality and the Criminal Law*, 15 VAND. L. REV. 797, 809 (1962).

<sup>199</sup> Reisman, *STOLEN HONOR, STOLEN INNOCENCE*, *supra* note 99 at 102.

reaches his mid-teens.... According to Kinsey, they repudiate the doctrine that intercourse should be restricted to marital relations. Nearly all ignore the legal limitation on intercourse outside of marriage.<sup>200</sup>

Therefore, according Hefner and his fellow commentators, those legal limitations should be removed and wholly new laws regarding sexual behavior should be adopted nationwide.<sup>201</sup>

**ii. THE ALI MODEL PENAL CODE REFORMS CRIMINAL LAW INTO THE KINSEY MOLD**

The reforms called for by Hefner and his fellow commentators were realized in the American Law Institute's ("ALI") Model Penal Code's ("MPC") revisions of laws related to sexual offenses. The MPC sexual offense provisions became the foundation for court decisions, including *Lawrence v. Texas*, upon which the decisions invalidating marriage laws have been based. The ALI MPC was foundational in other controversial cases, such as legalizing abortion.<sup>202</sup>

Many calling for changed, including Ploscowe, Louis Schwartz<sup>203</sup>, and Herbert Wechsler<sup>204</sup>, and those who helped usher in changes in their own states, including Allen from Illinois and Tappan from New Jersey, were tasked by the ALI to draft a new model criminal code law addressing sexual offenses.<sup>205</sup> The task force reviewed the Kinsey reports, among reams of other arterial, and submitted a recommendation to the ALI Council in 1953-54.<sup>206</sup> The recommendation included decriminalization of private consensual sodomy. Many council members, including Fourth Circuit judge John J. Parker, did not support decriminalization so a new draft was prepared making it a misdemeanor.<sup>207</sup> Kinsey's reports were featured prominently in the sex crime comments which justified decriminalization because, due to the alleged high number of homosexuals and therefore the frequency of homosexual sodomy, the laws were not enforced and sodomy this posed no harm to secular interests of the community.<sup>208</sup> On May 19, 1955, the ALI narrowly approved the sex offenses section with the original language

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<sup>200</sup> Hugh M. Hefner, *The Legal Enforcement of Morality*, 40 U. COLO. L. REV. 199, 201-02 (1968). Hefner however did not live up to Kinsey's data, as a 22 year old virgin; Reisman, *SEXUAL SABOTAGE*, *supra* note 15 at 104, citing Hugh Hefner, *Sunday Plain Dealer*, Cleveland Ohio, (Jan. 11, 1976).

<sup>201</sup> *Id.* at 200.

<sup>202</sup> *Roe v. Wade*, 410 U.S. 113, 139-40 (1973): "In the past several years, however, a trend toward liberalization of abortion statutes has resulted in adoption, by about one-third of the States, of less stringent laws, most of them patterned after the ALI Model Penal Code, s 230.3,37 set forth as Appendix B to the opinion in *Doe v. Bolton*, 410 U.S. 205, 93 S.Ct. 754."

<sup>203</sup> Louis B. Schwartz, *Sexual Behavior in the Human Male*, 96 U. PA. L. REV. 1947, 1947-48 (1948); Louis Schwartz, *Morals Offenses and the Model Penal Code*, in *MORALITY AND THE LAW* 90, 91 (R.A. Wasserstrom, ed., 1971).

<sup>204</sup> Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARVARD L. REV. 1097 (1952); Herbert Wechsler, *Codification Of Criminal Law In The United States: The Model Penal Code*, 68 COLUMBIA L. REV. 1425 (1968).

<sup>205</sup> *supra* note 178 at 121.

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

<sup>207</sup> *Id.* at 121-23

<sup>208</sup> *Id.* at 122, *citing*, ALI, *Model Penal Code*, Commentary 277-80 (Tent. Draft No. 4, 1955).



decriminalizing private consensual sodomy.<sup>209</sup> Illinois decriminalized private consensual sodomy in 1961.<sup>210</sup> Between 1969 and 1978, twenty-three states decriminalized consensual sodomy, with five more doing so between 1980 and 2001.<sup>211</sup> In eight states, courts invalidated laws criminalizing private consensual sodomy between 1980 and 2001.<sup>212</sup>

**iii. THE SUPREME COURT ADOPTS THE KINSEYAN WORLDVIEW IN LAWRENCE V. TEXAS.**

Laws criminalizing consensual same-sex sodomy remained in force in fourteen states when the Supreme Court heard *Lawrence v. Texas* in 2003.<sup>213</sup> By then, Kinsey had become well-ensconced as an authority in decisions throughout the country.<sup>214</sup> Most notably, the Texas court of appeals referenced Kinsey in its decision upholding Texas' law criminalizing consensual same-sex sodomy, the statute that was invalidated when the Supreme Court reversed the Texas court in 2003.<sup>215</sup> The Texas court concluded that the statute did not violate rights of privacy or equal protection because it did not discriminate on the basis of sexual orientation.<sup>216</sup> Citing to Kinsey's research, and in particular, the Kinsey scale, the court said:

On its face, the statute makes no classification on the basis of sexual orientation; rather the statute is expressly directed at conduct. While homosexuals may be disproportionately affected by the statute, we cannot assume homosexual conduct is limited only to those possessing a homosexual "orientation." Persons having a predominately heterosexual inclination may sometimes engaged in homosexual conduct. Thus, the statute's proscription applies, facially at least, without respect to a defendant's sexual orientation.<sup>217</sup>

In reaching the opposite conclusion, Justice Kennedy did not cite to Kinsey's reports directly, but relied heavily upon the 1955 MPC and other "laws and traditions of the past half century" that "show an emerging awareness that liberty gives substantial protection to adult

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<sup>209</sup> *Id.* at 123-24.

<sup>210</sup> Morris Ploscowe, *Sexual Patterns and the Law*, in *SEX HABITS OF AMERICAN MEN* 125, 127 (Albert Deutsch, ed., 1948).

<sup>211</sup> *Id.* at 388-407

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

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

<sup>214</sup> See, e.g., *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (citing Kinsey for proposition that "sexual identity is inherent to one's very identity as a person."); *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 33-34 (D.C. Ct. App. 1987) (upheld a D.C. anti-discrimination law against a free exercise challenge, citing Kinsey's data on the prevalence of homosexuality and the Kinsey scale); *Rowland v. Mad River Local Sch. Dist., Montgomery Cnty.*, 730 F.2d 444, 455-56 (6th Cir. 1984) (Edwards, J. dissenting) (In dissenting from the court's dismissal of a constitutional challenge to non-renewal of a high school counselor's contract after her admission of being a lesbian, Judge Edwards said that the court should take judicial notice of the "monumental works" of Kinsey); *State v. Next Door Cinema Corp.*, 225 Kan. 112 (1978) (citing to Kinsey as authority for education value of obscenity in finding that the obscenity exemption for scientific, educational and governmental purposes was not void for vagueness).

<sup>215</sup> *Lawrence v. State*, 41 S.W.3d 349, 353 (Tex. Ct. App. 2001), *jud. rev'd, sub nom Lawrence v. Texas*, 539 U.S. 558 (2003).

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

<sup>217</sup> *Id.*

persons in deciding how to conduct their private lives in matters pertaining to sex.<sup>218</sup> Justice Kennedy quoted his oft-cited language from *Casey v. Planned Parenthood of SE Pennsylvania*: “[a]t the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.”<sup>219</sup> Justice Kennedy concluded homosexuals had this same right of autonomy enjoyed by married heterosexuals.<sup>220</sup>

With the Kinseyan principle that homosexuality was an attribute of personhood now enshrined in the Supreme Court precedent, the stage was set for the next phase of the Kinseyan invasion, *i.e.*, dismantling marriage as an archaic institution that did not conform to Kinseyan pansexuality.<sup>221</sup>

#### IV. THE COURTS USE KINSEY PANSEXUAL WORLDVIEW TO CREATE AN ARTIFICIAL CONSTRUCT OF SAME-SEX “MARRIAGE”

Courts wasted little time utilizing *Lawrence* to justify dismantling marriage. Only five months after the Supreme Court’s decision, the Supreme Judicial Court of Massachusetts cited Justice Kennedy’s language in *Lawrence* quoting *Casey* to overturn the Commonwealth’s statutes defining marriage as the union of one man and woman.<sup>222</sup> As is true with subsequent cases invalidating state marriage laws and constitutional amendments, the Massachusetts court erased the objective structure of marriage without putting in place a new objective structure to prevent further dilution of the institution.<sup>223</sup> The court concluded that same-sex couples were to be included in the institution of marriage, which was to no longer be defined by the union of one man and one woman.<sup>224</sup> Left unanswered was the question of whether anyone else, and if so, who, or what, should be included in the institution. Following the Kinseyan pansexual philosophy to its logical conclusion would mean that all manner of sexual “outlets” are entitled to equal recognition and approbation.<sup>225</sup>

The Justices in the Fourth, Seventh, Ninth, and Tenth circuits, and now the Supreme Court, have similarly failed to answer the question of how marriage should be defined if the millennia old understanding of the union of one man and one woman does not comport with the Constitution. To the contrary, the courts have emphasized the need to be “inclusive,” as exemplified by the Ninth Circuit’s conclusion: “inclusion strengthens, rather than weakens, our most important institutions.... When same-sex couples are married, just as when opposite-sex couples are married,

<sup>218</sup> *Lawrence v. Texas*, 539 U.S. at 571-72.

<sup>219</sup> *Id.* at 574. quoting *Casey v. Planned Parenthood of SE Pennsylvania*, 505 U.S. 833, 851 (1992).

<sup>220</sup> *Id.*

<sup>221</sup> See Judith Reisman, *Sodomy Decision Based On Fraudulent “Science,”* HUMAN EVENTS, August 19, 2003 <http://humanevents.com/2003/08/19/sodomy-decision-based-on-fraudulent-science/> (last visited January 26, 2015).

<sup>222</sup> *Goodridge*, 440 Mass. at 312, 349.

<sup>223</sup> *Id.* at 349-50.

<sup>224</sup> *Id.*

<sup>225</sup> See Robinson, THE MODERNIZATION OF SEX *supra* note 8, at 59.

they serve as models of loving commitment to all.”<sup>226</sup> In his concurrence, Judge Reinhardt elaborated:

Yet our core legal instrument comprehends the rights of all people, regardless of sexual orientation, to love and to marry the individuals they choose. It demands not merely toleration; when a state is in the business of marriage, it must affirm the love and commitment of same-sex couples in equal measure. Recognizing that right dignifies them; in doing so, we dignify our Constitution.<sup>227</sup>

Similarly, the Tenth Circuit placed a high premium on including those who the court claimed were previously excluded from marriage without establishing a new objective structure to prevent further disintegration. “Consistent with our constitutional tradition of recognizing the liberty of those previously excluded, we conclude that plaintiffs possess a fundamental right to marry and to have their marriages recognized.”<sup>228</sup> As was true in *Latta*, the Tenth Circuit based its decision in large part of Justice Kennedy’s language in *Lawrence* quoting *Casey* for the proposition that homosexual couples should enjoy equal dignity and autonomy, as do heterosexual couples.<sup>229</sup>

In his zeal to bring same-sex marriage to the Seventh Circuit, Judge Posner, a longtime Kinsey advocate,<sup>230</sup> actually contradicted Kinsey when he claimed that homosexuality is “an immutable (and probably an innate, in the sense of in-born) characteristic rather than a choice.”<sup>231</sup>

The American Psychological Association has said that “most people experience little or no sense of choice about their sexual orientation... The leading scientific theories of the causes of homosexuality are genetic and neuroendocrine theories, the latter being theories that sexual orientation is shaped by a fetus’s exposure to certain hormones.”<sup>232</sup>

Judge Posner said that same-sex couples must be included in marriage to ease the pain of a discrimination that is greater than any suffered by every other group in history, (surely a historical revision that does not account for black slavery, Mexican and Chinese degradation, Jewish genocide, and Western women’s economic discrimination, rape, and general second class citizenship, now amplified in the Third World by genital mutilation and powerlessness):

Because homosexuality is not voluntary condition and homosexuals are among the most stigmatized, misunderstood, and discriminated-against minorities in the history of the rights to same-sex couple, is a source of continuing pain to the homosexual community.<sup>233</sup>

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<sup>226</sup> *Latta*, 771 F.3d 456.

<sup>227</sup> *Id.*

<sup>228</sup> *Kitchen*, 755 F.3d at 1218.

<sup>229</sup> *Id.*

<sup>230</sup> Judge Posner’s writings contain frequent citations to Kinsey and accolades of Kinsey’s work as the high water mark for the scientific study of human sexuality. He has regularly cited the Kinsey scale and Kinsey’s data as authoritative. *See, e.g.*, Posner, *SEX AND REASON*, *supra* note 83, at 19; Richard A. Posner, *OVERCOMING LAW* (Harvard University Press, 1995).

<sup>231</sup> *Baskin*, 766 F.3d at 657.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 658.

Judge Posner further claimed that granting marriage rights to homosexual couples would help convince the opponents of same-sex “marriage” that “homosexual married couples are in essential respects, notably in the care of their adopted children, like other married couples.”<sup>234</sup> As is true with his colleagues in the Ninth and Tenth Circuit, Judge Posner did not provide any objective parameter for his new construct.<sup>235</sup>

The same is true for the Fourth Circuit. While offering less rhetorical flourish than Judge Posner’s opinion, the majority opinion in *Bostic* has the same Kinseyan underpinnings.<sup>236</sup> Ironically, the Fourth Circuit proclaimed that “[c]ivil marriage is one of the cornerstone in place, *i.e.*, its objective structure as the union of one man and one woman.<sup>237</sup> The *Bostic* court jettisoned any notion structure, saying that “the right to marry is an expansive liberty interest that may stretch to accommodate changing societal norms.”<sup>238</sup> The court likened Virginia’s marriage laws memorializing that marriage is the union of the one man and one woman to law prohibiting interracial marriage and restricting prisoner marriage, claiming that just as societal norms required overturning those laws, so to do societal norms regarding homosexuality require overturning the idea that marriage is only the union of one man and one woman.<sup>239</sup> Unlike *Bostic*, however, the anti-miscegenation and prisoner prohibition laws did not affect the underlying objective structure of marriage, but merely removed impermissible barriers to entering into the union of one man and one woman.<sup>240</sup> The Court’s comparison is further flawed because it relies upon the Kinseyan notion that homosexual and heterosexual relationships are the same, *i.e.*, merely one of many sexual “outlets” individuals can choose.<sup>241</sup> The Court’s adoption of the Kinseyan concept of sexual outlets is most apparent in its assertion that permitting same-sex couples to marry will actually “strengthen the institution of marriage.”<sup>242</sup> Such a statement can only be made from an underlying belief that there is no fundamental difference between the complementary procreative act of heterosexual intercourse and any other manner of sexual conduct, so that there is no need to set conjugal sex apart as innately valuable to the civil society. Consequently, under the Kinseyan worldview adopted by the *Bostic* court, all types of sexual conduct, or “outlets” are equally acceptable, so marriage can only be improved if it is expanded to include whatever combinations of human, non-human, objects or relations the participants choose. In fact, in the closet thing to an alternative definition of marriage, the Fourth Circuit framed the fundamental right of marriage as the right to marry the person of one’s choice.<sup>243</sup>

Consequently, the Supreme Court Fourth Circuit, along with the Seventh, Ninth, and Tenth circuits and legislatures throughout the country have fully embraced Kinsey’s philosophy that “all orgasms [are] equal, regardless of how one came by them [so] there [are] no grounds for placing

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<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 672.

<sup>236</sup> *Bostic*, 760 F.3d 352.

<sup>237</sup> *Id.* at 384.

<sup>238</sup> *Id.* at 376.

<sup>239</sup> *Id.*, discussing *Loving v. Virginia*, 388 U.S. 1 (1967), *Turner v. Safley*, 482 U.S.78 (1987).

<sup>240</sup> *See Loving*, 388 U.S. at 12; *Turner*, 482 U.S. at 82.

<sup>241</sup> *Bostic*, 760 F.3d at 381-83.

<sup>242</sup> *Id.* at 381.

<sup>243</sup> *Id.* at 377.

heterosexual intercourse in a privileged position.”<sup>244</sup> That fundamental shift in perspective has already had profound consequences in other regions of the country and world. Absent a concerted effort to stem the tide, those consequences will now be realized in the Fourth Circuit.

**V. THE CONSEQUENCES OF DISMANTLING MARRIAGE IN FAVOR OF KINSEY PANSEXUALITY**

Expanding marriage to become more “inclusive,” as advocated by the Supreme court the Fourth, Seventh, Ninth, and Tenth Circuits with no alternative objective structure to regulate human relationships will create disorder, confusion and instability as society struggles with the question left either deliberately or naively unanswered. Judge Sutton of the Sixth Circuit union of one man and one woman in Michigan, Ohio, Kentucky, and Tennessee:

Imagine a society without marriage. It does not take long to envision problems that might result from an absence of rules about how to handle the natural effects of male-females intercourse: children. May men and women follow their procreative urges wherever they take them? Who is responsible for the children that result? How many mates may an individual have? How does one decided which set of mates is responsible for which set of children?”<sup>245</sup>

Answering these questions has created conflicting policies, statutes and court decisions as various states have struggled with how to accommodate the new social order.<sup>246</sup> The Supreme Court’s decision in *Windsor* arose out of a distinct difference in the federal and New York law, which precluded the recognition of a same-sex couple marriage.<sup>247</sup>

A much more fundamental issue has been the conflict between the newly granted right of same sex couples to “marry” and the fundamental constitutional rights of free speech and religious free exercise.<sup>248</sup> Many states that have permitted or been told to permit same-sex “marriages” also have enacted anti-discrimination laws that include sexual orientation and gender identity.<sup>249</sup>

When providers of wedding services whose sincerely held religious belief prevented them from performing or providing services for the same-sex couples declined to provide those services, they were fined, harassed and in some case driven out of business entirely.<sup>250</sup> The New Mexico

<sup>244</sup> Robinson, THE MODERNIZATION OF SEX, *supra* note 8 at 59.

<sup>245</sup> *Id.*

<sup>246</sup> *In re Kandou*, 315 B.R. 123 (Bankr. W.D. Wash. 2004) (addressing conflict between federal bankruptcy law and foreign recognition of same-sex “marriage.”); *Ross v. Goldstein*, 203 S.W.3d 508 (Tex. App. 14th 2006) (refusing to grant marriage-like status to same-sex surviving partner for estate purposes); *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007) (addressing same-sex adoptions in state recognizing that marriage is the union of one man and one woman); *Adar v. Smith*, 639 F.3d 146 (5th Cir. 2011) (addressing conflict between Louisiana adoption which did not permit any unmarried couples to obtain revised birth certificates with both parents’ names and New York recognition of same-sex couples as “married.”)

<sup>247</sup> *United States v. Windsor*, 133 S. Ct. 2675 (2013).

<sup>248</sup> Ryan T. Anderson & Leslie Ford, *Protecting Religious Liberty in the State Marriage Debate*, HERITAGE FOUNDATION (April 10, 2014), <http://www.heritage.org/research/reports/2014/04/protecting-religious-liberty-in-the-state-marriage-debate>.

<sup>249</sup> *Id.* at 2.

<sup>250</sup> *Id.* at 2-5.

Supreme Court ruled that in light of the New Mexico Human Rights Act, the First Amendment does not protect a photographer's freedom to decline to take pictures of a same-sex commitment ceremony—even when doing so would violate the photographer's religious beliefs.<sup>251</sup> The court said renouncing religious beliefs is the “price of citizenship” for the right to be a photographer.<sup>252</sup> Bakers in Oregon and Colorado were found to have violated their respective states' civil rights laws and were fined when they declined to create wedding cakes for same-sex couples when they declined for same-sex couples because of their religious belief.<sup>253</sup>

The Oregon bakers were forced to close their business in the interest of protecting their family after receiving threatening messages related to their defense of their free exercise rights.<sup>254</sup> Florists, galleries and family farms throughout the country have faced similar conflicts as their First Amendment rights are trumped by state anti-discrimination laws.<sup>255</sup> Faith based foster care and adoption agencies had to stop helping abandoned children in Massachusetts, the District of Columbia, and Illinois when state governments required that the organization abandon their religious beliefs that marriage is the union of one man and one woman and that the best and safest place is with and mother and a father.<sup>256</sup>

Similar scenarios will not play out in even more jurisdictions, as citizens' religious liberty rights clash with what some call the tyrannical paradigm of the same-sex “marriages.” Magistrates in North Carolina were forced to resign when they were directed to perform marriage ceremonies for same-sex couples regardless of their religious belief.<sup>257</sup> Only the legislature's vote to override Gov. Pat McCrory's veto of a bill creating a religious exemption for magistrates prevented further resignations or legal action to protect the magistrate's conscience rights.<sup>258</sup> Rowan County, Kentucky Clerk Kim Davis has made international headlines in her exercise of religious

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<sup>251</sup> *Elane Photography, LLC v. Willock*, 134 S. Ct. 1787 (2014).

<sup>252</sup> *Id.* at 92 (Bosson, J., specially concurring).

<sup>253</sup> Anderson, *Protecting Religious Liberty*, *supra* note 248, at 3-4, citing Billy Hallowell, “We Still Stand by What We Believe’: Bakers Who Refused to Make a Gay Wedding Cake Doubled Down Despite Ruling They Violated Couple’s Civil Rights,” THE BLAZE (Jan. 20, 2014, 7:40 AM), <http://www.theblaze.com/stories/2014/01/20/state-rules-oregon-bakery-that-refused-to-make-a-gay-wedding-cake-violated-lesbian-couples-civil-rights/>; *see also*, Kristen Anderson, *Baker Says He’d Rather Go to Jail After Judge Orders Him to Bake Cakes for Gay Weddings*, LIFE SITE NEWS, (Dec. 11, 2013, 3:47 PM), <https://www.lifesitenews.com/news/baker-says-hed-rather-go-to-jail-after-judge-orders-him-to-bake-cakes-for-gg>.

<sup>254</sup> *Id.* at 3, citing Todd Starnes, Opinion, *Christian Bakery Closes After LGBT Threats, Protests*, FOX NEWS, (Sept. 3, 2013), <http://www.foxnews.com/opinion/2013/09/03/todd-american-dispatch-christian-bakery-closes-after-lgbt-threats-protests.htm>.

<sup>255</sup> *Id.* at 4, *see also*, Leslie Ford, *Government to Farmers: Host a Same-sex Wedding or Pay a \$13,000 Fine*, THE DAILY SIGNAL (Aug. 19, 2014), <http://dailysignal.com/2014/08/19/government-farmers-host-sex-wedding-pay-13000-fine/>.

<sup>256</sup> *Id.* at 5-6.

<sup>257</sup> Samuel Smith, *North Carolina Judge Resigns So He Won't Have To Conduct Gay Marriages, Thinks Other Magistrates Will Do The Same*, CHRISTIAN POST (Oct. 25, 2014), <http://www.christianpost.com/news/north-carolina-judge-resigns-so-he-wont-have-to-conduct-gay-marriages-thinks-other-magistrates-will-do-the-same-128532/>.

<sup>258</sup> Marti McGuire, *North Carolina Senate overrides governor's veto of marriage opt-out bill*, REUTERS, (June 5, 2015), <http://www.reuters.com/article/2015/06/02/us-usa-gaymarriage-north-carolina-idUSKBN0OI05420150602> (last visited Oct. 1, 2015).

conscience that landed her in jail.<sup>259</sup> The history of other jurisdictions indicates that this is just the beginning.

### CONCLUSION

The Supreme Court and circuit courts have exchanged the truth of a millennia old institution based upon the complementary and procreative union of man and woman for the lie of an artificial social construct based upon a philosophy that all manner of sexual behavior is to be celebrated and accorded special rights. By adopting the Kinseyan pansexual worldview, the Circuit Courts and state legislatures nationwide, have dismantled the foundational child productive and protective social institution based upon fraudulent data disguised as scientific fact. Worst of all, as is clearly apparent to anyone who reads the Kinsey reports, these data, still lauded today, were obtained through the violent sexual abuse and torture of children as young as two months old. Before these decisions, which rely so heavily on Kinsey's criminal sex experiments on infants and children, are set in stone, the data resulting from those experiments should be subjected to thorough investigation and judicial review.

### APPENDIX

TABLE 34, *Sexual Behavior in the Human Male*, p.  
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<sup>259</sup> Chris Pleasance, 'Why should I have to quit a job that I love?' Defiant Kim Davis tells Megyn Kelly that she is ready to go back to jail as legal challenges mount, UK DAILY MAIL, (Sept. 24, 2015, 6:13 AM), <http://www.dailymail.co.uk/news/article-3247036/Gay-marriage-clerk-Kim-Davis-remains-defiant-saying-shouldn-t-quit-job-refusing-issue-licences-sex-couples-ready-jail.html#ixzz3nLX1JQQU>.

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.
2½ yr.	{ 11	65 min.	12 yr.	{ 9	2 hr.
4 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.	13 yr.	{ 3	70 sec.
9 yr.	7	68 min.	13 yr.	{ 11	8 hr.
10 yr.	9	52 min.	14 yr.	{ 26	24 hr.
10 yr.	14	24 hr.		11	4 hr.

**Table 34. Examples of multiple orgasm in pre-adolescent males**  
Some instances of higher frequencies.