

tal . . . these laws do not prohibit the
a child. As Judge Bok said:

would care to have one's young read
Acre, the *Studs Lonigan* trilogy). . .
daughters meet the facts of life and the
rary than behind a neighbor's barn, for
directly . . . no parents who have been
ed fear the outcome.⁵⁵

d should not be subjected to that with
ould be the purpose of our child ab
not govern our adults with a child's

RECOMMENDATION

ng; and don't be nervous, or I'll have

Alice in Wonderland

is writer feels that a statute governing
enity is a necessity. Nevertheless, the
governing adult exposure to obscenity
nt proposals in Kentucky.
effect of obscenity on adults is con-
work has no social value is not a
live in a society which views sex in
generation before us.

ult . . . games.' If they are solicited
ld be more tortious than commercial
propriate civil, and in the extreme case,

e acute sexual curiosity and have not
tities. The state should proscribe the
the merchant of 'hard-core porno-
e term), alluringly portraying bestiality
no further because censorship solicits
least deserving of such curiosity and
secrecy and furtiveness towards life.

attempt to hide the adult world from

quired for the same reason that scienter
void self-censorship of constitutionally
should be on the solicitation of the
ity to the otherwise indifferent juvenile
isoned.

Obscenity cannot be measured as a crime, but only a sin. Likewise
a sin is a very subjective standard and not amenable to legal sanction.⁵⁶
The utter ridiculousness of obscenity legislation was summed up as
follows:

Additionally, censorship spawns its own particular evils: timidity;
cynicism; unwarranted curiosity. It stifles expression that may be
therapeutic. Furthermore, it is self-defeating. The 'big business of
pornography' thrives on the very laws that impede its supply and
increase the demand. Experience has shown that the word 'censored'
is more profitable to the pornographer than the content of his material.

There is no rational regulation for an irrational phenomenon. The
best regulation is self-regulation. The applause or rejection of the audi-
ence will always be the ultimate censor, no matter what the state of the
law. The great courage of the Supreme Court has faltered in the ob-
scenity cases, save for the clear and thoroughly adult opinions of Justices
Douglas and Black. Both Justices have emphasized that the choice of
what to read is an individual and not a governmental choice. The choice
is admittedly difficult but unavoidably personal and it is high-time that
we stop imprisoning men for selling books, and lift the distasteful task
of the censor from the Court, and from government, and make our
own decisions as to what we are to read, to see, and to think.⁵⁷

One should be free to choose his own reading material. Questions
should not concern the nature of the material, but why some people
read only pornography. One should be permitted to live his adult life
with all its risks, including those involving sexuality and obscenity.
The legislature should refrain from removing by law the natural right
of presumptively rational adults to accept these risks and choose for
themselves what they desire to read. The point was best summarized
three hundred years ago by John Milton in his *Areopagitica*. Here
he enunciated the eternal case against censorship: "For those actions
which enter into a man rather than issue out of him, God uses not to
captivate under a general prescription, but *trusts him with the gift of
reason to be his own chooser.*"⁵⁸ (Emphasis added.)

Thomas B. Russell

CRIMINAL LAW—CONSENSUAL HOMOSEXUAL BEHAVIOR—THE NEED
FOR LEGISLATIVE REFORM.—One has only to explore the pages of Ken-
tucky legal history to find that before 1962 the statutory prohibition
against sodomy was one of the untouched areas of Kentucky criminal
law. The Penal Act of 1778 prescribed a two to five year penalty for

⁵⁶ Henkin, *Morals and the Constitution: The Sin of Obscenity*, 63 COLUM.
L. REV. 691 (1963).

⁵⁷ Note, *supra* note 54, at 132.

⁵⁸ Gilman, *supra* note 5, at 82.

the undefined crime of sodomy.¹ Our present statute, Section 436.050 of the Kentucky Revised Statutes [hereinafter referred to as KRS], also fails to define sodomy while continuing to impose a similar two to five year penalty for the act.² If one were to look to the Kentucky Court of Appeals for interpretative guidance as to the statutory meaning of sodomy, one would only find decisions clothed in the clouded euphemistic terminology of Nineteenth century English common law. This, however, is not surprising since the Court has not had an opportunity to examine the crime of sodomy since the 1909 case of *Commonwealth v. Poindexter*.³ Here the Court based its decision on English common law and failed to mention the governing Kentucky statute.⁴

In 1962 another regulation of sexual conduct was enacted, KRS § 435.105,⁵ to prohibit indecent or immoral practices with another. It is divided into two sections. The first pertains to such practices between a person seventeen years old or over and a person under the age of fifteen. It has been interpreted by the Court of Appeals on numerous occasions, and yet the Court has never been confronted with the crime of sodomy, whether that sodomy be heterosexual, homosexual or bestial in nature.⁶ The second section, pertaining to indecent or im-

¹ 2 THE STATUTE LAW OF KENTUCKY 12 (W. Littell ed. 1810).

² KRS § 360.050 (1942) states: "Any person who commits sodomy or buggery, with man or beast, shall be confined in the penitentiary for not less than two nor more than five years."

³ 133 Ky. 720, 118 S.W. 943 (1909).

⁴ *Id.* The Court held sodomy to be a crime consisting of carnal copulation by human beings against nature, with penetration. Penetration of the mouth is not sufficient to constitute the crime. Consent makes the consenting partner an accomplice to the crime. Buggery is the same offense between a man and a beast.

It should be noted that the Court deleted or disregarded the common law requirement that sodomy, in order to be indictable, must be open, notorious, grossly scandalous and public. 4 BLACKSTONE COMMENTARIES 85 (Hammond ed. 1890).

⁵ KRS § 435.105 (1962) states:

(1) Any person of the age of seventeen years or over who carnally abuses the body, or indulges in any indecent or immoral practices with the body or organs of any child under the age of fifteen years, or who induces, procures or permits a child under the age of fifteen years to indulge in immoral, sexual or indecent practices with himself or any person shall be guilty of a felony, punishable on conviction thereof by imprisonment in the penitentiary for not less than one year nor more than two years.

(2) Any person of the age of seventeen years or over who carnally abuses the body, or indulges in any indecent or immoral practices with the body or organs of any other person of the age of fifteen or over or who induces, procures or permits any person of the age of fifteen years or older to indulge in immoral, sexual or indecent practices with himself or any other person, not otherwise denounced in this chapter, shall be guilty of a felony, punishable on conviction thereof by an imprisonment in the penitentiary for not less than one nor more than five years.

⁶ A deviate connection with a fowl is not sodomy at common law. 1 RUSSELL, CRIMES 736 (12th ed. 1964).

my.¹ Our present statute, Section 100, hereinafter referred to as "the statute," while continuing to impose a similar act.² If one were to look to the interpretative guidance as to the statute, one could only find decisions clothed in the terminology of Nineteenth century law. It is not surprising since the Court has not defined the crime of sodomy since the case of *Poindexter*.³ Here the Court has followed common law and failed to mention the governing statute.

A law of sexual conduct was enacted in 1810 which prohibited indecent or immoral practices with another person. The first pertains to such practices between a person over and a person under the age of fifteen years and by the Court of Appeals on November 1, 1909, has never been confronted with the question whether sodomy be heterosexual, homosexual or bisexual in character, pertaining to indecent or immoral practices.

Kentucky 12 (W. Littell ed. 1810). The statute reads: "Any person who commits sodomy or buggery shall be confined in the penitentiary for not less than two years nor more than five years."

1909). The statute is to be a crime consisting of carnal copulation with penetration. Penetration of the mouth is sufficient. The statute makes the consenting partner an accessory. The offense between a man and a woman is a crime, but the Court deleted or disregarded the common law rule that the offense must be open, not done in private, to be indictable, must be open, not done in private.

of seventeen years or over who carnally abuses any indecent or immoral practices with a child under the age of fifteen years, or who commits indecent practices with himself or any person, shall be punishable on conviction thereof by imprisonment for not less than one year nor more than five years.

seventeen years or over who carnally abuses any indecent or immoral practices with the body of a person of the age of fifteen or over or who in any manner commits indecent practices with himself or any person, shall be punishable on conviction thereof by an imprisonment in the penitentiary for not less than five years.

Now is not sodomy at common law. 1 Kent 358.

moral practices between a person seventeen years old or over and a person over fifteen, has never been interpreted in any manner by the Court of Appeals. Thus the present standard of what constitutes indecent or immoral behavior between consenting "adults" in Twentieth century Kentucky may still be a matter of conjecture; whereas the standards of what constitutes sodomy under KRS § 436.050 seem to be generally those of nineteenth century English common law.⁷

Consequently, if a case should arise as to the meaning of KRS § 435.105(2), it would be possible for the Court of Appeals to follow *Rittenour v. District of Columbia*,⁸ in which the Municipal Court of Appeals for the District of Columbia interpreted a similar statute⁹ as not applying to private consensual homosexual behavior. The view of that court was that "... [A]lthough an open or public act in the common law sense is no longer required, it is our opinion that the present law was not designed nor intended to apply to an act committed in privacy in the presence of a single and consenting person."¹⁰

The *Rittenour* opinion is in keeping with the comment to the proposal of the American Law Institute which states: "[N]o harm to the secular interests of the community is involved in atypical sex practice in private between consenting adult partners. This area of private morals is the distinctive concern of spiritual authorities."¹¹ As a result of this thinking, Section 213.2 of the Model Penal Code prohibits deviate sexual intercourse, only when that intercourse is accomplished through force, involves the adult corruption of a minor, or is accompanied by a public offense.¹²

⁷ See discussion in note 4 *supra*.

⁸ 163 A.2d 558 (D.C. Mun. Ct. App. 1960).

⁹ D.C. CODE ANN. § 22-1112(a) (Supp. VIII 1960).

¹⁰ 163 A.2d at 559.

¹¹ MODEL PENAL CODE § 207.5, Comment (Tent. Draft No. 4, 1955).

¹² MODEL PENAL CODE § 213.2 (Official Draft 1962). The following are relevant sections of the statute:

Deviate Sexual Intercourse by Force or Imposition.

- (1) *By Force or Its Equivalent.* A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the second degree if:
 - (a) he compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or
 - (b) he has substantially impaired the other person's power to appraise or control his conduct, by administering or employing without the knowledge of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or
 - (c) the other person is unconscious; or
 - (d) the other person is less than 10 years old.

Deviate sexual intercourse means sexual intercourse per os or per anum between beings who are not husband and wife, and any form of sexual intercourse with an animal.

- (2) *By Other Imposition.* A person who engages in deviate sexual inter-

(Continued on next page)

The Model Penal Code defines deviate intercourse as "sexual intercourse per os or per anum between human beings who are not husband and wife, and any form of sexual intercourse with an animal."¹³ Illinois simplifies its definition by considering sexually deviate conduct as only "sexual gratification involving the sex organs of one person and the mouth or anus of another."¹⁴ New York, on the other hand, evidently considers deviate sexual intercourse as self-defining.¹⁵ Illinois remains the only state to have adopted the Model Penal Code's rationale of considering sexually deviate behavior by consenting adults not to be a criminal offense.¹⁶ New York still considers such behavior a crime but punishes that behavior with only a ninety day maximum jail sentence.¹⁷ The New York prohibition is probably a political consideration, but it also reflects a desire that the criminal law should not condone sexually deviate behavior and thus such behavior must be prohibited.¹⁸ This logic is well within the ethical conceptual framework of our Judeo-Christian culture.¹⁹ Yet it is quite obvious that prohibitions of private sexual deviation can only be enforced, if at all, by the stationing of a policeman in every private place. The collective moral judgment of society as to what constitutes normal sexual conduct is frustrated unless society is willing to tear down the walls of privacy in order to enforce its collective morality.²⁰

(Footnote continued from preceding page)

- course with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the third degree if:
- (a) he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or
 - (b) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or
 - (c) he knows that the other person submits because he is unaware that a sexual act is being committed upon him.

¹³ *Id.*

¹⁴ ILL. CRIM. CODE § 11-2 (1962).

¹⁵ See N.Y. PENAL LAW § 130.38, Practice Commentary (McKinney 1967).

¹⁶ ILL. CRIM. CODE § 11-3 (1967); see also MICH. REV. CRIM. CODE § 2317 (Final Draft Sept. 1967).

¹⁷ N.Y. PENAL LAW § 130.38 (McKinney 1967).

¹⁸ A similar view is expressed by Mr. James Adair, a committee member, in his reservation to the report of the GREAT BRITAIN COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION 117-23 (Rep. No. 79, 1957) [hereinafter cited as the WOLFENDEN REPORT].

¹⁹ "Thou shalt not lie with mankind as with womankind." *Leviticus* 18:22. See generally, W. CHURCHILL, *HOMOSEXUAL BEHAVIOR AMONG MALES* (1967); see also, 48 AM. JUR. *Sodomy* §§ 1-7 (1943).

²⁰ *The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles*, 13 U.C.L.A. L. REV. 643, 686-742, 795-97 (1966). This study shows that most arrests of homosexuals were made by vice squad decoys. See also *Smayda v. United States*, 352 F.2d 251 (9th Cir. 1965), which involved the apprehension of homosexuals through the use of a peep hole in a "public" toilet. See generally D. WEST, *HOMOSEXUALITY* 89-91 (1967).

causes another to engage in felony of the third degree if: participate by any threat that person of ordinary resolution; or suffer from a mental disease capable of appraising the nature submits because he is unaware of upon him.

Commentary (McKinney 1967)
MICH. REV. CRIM. CODE § 2312

Adair, a committee member, in
MAIN COMMITTEE ON HOMOSEXUAL
9, 1957) [hereinafter cited as the
"with womankind." *Leiticism* 18:22
BEHAVIOR AMONG MALES (1987)

the Law: An Empirical Study of
13 U.C.L.A. L. REV. 843, 858.
most arrests of homosexuals were
v. United States, 352 F.2d 241
sion of homosexuals through
erally D. WEST, *HOMOSEXUALITY*

Would it not be better for the state to refrain from attempting to regulate personal autonomy and instead hold a person responsible for his actions only when those actions directly interfere with the well being of the community?²¹ But perhaps this question is made moot in light of Griswold v. Connecticut.²² The "zone of privacy" as established in that case to protect from criminal sanctions the right of married couples to use contraceptives in their private sexual lives can easily be expanded to protect the right of homosexuals to engage in private consensual relationship.²³ The possibility of such an expansion, however, is made remote by the fact that homosexuals who act discretely and carry on only private consensual relationships are basically immune from prosecution because consenting partners are naturally undesirous of swearing out complaints against themselves.²⁴ It would thus appear then that the Supreme Court will not have an opportunity to enact judicial legislation in the field of private consensual deviate sexuality within the near future.²⁴ Consequently, any change in the law concerning the regulation of homosexual behavior will probably come about either through local judicial interpretation or through state legislative enactment.

If the laws attempting to regulate homosexual behavior are to be changed, this change must be based on an enforceable value judgment which is rationally attained on the basis of known facts. It is thus essential that we recognize the wide variance of homosexual behavior. Dr. Stanley Willis²⁵ states:

Homosexual behavior can range from an extremely bizarre form of psychopathological acting-out to a highly integrated act of love between two stable and mature people. It can be a manifestation of many different emotional states, some of which are isolated, sporadic, non-recurring responses to changing psychodynamic forces, or it can represent a fixed adjustment pattern. The meaning of any homosexual behavior will depend on the particular persons and the circumstances in which the act

²¹ See W. LIPPMAN, A PREFACE TO MORALS 286 (1929). Mr. Lippman states: "... [W]hat everybody must know is that sexual conduct, whatever it may be, is regulated personally and not publicly in modern society."

²² 381 U.S. 479 (1965).

²³ In striking down a Connecticut statute which made it a criminal offense for persons to use any drug, article or instrument for preventing conception, Justice Douglas said: "The present case . . . concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees [namely the penumbras of Amendments I, III, IV, V and IX of the U.S. Constitution]." *Id.* at 485.

²⁴ D. WEST, *supra* note 20, at 84.

²⁵Adjunct Professor of Law in Forensic Psychiatry, University of San Diego School of Law; Sometime Lecturer, Neuropsychiatric Institute, School of Medicine, University of California at Los Angeles; Private Practice of Psychiatry, La Jolla, California.

takes place. To lump all homosexual activity into one category is a naive but serious mistake.²⁶

Once we realize that homosexual behavior can be diverse and variable, we can then make proposals for the regulation of those types of homosexual behavior which we believe to be not only worthy of control but also susceptible to control. As we have seen, the Model Penal Code advises the regulation of only certain types of homosexual behavior.²⁷ In support of these provisions it is argued that under our present statutes, or under a statute like New York's²⁸ which specifically includes a prohibition against consensual deviate behavior, the only person to really gain is the blackmailer.²⁹ Yet, it would seem that even if the law was changed so as to conform to the Model Penal Code, the blackmailer would still have the power of exposure within the social framework of the community. True, exposure would not put the homosexual in jail, but it is more than likely that he would still lose his social position and his means of employment.³⁰ It is also argued, as many medical experts conclude, that homosexuality is symptomatic of psychological disorder, stemming from a failure to achieve mature psychic development, and that it cannot be cured unless the underlying psychological deviation is cured.³¹ Yet when this position is discussed in light of cultural and medical history, it seems absurd. Are we to conclude that all of the ancient Greeks, Romans and Egyptians who

²⁶ S. WILLIS, UNDERSTANDING AND COUNSELING THE MALE HOMOSEXUAL 6 (1967). See also D. CAPPON, TOWARD AN UNDERSTANDING OF HOMOSEXUALITY (1965). Dr. Cappon states:

... [T]here is no such thing as 'a homosexual.' The H person may be a he or a she; black, pink, or yellow; an Italian, a Jew, or one of the Herenvolks. He may be effeminate and handsome, or she may be masculine and ugly; he may be robust and athletic, or she may be very feminine. An H person may be exclusively homosexual in behavior; have intercourse with both sexes at different times, or even roughly at the same time; or not have any sexual relations with a human being at all. The personalities of H persons may be variable or prototypic as the personality of humans in general. Hence the deliberate avoidance of the substantive 'homosexual' in the title of this book and in the subsequent exposition. The moral and scientific error of classifying man in necessarily false or inadequate categories usually leads to rejection and condemnation. ('He is a neurotic,' or, 'She is a psychopath,' e.g.) *Id.* at 4.

²⁷ MODEL PENAL CODE § 213.2 (Official Draft 1962).

²⁸ N.Y. PEN. LAW § 130.38 (McKinney 1967).

²⁹ See E. SCHUR, CRIMES WITHOUT VICTIMS 82-85 (1965). See also S. WILLIS, *supra* note 26, at 25.

³⁰ Homosexuals are often unnoticed members of a respectable community with ordinary jobs and otherwise ordinary lives. See generally M. HOFFMAN, THE GAY WORLD (1968).

³¹ See George, *Legal, Medical and Psychiatric Considerations in the Control of Prostitution*, 80 MICH. L. REV. 717, 753-57 (1962); SEXUAL BEHAVIOR AND THE LAW 434-77 (Slovenko ed. 1964).

ity into one category is a mistake.

behavior can be diverse and the regulation of those types of behavior may be not only worthy of study but also of regulation. As we have seen, the Model Penal Code does not include only certain types of homosexual acts. It is argued that under our law, which specifically prohibits homosexual deviate behavior, the only way to avoid the Model Penal Code's prohibition is to claim that the power of exposure within the family would not put the person in a position where he would still be employed.³⁰ It is also argued that homosexuality is symptomatic of a failure to achieve maturation and can be cured unless the underlying psychological condition is treated. When this position is discussed, it seems absurd. Are we to believe that the Romans and Egyptians who

RELATING THE MALE HOMOSEXUAL TO THE UNDERSTANDING OF HOMOSEXUALITY

qual. The H person may be a man, a woman, or one of the Hermaphrodites, or she may be masculine, or she may be very feminine. The person may be very masculine, or even roughly at the same time a human being at all. The person may be as prototypic as the person who avoids the subject of the book and in the subsequent classification of man in necessarily to rejection and condemnation. (e.g.) *Id.* at 4.

raft 1962).

See generally M. HOFFMAN, *THE*

ric Considerations in the Context of the Law (1962); SEXUAL BEHAVIOR AND THE

participated in homosexual activities in cultures whose norms were not adverse to such behavior, were suffering from a psychological disorder.³² Even today in American society, which outwardly disdains homosexual activity, Kinsey reports that "37 per cent of the total male population has at least some overt homosexual experience to the point of orgasm between adolescence and old age."³³

Professor Ploscowe states:

Female homosexuality has been studied much less intensely than male homosexuality, but it too is far more widespread than is generally realized. Katherine B. Davis studied twelve hundred unmarried college graduates who averaged thirty-seven years of age. Of this number half had experienced intense emotional relations with other women and over three hundred, or one-fourth of the total reported sexual activities with other women. Of one hundred married women studied by Hamilton, one-fourth admitted homosexual physical episodes.³⁴

Is then one-third of our population, because it has had some homosexual experience, suffering from a psychological disorder? The psychodynamics of homosexual behavior are poorly understood. Most writers treat this behavior "as if it were a static condition with a single underlying psychological cause."³⁵ Consequently, the results of these studies are inconclusive.³⁶ However, it is known that homosexual interests "are not only possible in 'normal' men, but are also actually present in some form during some phases of the development of any personality."³⁷ We also know that homosexual behavior is diverse, fluid and not easily categorized, but is subject in all forms to attempted regulation by our criminal law.

We are well aware that there are "heterosexuals" as well as "homosexuals" who are pathologically inclined to criminal conduct and are rightfully under the purview of our criminal law. But the criminal law is still trying to regulate private "abnormal" heterosexual activities as well as private consensual homosexual behavior. As we have seen, the attempted regulation of private morality is in vain. Homosexual as well as heterosexual deviates are still with us, even though their methods of sexual gratification do not lead to propagation. "Homo-

³² See W. CHURCHILL, *supra* note 19, at 15-35; D. WEST, *supra* note 20, at 17-34-73.

³³ A. KINSEY, W. POMEROY & C. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* Figure 156 (1948).

³⁴ M. PLOSCOWE, *SEX AND THE LAW* 204-06 (1951).

³⁵ See S. WILLIS, *supra* note 26, at 84.

³⁶ *Id.* at 83-109; see also D. CAPPON, *supra* note 26, at 67-111. Compare DE SAVITSCH, *HOMOSEXUALITY, TRANSVESTISM, AND CHANGE OF SEX* 1. 16 (1958), with E. BERGLER, *HOMOSEXUALITY: DISEASE OR WAY OF LIFE?* 31 (1956).

³⁷ S. WILLIS, *supra* note 26, at 108.

sexuals" remain a significant segment of our population.³⁸ We make them criminals who have no victims.³⁹

This writer knows of no public opinion poll taken in Kentucky reflecting public sentiment as to the matter of reforming the laws which attempt to regulate homosexual behavior. Perhaps then it is of some value to the legislature to know that in a recent Australian poll, twenty-two percent of the Australians polled favored the liberalization of their laws (which are much like Kentucky's) pertaining to the regulation of homosexual behavior.⁴⁰ If we hypothesize that Kentuckians are not any more receptive to the liberalization of such laws, one can only conclude that the possibility of reform in this area of the criminal law is politically unfeasible. If, however, this hypothesis is incorrect,⁴¹ or in the alternative, if reason, knowledge and sanity prevail, then perhaps the Kentucky legislature will enact section 213.2 of the Model Penal Code,⁴² thereby making Kentucky's criminal sanctions applicable only to those whose sexual deviation is accompanied by force, the adult corruption of a minor, or a public offense.

Paul L. Lamb

CRIMINAL LAW—OFFICIAL MISCONDUCT—THE NEED FOR LEGISLATIVE REFORM.—Official misconduct may be defined as any unlawful behavior by a public officer in relation to the duties of his office, willful or corrupt failure, refusal, or neglect by an officer to perform any duty imposed on him by law.¹ It differs from bribery in that in official misconduct the officer need not receive any bribe or derive any personal benefit from the corrupt act.²

At present Kentucky has no specific statute covering official misconduct. Various sections of the Kentucky Revised Statutes [hereinafter referred to as KRS] prohibit certain activities of specific

³⁸ See *THE WOLFENDEN REPORT* 17-47.

³⁹ This paraphrase is borrowed from E. SCHUR, *CRIMES WITHOUT VICTIMS* (1965).

⁴⁰ Chappell & Wilson, *Public Attitudes to the Reform of the Law Relating to Abortion and Homosexuality*, 42 *AUST. L.J.* 175, 178 (1968).

⁴¹ Education had a strong influence on the results of the poll; e.g., forty-eight percent of those with college training favored the liberalization of the laws regarding homosexual behavior whereas only sixteen percent of the laborers and unskilled workers favored such reform. *Id.* at 179.

⁴² *MODEL PENAL CODE* § 213.2 (Official Draft 1962). The provisions of this section are set out in full in note 12 *supra*.

¹ *BLACK'S LAW DICTIONARY* 1236 (4th ed. 1951).

² 11 C.J.S. *Bribery* § 1 (1938).