THE AMERICAN ASSOCIATION FOR PERSONAL PRIVACY

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1985

The American Association for Personal Privacy was established in 1970. It is composed of a group of lawyers with experience in the field of civil liberties and of authorities in related fields working for the dismantling of the entire structure of criminality and discrimination surrounding private sexual conduct between persons above the sexual age of consent. The Association was originally known as the National Committee for Sexual Civil Liberties because one of its first goals was to develop public awareness of the then-largely-unrecognized field of sexual civil liberties. This entails working for repeal of fornication, adultery, and sodomy laws to the extent that they punish private consensual conduct between adults or between those above the sexual age of consent. It also involves working for repeal of sexual solicitation statutes wherever they punish simple requests to engage in private, non-commercial sexual conduct. Finally, it embraces efforts to modify certain aspects of open or public lewdness laws of the kind which are found in every state.

In addition to its work for repeal or modification of laws of this kind, the Association has been involved in many of the campaigns for enactment of affirmative legislation prohibiting discrimination for reasons of sexual orientation in such areas as employment, licencing, housing, insurance, child-custody and adoption, and in related matters. It also works with like-minded groups for the enactment of legislation to remove the inequities to which single persons are exposed in such areas as taxation, inheritance, and community property.

The Association has important academic dimensions, reflected in its Academic Council, most of whose members have university connections. This involves research, publication, and teaching in the broad area of human sexuality. The most important disciplines represented are sociology, religion, history, law, and philosophy. There is a close

working relationship between the scholarly work of the members of the Council and that of the lawyers of the Association, with the former not infrequently providing important material for briefs and memoranda, not only for use in court cases, but for presentations to state legislative committees and penal law revision commissions.

It was obvious at the time of the Association's formation that changes in the criminal law would be one of its primary objectives. These have been pursued judicially, legislatively and administratively. It was apparent, too, that almost all of the criminal sanctions adversely affecting gay people were state enactments, and that, while some of these laws might be challenged in federal courts on federal constitutional grounds, there was little likelihood of redress from the federal judiciary for two reasons. The first was that, even at the time of the Association's establishment -- which was during the Nixon administration -- the already-conservative membership of the U.S. Supreme Court was not likely to accept what would have appeared to them to be the radical arguments which needed to be made if that court were to strike down long-standing state sodomy laws as unconstitutional. This was because the proper legal groundwork had not, and still has not, been made to support such arguments. Such a foundation takes at least a generation to create. To confirm this one need only read the recent remarks of Judge Robert H. Bork, in his Francis Boyer Lecture in Washington on "Tradition and Morality in Constitutional Law" before the American Enterprise Institute for Public Policy Research. Judge Bork, who sits on the United States Court of Appeals for the District of Columbia is rumored to be Reagon's choice to fill the next vacancy on the U.S. Supreme Court.

The absence of a proper legal groundwork for the argument that state sodomy laws violate the federal constitution derives from the failure over the years to recognize that the gay movement is no different than any other reform movement which has entered the American political scene, whether it be the anti-slavery movement, the fight for women's

suffrage, the campaign against child labor, or the now-lamented temperance movement that shackled the country with the 18th amendment. All these reform movements began at the local and state level, and only after years of effort, reflected by the enactment of favorable state legislation or by favorable state judicial decisions, were their leaders in a position to push the federal Congress for similar legislation. During the course of their state campaigns these reform movements gained the support of powerful state leaders, which enabled them to become an effective force in moulding state opinion. Thus, when these reform spokesmen finally approached the national legislature, members of Congress had to pay attention because they were confronted by political forces from back home which could not be ignored. Regrettably these lessions of history have been lost on too many gay representatives today, who still think that the federal courts will provide a "quick fix" for their objectives. At the very least we must recognize that over 90% of the laws which affect gay people adversely are state, and not federal, enactments.

Legal reform at the state level means studying state constitutions and breathing life into them as guardians of individual liberty through favorable state court decisions. Naturally this takes time, a great deal of time, but patience has always been the byword of those who expect to succeed in legal or social reform. It is here that the American Association for Personal Privacy frequently parts company with many local chapters of the American Civil Liberties Union. The attorneys for those chapters are not specialists in sexual civil liberties since they have to carry the burden of the whole gamut of civil liberties legal issues. Too many of them continue to operate under the spell of what was once conventional wisdom for all civil liberties lawyers challenging state statutes -- namely, to rush into federal district court in the expectation of having the statute struck down on federal constitutional grounds. This ignores the fact that we are today confronted with a U.S. Supreme Court sitting at the top of the federal judicial pyramid, the membership of which is certain to

overrule any lower federal court rulings favorable to gay causes. This is in addition to the fact that a number of that court's decisions over the past fifteen years have greatly narrowed the procedural grounds for challenging in federal courts the constitutionality of _any_ state statute, whether involving sex or not. When, at the time of its founding in 1970, the American Association for Personal Privacy espoused the concept of challenging state sodomy laws in state courts under _state_ constitutions, it found itself a voice crying in the legal wilderness, at odds with the overwhelming majority of civil liberties practitioners. Today the best legal journals have articles recommending this legal route to those involved in civil liberties litigation.

For these two reasons, then -- the absence of an adequate legal groundwork and the type of justices currently on the U.S. Supreme Court -- it is necessary to stay away from the federal judiciary whenever possible. The advantages of state over federal action are demonstrated by the Association's long list of state legal victories -- nine cases won in the highest state appellate courts within a decade. No other organization in the field of homosexual civil rights can approach this record. It began in Colorado, in 1973, when the Association succeeded in having the Colorado Supreme Court invalidate its homosexual solicitation law. This was followed by two decisions in New Jersey, only a year apart, in which the New Jersey Supreme Court in effect rewrote the state's open lewdness law and soon thereafter struck down in its entirety the New Jersey fornication law. Then came the Association's _Pryor_ case, in which the Supreme Court of California engaged in similar judicial rewriting. Since the California statute which was involved combined the offences of open lewdness and sexual solicitation, the decision was a double victory. Even more important was the fact that the court set definitional standards for open lewdness laws which appear to be gaining national recognition by judicial adoption in other states. Within a year, the Supreme Judicial Court of Massachusetts reinterpreted that state's sexual solicitation law by adopting the California standards as set forth in the _Pryor_ case. In Pennsylvania the Association successfully challenged the

state's sodomy law equivalent, known as the voluntary deviate sexual conduct statute. That law was struck down by the Pennsylvania Supreme Court. Since the invalidated statute had also punished soliciting for the proscribed conduct, the effect was to end all criminal penalties for homosexual soliciting as well. Two cases were won before the New York Court of Appeals, the state's highest tribunal. The first threw out the New York voluntary deviate sexual conduct law. The second struck down the New York homosexual solicitation statute, although we were forced into the U.S. Supreme Court before we ultimately won. Finally, the Association suceeded in having Oregon's highest court of criminal appeals strike down the Oregon homosexual solicitation statute.

Working at the state rather than the federal level applies t political activity as well. There are today no more than three or four states where gay people have developed the organizational strength and political expertise to be counted as a significant force on the state political scene. These are California, Wisconsin, Texas and New Jersey. In two other states -- New York and Pennsylvania -- the makings of state-wide political influence exist, but gay divisiveness, political ineptitude, and a failure to agree on common objectives have prevented the gay people of those two states from exercising the political influence they should have. The situation is worse on the national level, where the larger of the two gay organizations with any claim to being national in scope has attempted to destroy the other and remair totally out of touch with the constituencies it professes to represent.

A number of explanations account for the absence of any effective gay political presence on the national level. One of these must certainly be the absence of effective state and local organizations on which any national organization must rest if it is to serve its purpose. There is, however, a more fundamental condition which helps to explain the paucity of effective gay political groups, whether local or national. This is the fact that the homosexuals who comprise the membership of gay organizations constitute only a small, out-of-the-closet fringe, whose outlook -- social, political, religious, and cultural -- is not representative of the great body of

people who engage in same-sex behavior. The vast majority of homosexuals and bisexuals are unrecognizable and unrecognized; they remain "in the closet" and belong to no gay organization. Yet, except for their marital status -- and frequently not even in this respect -- there is little reason to suppose that they do not generally reflect the religious, racial, ethnic, political, age, and social configuration of the population as a whole. The same cannot be said of the membership of gay organizations, which is overwhelmingly "lily white" in racial composition, below 35 in age, urban in residential patterns, agnostic in religious outlook, middle-class or white collar in social structure, and liberal or leftist in its political views. Out of this membership the gay leadership arises, which explains why it does not have deep roots within the constituencies for which it speaks. We all know that a substantial number of persons who belong to gay groups do not fit into these stereotypes; however, we must recognize that they constitute a distinct minority within the gay establishment.

No blame should be cast because of the unrepresentative character of the membership of gay organizations. Understandably, it is a product of the historical matrix out of which the homosexual minority sprang. Nevertheless, it constitutes an ever-present sociological fact to be ignored at one's peril. It follows that, where a large part of one's constituency is "in the closet", those organizations closest to the grass roots will be those most capable of developing into an open and effective voice for the homosexual minority. But to do this takes time and dedicated effort, which few members of the gay leadership have been prepared to make. In this respect, the young age of most of them is a decided handicap. Because most of them work at regular jobs, they have neither sufficient time nor the means to devote to the cause, while most older gays, who could contribute of their time and resources, remain completely outside of the movement and constitute for all purposes a lost generation.

The attitudes of gay leaders have also been colored by the fact that the movement for homosexual rights developed during the period

when the Model Penal Code was very much in the legal air. This contributed to the view that all gay legal problems could be solved in one fell swoop through the medium of the federal courts, culminating in one great victory in the U.S. Supreme Court. Most of us know that, in the 1950's, the American Law Institute, through its drafting of what came to be known as the Model Penal Code, recommended that the states decriminalize consensual sodomy occur in private between persons above the sexual age of consent. Here it should be noted that the Model Penal Code, a corpus of several hundred pages, was, like other legal codes proposed by the Institute, only a recommendation to the several states, without legal force, although it carried the prestige of the Institute's membership behind it. The code gave rise to the establishment in many states of so-called criminal law or penal law revision commissions, drawn in the main from judges, professors of law, prominent practitioners, legislators, and some law enforcement officers. Their purpose was the drafting of new penal codes for their states. The drafts produced by these commissions after several years were eventually submitted to their respective state legislatures, where they usually gestated for a further number of years before, in most cases, being enacted, although not before numerous changes had been made during the legislative process.

Until the appearance of the Model Penal Code, the process of adopting a new criminal code -- as distinct from <u>ad hoc</u> revisions to an existing code made from time to time -- was embarked upon by a state only rarely, perhaps once in a century. The new Illinois Code, for example, which the legislature of that state adopted in 1962, replaced the one which had served since Illinois' admission to the Union in 1818. Thus, during the first twenty-five years after the Model Penal Code's appearance, the American legal scene presented the unusual aspect of having a large number of states engaged in the lengthy process of revising their entire criminal codes at about the same time. Many of these new codes followed the recommendations of the American Law Institute with respect to sodomy. Generally they were several hundred pages in length, containing all the varied subjects cus-

tomarily comprehended within a state's system of criminal justice. Few members of the legislatures which passed these codes read most of the provisions contained in their new enactments, and certainly many of them were unaware of the changes which had been made in their state's sodomy provisions. Because these changes were buried beneath several hundred other provisions, it meant that the issue of sodomy-law reform never became a public issue, to be openly debated. Hence legislators who favored sodomy reform and who may have been aware that it was embodied in the proposed code, could vote for the legislation without fear of a political backlash from their constituents.

It was in this manner that almost all the approximately twenty-five states which are today reformed jurisdictions accomplished the change. In only two of them was the issue of sodomy-law reform publicly aired prior to its enactment. Not only was the majority of legislators unaware of the change, so were most gay people. Most practicing homosexuals discovered only months after the legal changes in their states that they were no longer felons in the eyes of the law. The same unawareness characterized the gay leadership. It had little or nothing to do with the legal changes that transformed them within a relatively short period of time from representatives of a criminal segment to spokemen for persons at least half of whom were now law-abiding citizens. This was the pattern that prevailed everywhere except in California and Wisconsin, where sodomy-law reform was accomplished in the more conventional manner, that is, by separate bill, the merits of which were first publicly discussed pro and con prior to enactment. Only in those two reformed states was it necessary to meet the issue head on. In those states gay people did really knuckle down and go to work for several years. In the process they developed quite sophisticated political and lobbying methods, and they were also effective in state-wide mobilization of public opinion. Sodomy-law reform was also accomplished by separate bill in New Mexico, but the measure also included provisions for important changes in the state's rape laws, which were strongly supported by woman's and other groups, so that public attention was not concentrated entirely on the sodomy

issue. The legislation was passed without intensive political efforts by gay groups.

In one state, however, gay people did mount very effective political pressure at the time their state's criminal code was up for adoption, even though they were not successful in having consensual sodomy removed in its entirety from their penal code. That was in Texas, where, after fine gay lobbying work, the offence was downgraded from a serious felony to the most minor of violations, carrying with it a maximum punishment of a fine of $200.00 with no possibility of imprisonment. And the $200.00 fine remains the maximum punishment regardless of the number of past convictions for the offence. As a consequence, Texas is the only unreformed jurisdiction which may not send consensual sodomites to prison.

In sum, almost every instance of sodomy-law reform has slid through its state legislature quietly, without its opponents having had an opportunity to mobilize against it. The ease with which this was accomplished led most gay people into thinking that the same legal changes can be effected in the unreformed half of the country in a similar manner. This is wishful thinking. Unlike the situation in the past, our enemies are now alerted to us, and we will have to fight for every inch of ground in the future. To a large degree this had become true even before A.I.D.S. had entered the picture to make matters worse. Furthermore, the unreformed half of the country lies almost entirely in the South, where strategies which worked to reform other parts of the country will not be effective. One thing is certain, progress from now on is going to take a long time.

The failure to understand the political winds extends to the legal sphere as well, and gay people are not the only ones confused. So are many of the so-called experts. Much of the problem arises from the fact that the sodomy laws, the lynchpin on which all the discrimination against gay people legally rests, and which are the statutes that have always provided the most savage penalties, are also the laws which have, throughout their existence, been virtual dead letters. Of the three criminal statutes

under which homosexuals are commonly arrested for doing what comes naturally -- the sodomy laws, the sexual solicitation statutes, and the open or public lewdness laws -- arrests under the sodomy laws certainly account for less then 1% of the total. This is due to the fact that the crime of sodomy is difficult to apprehend and, under its common-law definition, difficult to prove. It has been estimated that, for every sodomitical act which comes to the attention of the authorities in this country, a million others take place undetected. Apprehension of offenders under these laws is ordinarily quite impossible unless there is some delation by a particeps criminis or unless the case comes to light because of blackmwil -- both infrequent occurrences.

Proof of the absence of arrests and/or prosecutions for this form of same-sex behavior under the traditional form of sodomy law is confirmed by the near impossibility of finding cases with which to challenge the constitutionality of these laws. Every sodomy prosecution which does come to light almost invariably involves conduct that was either public in character or involved someone under the sexual age of consent or was not consensual. Hence, for the purpose of constitutional challenge, lawyers have sometimes "manufactured" cases by inducing volunteers to go into court as complainants in civil proceedings with admissions that they engage in the proscribed conduct, together with a request for judicial relief against the supposed threat of criminal prosecution. But this has been an unproductive method of constitutional testing.

Why then bother about sodomy laws, which are almost entirely unenforceable and are hardly ever enforced? Because, regrettably, they are central to the whole penal structure surrounding homosexuals and homosexuality. They provide the quinessential legal rationale for every manifestation of discrimination against gay people. They constitute the legal justification for discrimination in matters of employment, housing, and licencing. They are also the grounds for refusing equitable treatment in child-custody cases and in those involving visitation rights. With sodomy-law reform, the entire pattern of arrests under the sexual solicitation or

open-lewdness laws changes dramatically. Not only does this change affect enforcement procedures of these other statutes, it frequently changes legal interpretations of these laws as well -- all to the benefit of gay people.

This is why sodomy reform should be the first priority Yet this change is usually the most difficult and takes the longest to accomplish. In many unreformed jurisdictions it is much easier to obtain a municipal ordinance banning discrimination against gays in housing and employment. This is particularly true in university communities where there is a substantial gay student presence. That such a statute may later be struck down on the ground that it is inconsistent with the state's sodomy law is usually lost on the starry-eyed young people often responsible for the enactment of such local legislation. This is not to deny that there are occasions when it may be wise to push for fair employment or other anti-discrimination legislation at the municipal level prior to working for state-wide sodomy-law reform on the ground that enactment of the former can occasionally prepare the public for the latter. But decisions to do this need to be made by political sophisticates and not by zap-happy adolescents out for psychological "kicks" through street action.

Turning now to legal reform through administrative methods, we have already made mention of state penal or criminal law revision commissions. Their role in drafting the first versions of the measures their legislatures will subsequently consider is crucial to the entire legislative process. Approaching members of these commissions is not difficult if it be done by persons who are properly qualified. Since most of the state penal law revision commissions followed the sodomy recommendations of the Model Penal Code, it has been found necessary to make representations to them only with respect to unsatisfactory provisions of proposed sexual solcitation or open lewdness statutes. Here the consequences of a discreet approach, even by a single individual if properly placed, can be spectacular. The state of Nebraska is today without a noxious homosexual soliciation law simply because the Association submitted an appropriate brief at the right time to the State's penal

law revision commission -- this all quietly, through the good offices of one of the Association's members, a faculty member at the University of Nebraska. Incluencing the shape of legislation is much easier at the penal law revision stage than when a measure has already reached the legislature. By that time the only door usually open is through an appearance at whatever public hearings the legislative committee considering the code may decide to hold. But even at this stage exceptions can occur. Through the undersigned's membership on the political action committee of the New Jersey Assemblyman who was chairman of the Assembly Judiciary Committee considering the proposed New Jersey penal code, he was invited to attend the Committee's meetings as an observer, with the right to speak. During this individual's two years of attendance on that Committee, he succeeded in having the sexual solicitation provision completely excised from the proposed New Jersey code, and, in that form, it subsequently became law. (The sodomy statute had already been reformed in the draft proposed by the penal law revision commission.)

Probably the Association's most significant accomplishment in the administrative area was its success in obtaining the establishment by the Governor of California of the California Commission on Personal Privacy, with the Association's co-chairman, the Los Angeles attorney Thomas Coleman, as its executive director. The massive and omnivorous report of that Commission remains a standing model in its recommendations to the executive authorities of any state, whether reformed or unreformed, who wish to end discrimination based on sexual orientation within their state governments. It has become an indispensable tool for anyone interested in administrative reform in this area. Changes in government administration involve so many aspects of life that one can do no more than mention a very few in passing. In this connection it is absolutely essential to reject all going-it-alone attitudes. If ever it is necessary to remember Kinsey's statement that homosexuality is not a distinct and separate condition, it is here. "Males", Kinsey wrote:

> 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 living world is a continuum in each and every one of its aspects. The sooner we learn this concerning human sexual behavior the sooner we shall reach a sound understanding of the realities of sex. (Alfred C. Kinsey, Wardell B. Pomeroy & Clyde E. Martin, <u>Sexual Behavior in the Human Male</u> (Philadelphia, 1949), p. 639.)

Homosexuality is merely the reverse side of the coin of human sexuality. This means that no administrative measure for the welfare of gay people is ever likely to be adopted unless it is framed so as to include <u>all</u> persons similarly circumstanced, regardless of their sexual orientation. There is no better example to demonstrate this than in the area of prison administration. A significant number of the victims of male rape in prison are not homosexual. Hence no administrative measure to reduce its incidence can be successful if it be directed solely to solving the problem as it affects homosexual prisoners. The point is driven home even more forceably on the morrow of sodomy-law reform, which always leaves a significant number of persons in prison, or at least with convictions, for crimes which are no longer crimes. This stems from the fact that, under our system of jurisprudence, persons convicted under a law, since repealed, have no judicial redress by which their convictions can be set aside, since, <u>at the time</u> they engaged in the proscribed conduct, it <u>was</u> illegal. This is a general principle of our Anglo-American jurisprudence, applicable everywhere.

It does not follow, however, that such persons have no remedy at all. They may well be appropriate candidates for executive clemency in the form of a pardon. It is precisely to redress legal inequities of this kind that the executive has the power of pardon. However, unless they be personally involved, most people have only the foggiest notion of how the pardoning process operates, and what its legal significance is. A governor's power of pardon is one of the very few vestiges of the royal prerogative in its pristine form. The power is kith and kin to the royal power

to "suspend" or to "dispense with" a law, two ppwers which were taken from the Crown by the English Bill of Rights of 1689. The royal power to suspend a statute permitted the King to suspend the operation of a law in whole or in part. The dispensing power enabled him to grant a dispensation to an individual exempting him from the operation of all or part of a statute. The pardoning power, whether exercised by the King in the 18th century or by a governor of an American state today is still almost plenary in its effect. As the modern manifestation of the exercise of royal grace, it is a supreme act of mercy. When exercised to the fullest, the power of pardon results in the complete remission of guilt so far as the law is concerned, and makes for the restoration of the offender to exactly where he stood immediately prior to his commission of the pardoned crime. Hence a full pardon has the effect of expunging the criminal record in its entirety just as if the crime had never been committed. That means the person pardoned may swear without committing perjury that he was never convicted of the pardoned offence, and anyone who publicly accuses him of having committed the crime is open to a suit for libel. Similarly, any public official who so much as intimates that the person pardoned was once convicted of the crime is himself committing an offence. A full pardon can return any fines which have been imposed, suspend any penalties still applicable, remove any disabilities, and wipe the entire record cleam so that, legally, there is no record.

Inherent in the plenary power of pardon is the ability to grant lesser forms of amelioration, such as the power to commute punishments which have been imposed judicially, administratively, or by the military, to issue reprieves, and to issue conditional or partial pardons. Pardons may be individual, that is, applicable only to one person, or general, in which case they apply to an entire class or classes of persons. (An amnesty is nothing but a particular form of general pardon, since it is rarely granted to an individual.)

What does all this have to do with gay people? It forces us to remember that, where a sodomy statute has been reformed through

legislation, the criminal law will almost certainly have been changed in other sexual aspects also, most of which are likely to have affected heterosexuals. The most usual of these other changes is repeal of a state's fornication law where there may have been one. Other such changes involve repeal of the adultery law, a narrowing of the definition of the crime of "impairing the morals of a minor", lowering the sexual age of consent, limiting the thrust of the public lewdness statute, and repealing any sexual solicitation law applicable to simple, non-commercial, sexual requests. All these legal changes frequently leave numerous heterosexual persons either in prison or with criminal records for offences which are no longer crimes. Yet here again, the failure of many gay people to recognize that their situation is only one aspect of a much larger whole works to their own disadvantage. In short, our sexually repressive society, the product of our Judeo-Christian heritage, oppresses heterosexuals as well as homosexuals. In Connecticut, the only state where the use of the pardon procedure was ever considered after sodomy-law reform, a gay-initiated project to secure a blanket pardon for all gay persons in the state with convictions for conduct which was no longer criminal, foundered because of the inability of the organizers to include heterosexuals in their programme.

Despite this failure, the Association was itself able to obtain a pardon for one individual in Connecticut. To this day his case remains the onely one in the country where a pardon was issued to a homosexual with convictions for crimes involving conduct which subsequently became legal. In this instance, the individual had three previous convictions under the old statute, for each of which he had served a prison term. The pardon took more than six years to obtain, and entailed lengthy hearings before the state pardon board, at which each of the three prosecutors who had convicted him at his previous trials appeared to oppose his pardon application. His lawyer was a prominent Hartford attorney and long-standing member of the Association whose work was performed entirely _pro bono_. He had previously been a key person working behind the scenes helping to insure that

Connecticut's new criminal code included sodomy reform.

Quite a different set of circumstances was involved in the effort to have the first person known to be gay admitted to the bar as a lawyer. The candidate was not only gay, but the fact of his homosexuality was revealed during his admission process to the bar, and he was then forced to admit that he engaged in conduct which was still a felony under the law of his state. This was almost fifteen years ago, when, for someone to be admitted to the bar who was known by the authorities to be a practicing homosexual in violation of the criminal law, was unheard of. The young man in question had been among the first fifty of the more than 5,000 in his college graduating class, and had gone on to law school where he had ranked among the highest ten in a class of over 500 and had won two prizes. He had passed the state bar examinations and had been hired by what is, without doubt, the most prestigious law firm in his state. But, prior to his appearance before the character committee of the state bar association -- preparatory to their expected recommendation that he be admitted to practice, and while his homosexuality was still unknown -- he was denounced as homosexual by a former lover in a letter to the bar association.

Then began one of the most extraordinary series of events in gay legal history. The bar association had been so impressed by the candidate's record that they nevertheless recommended that he be admitted. But the state supreme court, acting in its role as administrator of the state's court system, rejected the recommendation, and instead appointed a twelve-member commission of prominent attorneys from around the state to investigate the case on morals' grounds. This commission, which had power to pubpoena witnesses, met in camera and called each witness separately, so that no one giving testimony heard that of anyone else. The candidate was strongly supported by the partners of his law firm, one a retired general, the other a past-president of the state bar association. Another past-president was the candidate's own lawyer. As one of those who had been asked to appear, I had an opportunity to speak with witnesses outside of the hearing room who were waiting to be

called on to hear from those who had already testified. This gave me an opportunity to spend almost an hour discussing the case with the dean of the state's principal law school, who had come to appear on the candidate's behalf. The questioning which took place at that hearing can only be compared with what must have taken place at trials for heresy conducted by the Inquisition centuries ago. "Where was your mouth when he ejaculated?" "Did you penetrate his anus?" At the end the commission could reach no clear decision. Two members refused to take part in any of its proceedings from the very start. Two others abstained at the final voting. Of the eight who did vote, five favored admission and three were opposed. Only because the state supreme court ultimately ruled that it would recognize a decision by a majority of those voting was the candidate finally admitted to the bar, which was performed in a private ceremony in the supreme court's chambers.

Eschewing the federal courts does not necessarily mean ignoring the federal government. After several years of preliminary preparation, the Association was invited to a private discussion with the Commissioner of Immigration and Naturalization. As a result, the Immigration and Naturalization Service agreed to end the practice of making enquiries regarding the sexual orientation of foreigners seeking entrance into this country. Although this was done, many of us know that the problem of gay foreigners' visiting this country runs far deeper than the mere ending of such questioning at the borders. The ultimate resolution can only come through legislative changes by Congress.

From the time of its inception, one of the Association's most important concerns was the need to develop an acceptance of sexual civil liberties as a recognized legal specialty by the bar and bench. In full appreciation of the fact that such a goal would take at least a generation to accomplish, the Association early in its history established the Sexual Law Reporter, which appeared bi-monthly for about six years. Its purpose was to provide practitioners and laymen in the field of sexual

civil liberties with the same kind of news, professional information, and digests of recent cases provided by the law reporters for such established legal specialties as patent law, family law, criminal law, business law, and other such legal divisions. During its life-time the Reporter was very well received. Amongst its subscribers were law firms, law libraries, and law schools, and the list included several judges. One of the subscribers was the library of the United States Supreme Court, whose librarian personally commended the Reporter's editor for his fine work. The Reporter was never successful financially, although toward the end of its existence income from subscriptions amounted to a substantial portion of its expenses. Eventually it had to be discontinued, because the volunteer lawyers who were publishing it entirely at their own expense could no longer handle both the work of the Reporter and the demands of their own law practices.

At this point I should mention that all of the Association's work is performed on a volunteer basis. Membership in the Association is not by open enrollment but by invitation only. Hence there is no regular source of income from membership dues. Membership is limited to persons with a high degree of dedication to the Association's work plus the ability to assist in promoting it. Members are expected to contribute of their time, their talent, or their money -- or a combination of all three. The Association is not a gay organization even though all of its founding members happened to have been gay. Gayness has never been a requirement for membership, and there are several valued members who are heterosexual. By deliberate policy the Association has never become part of the gay movement. To the charge that it is an elitist organization, it would probably have to plead guilty. If it has any organizational goal, it is probably to become the "Club of Rome" of the movement for sexual law reform.

The Association is incorporated in California as a non-profit corporation and enjoys a 501(c)3 status with the Department of Internal Revenue. This means that contributions to it are deductible on a donor's federal income tax. Thus, for tax purposes, its status is no dif-

ferent than that of a church or private university. Aside from an occasional contribution from its friends, the Association's only continuing source of outside funding is from a small monthly stipend. It may properly be asked what are the expenses that the Association incurs, inasmuch as the legal services of its attorneys have, with a very few exceptions, been provided without charge. The answer is that expenses arising from litigation in the courts are not limited to lawyers' fees. Transcripts alone can run to several hundred dollars, and, in the case of appellate cases, to several thousand. The cost of printing the brief in the Association's Uplinger case which was heard by the U. S. Supreme Court last year came to some $1,750.00. The Association had to insist on paying this over the protests of its own dedicated lawyer who wanted to pay it himself, even though he was already out of pocket more than $18,000 for that case. Another $800.00 went for printing the brief of Professor David Richards of New York University Law School, who represented the Association as amicus in that litigation.

Telephone costs are the single most continuing expense with which the Association is confronted. On-going communication between members is essential if the Association is to carry out its functions, particularly when lawyers have to confer in the planning of litigation and in the writing of briefs. It is estimated that the three lawyers involved in the Pryor case in California -- separated as they were by the distance of a continent -- cost the Association more than $2,000 in telephone expenses during the period when they were drafting their briefs. But it was from those briefs that the Supreme Court of California framed its landmark decision which permanently freed thousands of gay Californians from the combined incubus of a horrendous sexual solicitation and open lewdness law. No one received a penny for the many weeks of concentrated legal work involved. Ordinarily the Association's telephone bill runs between $400 and $600 per month, but when something out of the ordinary arises, such as the AIDS situation in San Francisco, its phone bills skyrocket.

It must be conceded that, in today's society, the American Association for Personal Privacy is something of an anomaly. In a world increasingly run by salaried professionals, it staunchly pursues its goals through the voluntary efforts of dedicated individuals. It recognizes no obligation to insure gender parity within its membership. It refuses to squander its time and resources on public relations. It rejects the artificial distinction between "gay" and "straight" and works for the full integration of gay people into the mainstream of American life. In an era which seems to have little room for the development of patriotism, family ties, personal courage, and moral integrity, it is old fashioned enough to still believe that gay people have as great a stake in the preservation of these values as any other sector of our society. Standing outside of the official gay movement, the Association rejects the syren calls of the political extremes, whether of the left or of the right, and remains beholden to no political party or group. In sum, the Association's overriding objective is to eradicate the reasons for its own existence, so that future generations will be able to inscribe on its epitaph nothing more than the words, "They were good Americans."

Arthur C. Warner