A CASE STUDY IN THE GAY MOVEMENT:
WISCONSIN'S GAY RIGHTS LAW

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What is required by law, unrecognized in law or condoned by the lack of law has a tremendous impact, not only on the specific acts being regulated but on the minds of those whom the law governs. In a society which asserts that it is governed by law, one cannot help but wonder how significantly this state of the law must reinforce the homophobic attitudes which abound in this society. Law serves as a symbol of acceptable attitude and ideology. The assertion that in the United States we have achieved "equality and justice under law" is integral to the national self-concept. A group treated in law as described above is at least symbolically a group whose rights are not worth protecting. Thus, there is tremendous significance in forcing the legal system to recognize the existence of lesbians and gay males and to accord them rights. The significance, however, is not merely in the gaining of those rights. It is simplistic to assume that once law is changed, or discrimination outlawed, bigotry ceases. What is closer to the truth is that the existence of laws which permit and condone this kind of unfair and demeaning treatment is symbolic endorsement of prejudice and bigotry. To force systems like the legal system to accommodate, to change, to capitulate, to recognize the existence of rights for any despised group is to shape the perceptions of who that group is and how much their existence is valued or their plight is of concern to the collective conscience. Changing the law to make it fit and serve the lives as actually lived of lesbians and gay males is a symbolically significant way of resisting the derogatory characterizations now fostered by the existing symbols.

-- By the National Lawyers Guild
Anti-Sexism Committee of San
Fransisco Bay Area Chapter,
Roberta Actenberg, editor.

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INTRODUCTION: AB 70, THE 'FLUKE'

In 1982, Wisconsin became the first state in the United States to pass a so-called Gay Rights law. Passed on October 21, 1981 by the Wisconsin Assembly and on February 16, 1982 by the state Senate, the Gay Rights bill, known as Assembly Bill 70 (AB 70), was signed into law on February 25, 1982 by then-Governor Lee Sherman Dreyfus. Specifically, this bill added "sexual orientation" to all statutes prohibiting discrimination in employment, housing, and public accommodation. Thus, in addition to race, sex, religion, national origin, ancestry, marital status, age, and physical condition, discrimination against sexual orientation was prohibited.

According to both proponents and opponents, passage of AB 70 in 1982 was unexpected. As Dan Curd, legislative assistant to Representative David Clarenbach (D-Madison), the bill's chief legislative sponsor said, "It was a situation of being in the right place at the right time. We were overwhelmed and shocked that it passed. Afterwards, everyone was saying 'I can't believe this is happening'" (Interview, 31 March 1987). Barbara Lightner, who at the time was coordinator of The United, a gay and lesbian social service organization, described its passage as a "fluke" (Interview, 14 April 1987).

In this paper, we look at the surprising passage of AB 70, concentrating on the strategies used by both proponents and opponents of the Gay Rights bill. But first, we place the bill

in context of the greater gay movement in order to give some of its institutional and social impact as well as to give an idea of the homophobic legal environment in which the bill passed. Second, we explain the methodology --and some possible weaknesses with it --used for this inquiry. Finally, we evaluate the effect and implications of AB 70 and raise some questions regarding social movement theory.

METHODOLOGY

The chief methodology employed for this paper was research of primary literature, such as press releases and personal correspondence, provided by persons involved with the bill. This literature was supplemented by interviews, and in one case correspondence, with some of these same individuals. These interviews, while limited in scope, represented important segments that were involved with AB 70 such as legislative actors, grassroots activists, church supporters, and bill opponents. We complemented these sources with a number of secondary literature sources, from mainstream newspaper stories, to gay publication accounts, to social movement literature.

This methodology has a number of weaknesses. One important weakness regarding the academic literature is the dearth of information on the gay movement as a social movement. Second, although relatively few people were intimately and emotionally involved with the bill, ideally other participants would have

been interviewed to include other perspectives and differing versions. This point is especially relevant with AB 70 as its historic nature within the gay movement has apparently led to some "turfing" conflicts (Barbara Lightner, Interview, 14 April 1987). Also, since the bill passed over five years ago and since the legislative process that passed it took about a year from its initial introduction to the governor's signature, distortions caused by the time lapse are definite possibilities. Finally, because this paper is a case study, its application to more general social movement theory is limited (see Marwell and Oliver, p. 7).

THE GAY MOVEMENT: A LEGAL OVERVIEW

For the gay rights movement, AB 70 had a profound symbolic effect. No other state up to that time had enacted legislation of the sort -- and no other state has since, although there have been unsuccessful attempts to do so in a number of states. Therefore, Wisconsin's Gay Rights law serves as both a model for other states and as a morale booster for a movement which has suffered frequent defeats, such as the Supreme Court's 1986 Hardwick v. Bowers case. This decision effectively stated that adult gay males are not constitutionally guaranteed something so basic to human nature as private, consensual sex. In addition to Georgia where the case originated, 24 states and the District of Columbia still prohibit sodomy. Many states also outlaw oral

sex -- whether between gays or straights -- as well.

Gay movement leaders point out that in the United States, discrimination against gay men and lesbians has been systematic. For the most part, legal discrimination against gays has taken the form of omission. Gay men and lesbians are not acknowledged as rightfully existing. For example, marriage and adoption laws fail to recognize gays as legitimate, loving couples and as capable, stable nurturers even though thousands of gays have long term, stable relationships and raise children. Laws for providing financially for a mate and acting in a mate's behalf in the case of illness or incapacity makes no provision for the existence of lesbians and gay males or their familial relationships, with a few cities being exceptions.

In addition to omissions, explicit legal barriers exist against visits of lesbians and gay men from other countries and gay military service. The military, for example, enforces this law with a vengeance, irregardless of military service record. The official military position is that gays "cannot be tolerated" (McClosky and Brill, p. 178; see also Achtenberg). In effect, this is how all gay men and lesbians are treated by the U.S. government.

More recently the AIDS crisis, because it is wrongly perceived as a "gay plague", has resulted in calls for everything from quarantine and tatooing of AIDS victims and gay men, to numerous other forms of discrimination against people who have developed AIDS symptoms as well as against those who merely

tested positive for the presence of the AIDS-causing virus. These and other hysterical actions have served to stigmatize gays further and in some instances this has led to increased violence against gays.

However systematic discriminations against gays has been, numerous national groups and organizations, such as the American Civil Liberties Union, the Lambda Defense Fund, the National Gay Task Force, and other localized groups have pushed for statutes guaranteeing legal rights and challenged these discriminatory laws in court. To date, this strategy of passing rights guarantees has been successful in most major U.S. cities, although Chicago is a notable exception. But this has not been an easy task for the movement. New York City, for example, finally passed a sexual orientation nondiscrimination clause in 1986 --after 15 years of attempts. Individual court cases, too, have met a mixture of success and failure.

Ever since the birth of the modern gay movement following the 1969 Stonewall reaction to police harassment, reform of the U.S. legal code has been a top priority in the gay movement. Of course, legal changes alone are not the sole goals of the gay movement, but as Actenberg pointed out, law is a profoundly significant institution in U.S. society, affecting attitudes as much as material realities.

AB 70

Given the hostile legal environment gays faced in the United

States, it seems surprising that a Gay Rights bill could pass Wisconsin, which in 1981 and 1982 still considered sodomy against the law. In an attempt to explain AB 70's passage, we look at the strategies and tactics used by both AB 70's proponents and opponents. But we first turn to the main actors and organizations involved with the bill to see from what these strategies evolved.

ACTORS AND ORGANIZATIONS

The chief legislative sponsor of AB 70, David Clarenbach, was responsible for shepherding the bill through the legislature. Clarenbach and his staff actually composed the specific legislation, although this was done with feedback from others outside the office, such as those individuals involved with passage of Dane County's sexual orientation nondiscrimination ordinance. Jim Moody, then senator from Milwaukee and the senate's chief sponsor, noted that legislators were not the only people involved with the bill: "The grassroots endeavors for this particular legislation was such that the Wisconsin State Legislature had the wisdom and courage to adopt this long overdue measure" (Personal letter to Barbara Lightner, 23 February 1982).

Numerous individuals, representing both organizations and themselves, went on record as supporting and opposing the bill at its public hearings (see Appendix A for list). For example, one individual who was especially active with generating religious

support in the Milwaukee area was Leon Rouse, who was then with the Committee for Fundamental Judeo-Christian Human Rights. The support that Rouse helped generate would prove helpful in passing AB 70 as both legislators and the Governor referred to its mainstream backing as reasons for support (Interview, Dan Curd, 31 March 1987; Interview, Barbara Lightner, 14 April 1987).

Also, the role of the media, though of questionable impact in the end according to Curd, cannot be disregarded for its role in influencing public opinion. Most newspapers in the state, including Madison's State Journal and Capital Times as well as the Milwaukee Sentinel and the Milwaukee Journal, supported AB 70's passage. Considering the bill's controversial nature, surprisingly few articles were published on it. For example, between October 1981 and February 1982, only five articles in the State Journal covered AB 70, according to its index.

Another media actor turned out to be WORT-FM, a Madison listener-based radio station. WORT urged its listeners to call in opinions on the bill after two fundamentalist radio stations, WNMC-FM in Madison and WVCY-FM in Milwaukee, encouraged listeners to call the Governor's office with their opposition. The Governor's office was deluged with calls, causing Sue Riordan, then the Governor's media coordinator, to call it "the battle of the radio stations" (Milwaukee Sentinel, 24 February 1982, p. 3). Thousands of calls, which depending on the source, came in anywhere from 2 to 1 in favor of the bill to about 50 -50, tied up the governor's phones for days. The Governor's desire to

return his office to some normalcy is thought to be one reason why Dreyfus quickly signed the bill (Interview, Dan Curd, 31 March 1987; Interview, Barbara Lightner, 14 April 1987).

Beside the radio stations, the opposition to AB 70 was chiefly composed of religious fundamentalists. Perhaps the most visible and vocal opponent was the Reverend Richard E. Pritchard, who was then with a congregationalist church. While Pritchard had a long history in the black civil rights movement, he opposed AB 70 as he believed that homosexuality was a "disease", an "addiction" not dissimilar to drug addiction. Because homosexuality was a "chosen" yet "immoral" condition, gays should not be given the same rights guaranteed others in society, unless they are "cured" (Interview, Rev. R.E. Pritchard, 07 April 1987). Beside Pritchard and the fundamentalist radio stations, there was relatively little explicit opposition.

STRATEGY AND TACTICS

Perhaps the single most important influence on the development of a strategy on the part of AB 70's supporters was the history of another previously introduced Assembly bill, the Consenting Adults bill. This bill sought to effectively legalize consensual adult sexual activity by removing prohibitions against them. Covering straights as well as gays, the bill removed sodomy and oral sex prohibitions, and, for example, legalized cohabitation. After about three previous submissions, passage of

the bill seemed imminent in the 1981-1982 session due to two factors. First, according to Curd and Lightner, the key to the passage of the Consenting Adults bill was the existence of a broad-based coalition which endorsed the bill, and which consisted chiefly of religious organizations. Second, the changing composition of the legislature seemed to favor both Consenting Adults as well as the Gay Rights bill. For example, then-freshman Republican Betty Jo Nelson, now minority leader, supported both measures, as did many legislators of her class (Interview, Dan Curd, 31 March 1987).

Because passage of the Consenting Adults Bill seemed likely, supporters saw it as time to introduce the sexual orientation nondiscrimination bill, thinking that it would take a number of sessions for it to pass. Ironically, however, it was not until May 5, 1983 that the older Consenting Adults bill passed -- more than a year after its descendant, AB 70, would pass. From this experience with Consenting Adults, supporters of AB 70 had a strategy that consisted of five interrelated parts. This strategy was carried out by both grassroots activists, like Lightner and Rouse, and legislative insiders, like Clarenbach and Curd.

First, morality issues regarding homosexuality were downplayed by showing that AB 70 was a civil rights issue. According to a press release from Clarenbach:

> The point is not whether homosexuality is admirable, but whether discrimination is tolerable. No person should be denied a job, a home, or the use of a public place because he or she is homosexual.

Second, and closely relating to the first point, a broad-based coalition was forged around the rights issue in order to legitimize the bill and to show the diversity of support for gay civil rights. Chief among these coalition partners were members of many of the mainstream religious denominations, such as the Lutherans, the United Methodists, the Presbyterians, and the American Baptists (see Appendix B for the complete list of supporters). So important were these religious endorsements that Curd called the particular support of Archbishop Rembert Weakland, who had considerable public opinion influence in predominantly Catholic Milwaukee, "critical" in insuring the bills passage (Interview, 31 March 1987). One important qualifications affirmed by most of these religious leaders, however, was that this should not be mistaken as condoning gay sexual activity. For example, in a March 2, 1981 letter, the Archbishop wrote:

> There has been no change in the Catholic position concerning homosexual activity, which has always been considered as morally wrong; on the other hand, it has also been consistent with Catholic teaching that homosexuals should not be deprived of their basic human rights. For this reason I feel that support of this Bill [AB 70] would be indeed proper and consistent with previous positions that the Church has taken (Personal letter to John Murtaugh).

Although for some religious leaders, like the Rev. Pritchard, issues of rights cannot be separated from morality, most religious denominations apparently saw a distinction.

Third, proponents of the Gay Right bill were deliberately nonconfrontational with the opposition. This was done to

encourage rational discussion of the rights issue and to prevent it from merely becoming an emotional issue. For example, while public hearings for AB 70 took place almost a year before it became law, it only became a hot media item when the papers latched on to the "phone wars" aspect -- before this incident there was no heated press event. According to Curd, the majority of legislators privately supported the bill but publicly were hesitant to support it, lest it become a political liability. By making it an "issue of conscience" rather than an sensationalist spectacular, proponents were able to create an atmosphere for legislators "to do what most saw as right" (Interview, Dan Curd, 31 March 1987).

Fourth, another way proponents encouraged discussion and provided a positive atmosphere surrounding the bill was to anticipate "traps" (Interview, Dan Curd, 31 March 1987). Specifically, questions regarding the effect AB 70 would have on controversial issues, like teachers being required to teach homosexuality in the classroom, were met before they became distorted:

> The fears that homosexuals may try to convert the young in our classrooms; molest other citizens; disrupt the peace and stability of neighborhood or office, or even threaten the foundations of [the] American family are excessive and irrational. There are, after all, laws, regulations, and rules that cover misconduct by all persons, homosexual or heterosexual -- sanctions to deal with molester; with teachers who preach sexual values when they should teach; with tenants who are noisy and disruptive; with employees who let their private lifestyles interfere with their work (Press release, Office of David Clarenbach, p. 13).

Another frequent criticism of AB 70 concerned the Wisconsin

National Guard and ROTC which did, like the rest of the military, legally discriminated against gays. These concerns were diffused when it was shown that federal law, which covered both areas, supersedes state law at all times, thereby making AB 70 inapplicable in these areas. The National Guard and ROTC could -- and still do -- legally discriminate against gays.

Finally, yet another tactic used for AB 70 was to appease then-Governor Lee Sherman Dreyfus' concerns about the bill, such as the National Guard issue but especially affirmative action. After AB 70 passed the Assembly and with the Senate likely following suit, Dreyfus contacted the bill's sponsors and hinted that he would support the measure, providing it would not be implemented through affirmative action. While the Governor's support was not taken for granted even with this indication, this provision was amended as a precaution. Similarly, another tactic was to minimize the fact that AB 70 would be precedent-setting on the state level. Instead, emphasis was placed on the fact that cities, like Madison and Milwaukee, as well as Dane County had already added sexual orientation to their discrimination bans. Furthermore, it was noted that these forerunners did not create the problems the opposition claimed would develop from a sexual orientation provision.

Both of these points -- affirmative action removal and the lower government's previous actions -- added into the reason why Governor Dreyfus signed the bill. In keeping with his tradition of silence on his views of pending legislation, Dreyfus kept

silent, even to his staff, regarding his support or opposition to AB 70 until just a few days before he actually signed it into law. In his statement of support, the conservative Republican explained his reasoning:

> I have decided to sign this bill for one basic reason, to protect one's right to privacy. As one who believes in the fundamental Republican principle that government should have a very restricted involvement in people's private and personal lives, I feel strongly about governmentally sanctioned inquiry into an individual's thoughts, beliefs and feelings.
>
> Discrimination on sexual preference, if allowed, clearly must allow inquiries into one's private life that go beyond reasonable inquiry and in fact invade one's privacy. No one ought to have the right and no one ought to be placed in the position of having to reveal such personal information when it is not directly related to an overriding public purpose (Letter to David Clarenbach).

Curd also speculates that the Governor had already decided not to seek reelection, thus his support would not become a political liability (Interview, 31 March 1987). Lightner suggests his support might have arisen from his personal "pizazz style" (Interview, Barbara Lightner, 14 April 1987). Apparently, a factor in the speed of his decision was the desire to stop the "phone wars" which plagued the Governor's office.

In contrast to the strategy of AB 70 supporters, opponents had no coherently developed or executed strategy. Instead, most of the actions taken by the opponents apparently were ad hoc reactions to the bill's successive steps. Exceptions included the presentation of a petition opposing AB 70 that had about 800 signatures and letters to newspapers and legislators (Interview, R.E. Pritchard, 07 April 1987). The most visible tactic of the

opposition was the last minute phone campaign. However, even this was effectively met by proponents. While some, like Pritchard, have said this lack of organization on the part of the opposition was mainly due to "dishonest" legislative maneuverings, the year-long process of committee hearings and chamber debate makes this claim seem unfounded. Governor Dreyfus concurred:

> Finally, let me say I am somewhat puzzled by expressions of anger directed at me by certain opponents of this measure. Indeed, some people seem to believe I am solely responsible for ensuring the enactment of a proposal which rushed through the legislative process in a whirlwind of haste. That simply was not the case. AB 70 was introduced into the Legislature in February of 1981. Public hearings were held on it in both houses of the Legislature and people had over a year in which to make their positions on it known to their legislators. Many did so, and many also wrote to me during this time, to make their views known; the bill also had the support of a wide-ranging group of religious leaders from both the Christian and Jewish faiths, and was adopted by a majority of both legislative houses with the support of members of both political parties (Personal letter to Barbara Lightner, 8 April 1982).

Given this relatively long period of time in which to organize, it is unclear why significant opposition failed to mobilize.

EVALUATIONS

In evaluating the implications of AB 70, three areas are of special importance. First, what is the consequence of a strategy, like that used for AB 70, on the movement's constituent population? Did AB 70 have practical consequences, in terms of opening up channels for discrimination complaints, in addition to its noted symbolic effect? Second, what effect -- if any -- did

AB 70 have on public opinion? Did Wisconsinites become more tolerant of gay men and lesbians because of it? Finally, what characteristics were unique to this particular action and what characteristics are typical of the gay movement more generally?

One readily apparent characteristic in the history of AB 70's passage is the absence of a visible social movement demanding such a bill. Lightner explained: "Almost nothing is from a large-based social movement. Almost always only a few people are involved with an action in any dedicated fashion" (Interview, Barbara Lightner, 14 April 1987). Lightner explained this as "existential expediency":

> If we would all take control of our own lives, we would need no laws at all. But we don't -- and never will. We'll always have a few over the most. But what we can take as our goal is to expand the small circle which makes the decisions (Interview, Barbara Lightner, 14 April 1987).

Curd mirrored this sentiment for small groups. "You need to use the system to your advantage. And that system allows only a few to be active. There really wasn't anything for alot of gays to do" (Interview, Dan Curd, 31 March 1987).

One possible consequence of this is that since relatively few people were involved with the bill, gay men and lesbians may not know about the protection guaranteed them, a concern noted by Freiburg (1985). There seems to be some validity in this point as compared to other protected classes, gays have filed fewer complaints with the Equal Rights Division (ERD) than have other classes. For example, in the 1986 calendar year, only 69 complaints -- the lowest number for any protected class -- were

filed with the ERD regarding discrimination against sexual orientation. This is less than two percent of the total cases filed (see Appendix C for further breakdown).

This may be due to factors other than ignorance, however. First, although doubtful, there simply may be fewer gays than other classes. Second, gay men and lesbians may fear retaliation or even physical violence if complaints are filed. Others may be skeptical of the effectiveness of filing a complaint, given the legal environment gays have traditionally faced. However, the statistics do not seem to collaborate this possibility either. For example, of the total cases filed regarding sexual orientation discrimination as of April 27, 1987, roughly 33% of cases were regarded as "successful" by the ERD, meaning the department's investigation had found "probable cause" of discrimination or the cases were legally settled (see Appendix D for the status of other complaints). This compares to a 29% success rate for complaints regarding race and a 38% success rate for complaints regarding sex (Interview, Leanna Were, 12 May 1987). However, success as defined by the ERD may not mean success to the person filing, as the case of Jay Hatheway -- which we will discuss -- shows. Finally, rather than being ignorant of the law, gay men and lesbians may know of it but be apathetic to it. Like other oppressed groups such as women and blacks, gays may be more concerned with personal questions than larger political and legal challenges, a problem noted in Freeman (1983, p. 80). Similarly, the free-rider problem noted first by

Olson (1965; see also Walsh and Warland, 1983) could account for a number of gays who were aware of the Gay Rights initiative but choose to remain inactive regarding it. The free-rider problem could also account for the relatively few active opponents of the bill.

Second, the question of public opinion toward AB 70 -- as both a factor in its passage and as changing because it passed -- remain conclusively problematic. As a factor in the bills passage, there is little evidence beyond speculation that people in Wisconsin had less homophobic attitudes than the general population of the U.S. Surveys show a relatively low tolerance among the general population for homosexual behavior as well as for civil rights for gays. According to Schneider and Lewis (1984), "Large numbers of Americans harbor negative views of homosexuality that they no longer apply to differences of race, religion, sex, or national origin" (Schneider and Lewis, pp. 16 - 17). National opinion Research Center surveys from 1973 to 1983 showed a consistently high, between 67 and 70 percent, "always wrong" when asked about sexual relations between two adults of the same sex (Schneider and Lewis, p. 17). McClosky and Brill (1983), too, report that for the most part homosexuality is still strongly disapproved of and is regarded as morally wrong.

These moral pronouncements carry over to questions regarding civil liberties.

> Half the population do not think that complete equality for homosexuals in teaching and other public jobs is a good idea. A surprisingly large number (58 percent) would deny

> to gay liberation movements the use of the community's auditorium to promote homosexual rights. Approximately half the general public would also prohibit homosexual bars, with the elites again more willing to permit such establishments. Only one third of the public would allow lesbian mothers to retain custody of their own children. On the controversial, highly charged question of the legal right of gays to marry one another, the opinion among all groups is strongly negative (McClosky and Brill, p. 203).

Thus, while figures on the general population's attitudes toward gays differ possibly raising methodological questions on their gathering, empirical evidence nevertheless indicates a very low rate of tolerance for both homosexuality and only a slightly higher rate of tolerance for gay civil liberties.

Given this low rate of tolerance for gays among the general public, what was the state of public opinion toward gays in Wisconsin? According to Lightner, there was substantial support for the measure among heterosexuals -- backing she called "a mood of yes." "There was quiet consensus among a large group of people . . . either that or indifference." Wisconsin, she explained, is a "schizophrenic state" with the two polar traditions of LaFallette's progressivism and McCarthy's reactionism. "You can never tell which side of this tradition will decide an issue" (Interview, Barbara Lightner, 14 April 1987).

Complimenting this "mood of yes" was the reality of a broad-based, legitimizing coalition and widespread, mainstream media support. As a stigmatized and oppressed group, gays needed allies -- whatever their sexual orientation -- for legitimization, just as blacks needed the support of whites in

that civil rights movement. This is probably one of the most basic lessons of practical politics, whatever the issue. Although minority groups have often made progress in this way, there is frequent discrussion on the need for political power in gay hands. Gay leaders, like Harvey Milk and West Hollywood mayor Steve Schulte, have argued that gays should not merely support straight liberals, as they may not always be reliable or understanding enough, but seek office themselves (see Giteck, 1987, Shilts, 1982).

The "mood of yes" definitely was not unanimous as evidenced by the opposition to the bill. Although ultimately unsuccessful, this subsection of the general public formed a countermovement to defeat the measure. Arising for the most part from conservative Protestantism, which is consistent with Lo (1982; see pp. 121 - 126), the opposition did not adopt or adequately counter the organizational forms or strategies that the proponents used, possibly reducing their effectiveness (see Turner, p. 398). Instead of being relatively centralized and unified, the opposition appeared fragmented and indecisive and thus politically weak.

Finally, chief among the action's unique characteristics seem to be the substantial expertise, organization, and networking utilized by AB 70's proponents. Unlike the "tactical innovation" that most oppressed groups are forced to resort in an attempt to offset their powerlessness, the bill's proponents not only had institutional access but were also able to effectively

use that access (see McAdam, p. 735). That access was not enough by itself, however. Coalition-building was also a vital aspect, as it is with the gay movement more generally (Freiburg, 1987, p. 17). Grievances alone are not enough to induce change for gays -- careful organization and substantial networking are vital elements to successful change.

CONCLUSION: CHALLENGES CONTINUE

There is no substantive conclusion to AB 70 as its effects are facing a number of challenges. For example, one significant challenge to this nondiscrimination act involved a complaint brought by Jay Hatheway of Madison against the Gannett-owned Green Bay Press-Gazette. Hatheway filed a discrimination charge against the paper for refusing to publish classified advertising for Among Friends, a gay and lesbian rural resource agency. A newspaper, Hatheway charged, is public and so must accommodate gays. After an investigation by the ERD which found probable cause of discrimination, the case was referred to the Brown County District Attorney who in turn refused to proceed with the matter. In an opinion from the Attorney General's office, the scope of "public accommodation" was questioned, thus causing the ERD to remove newspapers from this classification. Currently, Hatheway is appealing the matter and is being represented by the Lambda Defense League of New York.

Perhaps the most significant challenge given to the sexual

orientation clause of the nondiscrimination law to date is the Rawhide exemption controversy. The Rawhide Boys Ranch, a private though state subsidized residential treatment center for delinquent teenage boys, has pushed for an exemption from the nondiscrimination bill, claiming it needs Christian, heterosexual, and married couples as "positive" role models. Thus Rawhide wants to not only consciously discriminate against gays but also against non-Christians and single people as well. This qualification is an important one, for although the sexual orientation aspect is receiving much of the legislative and media attention, the Rawhide amendment would provide for legal discriminations against other groups as well. According to Curd, the concentration on the sexual orientation aspect is a deliberate tactic to appeal on an emotional level (Interview, Dan Curd, 31 March 1987).

While religious organizations are currently allowed to discriminate in favor of individuals of the same faith when making employment decisions for some specified functions, the Rawhide exemption could effectively gut the Wisconsin nondiscrimination law as other groups could push for exemption once this precedent is set. Last year when the Rawhide bill was introduced, the Equal Rights Division went on record as opposing the exemption. According to Leanna Were of the ERD, the exemption is "not in compliance with the spirit of the fair employment law" (Interview, Leanna Were, 12 May 1987). The Rawhide bill failed in 1986, but its sponsors promise to

reintroduce it in the future.

Thus while AB 70 was enacted over five years ago, its provisions for the gay community are hardly secure. Whatever the final impact of these challenges, however, Wisconsin's Gay Rights law still serves as an important symbolic milestone for the gay movement. Whether this law will be effectively gutted and be purely symbolic or grow into a practical dvise for ending discrimination remains to be seen.

Appendix A

RECORD OF ASSEMBLY PUBLIC HEARING RE: AB 70, MAY 12, 1981

Source: Legislative Reference Bureau

Appearances for the Bill:

David Clarenbach, Madison, for self
Robert Young, Milwaukee, for Lutheran Church in America, Greater Milwaukee Conference on Religion and Urban Affairs
Beverly Davison, for Wisconsin Baptist State Convention
Eric Jernberg, Milwaukee, for self
Dale Robinson, Milwaukee, for Greater Milwaukee Conference on Religious and Urban Affairs
Tony Larsen, Racine, for Unitarian Universalist Church of Racine and Kenosha
Mary Neeval, Shorewood, for United Church of Christ
Mark Hazelbaker, Madison, for United Council of UW Student Government
Barbara Lightner, for the United
M. Ted Steege, Madison, for Lutheran Memorial Church
Sister Patricia Pechauer, Milwaukee, for Archdicesan Sisters Council
Leon Rouse, Brookfield, for the Committee for Fundamental Judeo-Christian Human Rights
Constance Threinen, Middleton, for self

Appearances against the Bill:

R. E. Pritchard, for self

Registrations for the Bill:

Dan Curd, Madison, for self
Dr. Paul Grossberg, Madison, for self
Dick Wagner, for Dane County Board of Supervisors
Geraldine Wolter, Brookfield, Wisconsin Chapter, National Association of Social Workers
Michael Grieves, Madison's Gay Center
Paul DeMarco, Milwaukee, for Citizen's Coalition
Stephen Leopold, Milwaukee, for 26th Assembly District
Cynthia Triggs, Madison, for self
Rev. Myron Talcott, Madison, for United Church
Lance Greene, Madison, for the United
Michael Thommen, Madison, for the United
Tom Ramells, Sun Prairie, for United Methodist Church

Registrations against the Bill:
Frank Meyers, Port Washington, for "Un-Gays"

Appendix A (continued)

RECORD OF SENATE PUBLIC HEARING RE: AB 70, JANUARY 28,1982

Source: Legislative Reference Bureau

Appearances for the Bill:

David Clarenbach, Madison, for self
Sister Mary Stephen, Milwaukee, Episcopal Diocean
Rev. H. Myron Talcott, Ft. Atkinson, United Methodist
Sister Naomi Schoem, Milwaukee, Sisters Council
Rev. Robert Young, Jr., Whitefish Bay, Lutheran Church
Mary Ann Neevel, Milwaukee, United Church of Christ
Dr. Milo Durst, Shorewood, WCLU
Alyn Hess, Milwaukee, for self
Tom Zander, Milwaukee, Wisconsin Civil Liberties

Appearances against the Bill:

Max Andrews, Madison, Moral Majority
William Lincoln, Watertown, Calvary Baptist
Valeria Sternberg, Wausau, for self
J. Mark Holland, Watertown, for self
Don Gordon, Rothschild, for self
David Holloweed, Watertown, for self
Ben Sternberg, Wausau, for self
B.M. Cedarholm, Watertown, for self

Registrations for the Bill:

Terrence Gilles, Madison, for self
Ken Opin, Madison, for Wisconsin Federation of Teachers
Donna Utke, Milwaukee, for self
Duane Kolterman, Madison, for self
Dan Curd, Madison, for self
Dick Wagner, Madison, for self
Roger Durand, Milwaukee, for self
Bruce Voss, Madison, for Wisconsin Conference of Churches
Mary Lelle, South Wayne, IN, for National Gay Task Force
Paul DeMarco, Milwaukee, for self
Betty Haughn, Madison, for self
William Meunier, Milwaukee, for self
Leon Rouse, Milwaukee, for Coalition for Fundamental Judeo-Christian Human Rights
Ralph Navarro, Milwaukee, Cream City Business Association
Barb Lightner, Madison, for the United

Registrations against the Bill:

Carol Krake, Rothschild, for self

Appendix A (continued)

Robert Burckart, Watertown, for self
Scott Lautenbach, Elkhart Lake, for self
Ed Richardson, Watertown, for self
Amy Miller, Watertown, for self
Kim Pierson, Watertown, for self
Caron Gjefle, Ontario, for self
Robert Loggans, Watertown, for Martha Baptist Church
Michael Bartlett, Ellsworth, for self

Appendix B

1981 - 1982 GAY CIVIL RIGHTS SUPPORTERS

Source: Office of David Clarenbach

Wisconsin Support

Committee for Fundamental Judeo-Christian Human Rights
Archdiocese of Milwaukee
The American Lutheran Church, Southern and Northern Districts
The United Methodist Church, Wisconsin Area
Lutheran Church of America, Wisconsin and Upper Michigan
Episcopal Diocese of Milwaukee
Episcopal Diocese of Eau Claire
The Presbytery of Milwaukee; and the Winnebago Presbytery
United Church of Christ, Wisconsin Conference
American Baptist Church, Wisconsin State Baptist Convention
Southeast Wisconsin Unitarian Universalist Councils
Milwaukee Common Council
Milwaukee Commission on Community Relations

National Organizations

American Bar Association
American Psychiatric Association
American Medical Association
American Association for the Advancement of Science
American Public Health Association
American Psychological Association
American Anthropological Association
American Federation of Teachers
National Education Association
National Council of Churches of Christ
United Church of Christ
National Federation of Priests' Councils
Unitarian Universalist Association
National Association of Social Workers

Appendix C

DISCRIMINATION COMPLAINST FILED WITH THE
EQUAL RIGHTS DIVISION
1986 CALENDAR YEAR

Source: Equal Rights Division, Department of Industry, Labor, and Human Relations

Category	Complaints	% of Total
Sex (includes harassment, pregnancy, and equal pay)	1352	27.3
Race	1170	23.6
Age (40 and over)	813	16.4
Handicapped	653	13.2
Retaliation	319	6.4
Marital Status	171	3.2
National Origin	161	3.2
Arrest Record	94	1.9
Conviction Record	79	1.6
Ancestry	73	1.5
Sexual Orientation	69	1.4
TOTAL	4635	100.0

Appendix D

STATUS OF SEXUAL ORIENTATION DISCRIMINATION COMPLAINTS
March 1, 1982 - April 23, 1984

Source: Equal Rights Division, Department of Industry, Labor, and Human Relations

Status	No. of Cases	% of Total
No probable cause	53	26.0
Probable cause	38	18.6
Settled	29	14.2
Administrative Closure	29	14.2
Withdrawn	28	13.7
Other (unknown, pending)	17	8.3
No Jurisdiction	10	4.9
TOTAL	204	99.9

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CREAM CITY

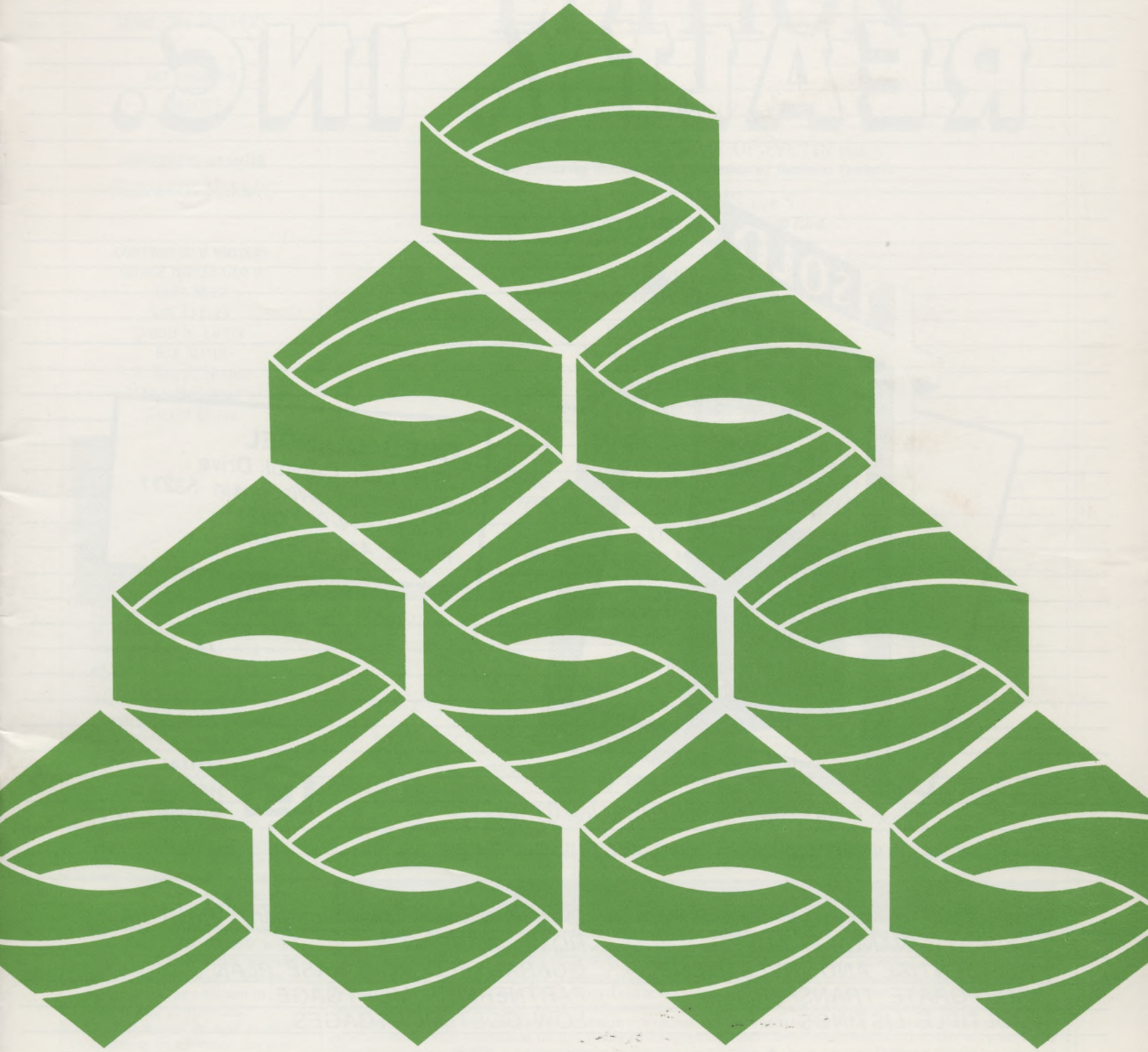
A CREAM CITY BUSINESS ASSOCIATION PUBLICATION

FREE

SPECIAL · EDITION

A GAY VISION OF THE BUSINESS WORLD

VOLUME 1 NUMBER 3 WINTER, 1983



MN Physicians for Human Rights opposes mandatory testing

GLC Voice 4/21/84

Minnesota Physicians for Human Rights is an organization of gay, lesbian, and gay-sensitive doctors. We encourage free, anonymous, and voluntary HTLV-III antibodies (Ab) testing for persons who feel they will be helped to make behavioral changes that will reduce the risk of transmission of the HTLV-III virus. We believe that some persons will be more motivated to follow risk reduction guidelines by knowing their antibody result — regardless of whether it is positive or negative. We do not support mandatory testing of anyone, nor sanction testing which does not guarantee anonymity.

Last year many gay organizations stood against the use of the HTLV-III Ab test for any purpose other than that for which the test was designed: screening of blood and blood products at blood banks. At that time, (1) there was inadequate understanding of the test's use in the clinical/diagnostic environment; (2) there was fear of false results; and (3) there was a significant potential for the creation and abuse of lists of high-risk individuals who chose to take the test (regardless of whether their test result was positive or negative). Adequate legal safeguards were not in place.

We feel that our concerns noted above have been adequately dealt with by the Minnesota Department of Health, provided that antibody testing remains free and anonymous. Remember, the test is *not* free and *not* anonymous at a private physician's office. Also, it is *not* anonymous at an alternate test site if your name is given or taken.

There is no doubt that if one is following safe sex guidelines *100 percent of the time*, one will neither become infected (if now Ab negative) nor infect others (if Ab positive).

It is hard to be perfect. We have observed that when one knows the test result, the issue of practicing safe sex becomes very important. If one is Ab negative (and the majority are), one becomes more committed to remaining Ab negative. If one is Ab positive, one becomes morally committed to making sure the virus is not transmitted to others. If a person's test is Ab positive, we encourage personal contact of all known sexual partners since 1977. In addition, we recommend a thorough medical evaluation by a gay-sensitive physician familiar with HTLV-III disease.

If a patient informs one's private physician of the HTLV-III Ab test results (positive or negative), this information may be recorded in the medical records. This information is then available to insurance companies and other organizations with access to the records. One should be aware of possible medical, legal, and social problems that can result from the availability of this information.

There may be times when, for medical reasons, physicians may request the HTLV-III Ab test be performed. A patient should ask for a complete explanation of the need for this test. A patient has the right to refuse to have this test, and at no time should this test be performed without the patient's knowledge. It is in everyone's best interests always to ask specifically what laboratory tests are being ordered *before* blood is drawn, either in the doctor's office or in a hospital.

— Michael Sprlane, M.D.
— David Griffin, M.D.
— Robert Saken, M.D.
— Henan Rosenstein, M.D.
— Robert Jeddelah, M.D.
— Phyllis Goldin, M.D.
— John Weiser, M.D.

Janesville Gazette April 19, 1984

Missing link' AIDS virus found in West Africans

ssociated Press

WASHINGTON—A virus that ould be the long-suspected idge which brought AIDS from imals to humans has been dis-overed in people in Western Af-ca, and researchers say it may e valuable in finding a way to revent the deadly disease.

Research groups from Harvard niversity and the Pasteur Insti-ute in Paris, working separately [redacted] ca, said ednesday they nd human viruses closely related to the one that causes AIDS which resemble a monkey virus.

In line with a theory that human acquired immune deficiency syndrome sprang from an animal virus which crossed species into man, one of the American researchers said their newly discovered virus could be the disease link between humans and monkeys.

"I think it is fair to say that it may be the 'missing link' virus that is closest to the virus that jumped from monkeys," Dr. Myron Essex of the Harvard School of Public Health said in a telephone interview.

The virus, isolated from healthy people in Senegal, apparently does not give people disease, a development that could help in developing a preventive vaccine against AIDS, he added.

The newly discovered West African viruses have been labeled HTLV-4 by American researchers and LAV-2 by the French. These viruses may be identical, or at least very similar, but researchers say they will not know until findings by the two groups are published and compared.

Findings by the Harvard group were being presented here today at a meeting of the American Society for Microbiology and published in the April 11 issue of the journal Science. A report on the French work has been submitted to Science but not yet accepted for publication.

The virus that causes AIDS, discovered and isolated by researchers in the U.S. and France, is called HTLV-3 by American scientists and LAV by their French counterparts.

AIDS is a fatal, incurable disease that destroys much of the body's immune system, making it unable to resist infection and other disease. As of March 24, it had struck 18,576 people in the United States and claimed 9,865 lives.

No one is known to have recovered from the disease.

Wisconsin State Journal, Saturday, April 19, 1986

8

Spread of AIDS reported slower

By Roger A. Gribble
Of The State Journal

GREEN BAY — An internal-medicine specialist who treated one of the nation's first identified AIDS cases in 1982 said there is "a little bit of good news" about a slowdown in the spread of AIDS.

"The number of AIDS cases in San Francisco was pretty much doubling every year, but there seems to be a slowing within six-month periods," Dr. Raymond Bachhuber of the Deckner Medical Center here told vocational-school health-occupations specialists.

"The same is true for gays and bisexuals in New York and drug users there. A lot of reasons are offered. I just don't know why it's leveling off, although I'm delighted."

Speaking at a sectional meeting at the Wisconsin Vocational Association, Bachhuber said one theory is that the "clean-needle" drive is helping, which he conceded is possible.

Another theory suggests that safe sex guidelines among homosexuals are helping. "I hope so," he said. "Others say that the potential population has already been saturated, but that's probably not so."

Buchhuber said the risk groups for contracting acquired immune deficiency syndrome remain the same as first identified. "Seventy-three percent are homosexual or bisexual men, 17 percent IV drug users, 0.6 percent hemophiliacs, 0.7 percent involve heterosexual contact with an AIDS victim, 1.2 percent through blood transfusions and 6.5 percent are unknown," he said. But when backgrounds of the 6.5 percent are checked, he said, many are found to be "absolute liars" when telling of their pasts and probably about 1,000 of the 17,000 known cases are not readily explained.

> 'People with AIDS are at risk to weird, oddball types of things. Viral infections you don't often hear about attack AIDS victims.'
>
> —Dr. Raymond Bachhuber

Bachhuber said that AIDS generated interest and fear over the past several years and that "the media has done its usual fine job of trying to downplay fears."

But 1 million to 2 million people have been exposed to HTLV III, the AIDS virus, "and it's an epidemic, although remarkably limited to risk groups already identified," he said.

"People with AIDS are at risk to weird, oddball types of things. Viral infections you don't often hear about attack AIDS victims."

Bachhuber estimated that about 100,000 of the people exposed to the AIDS virus have "AIDS-related complex" where they show two or more abnormal symptoms and exhibit unusual laboratory test results. While those people are at high risk to acquire AIDS, he said, the bulk "show no symptoms and are all potentially infectious to another. AIDS spreads sexually and by blood exposure.

"You can't get it from a drinking glass; you can't get it from a toilet. You can't get it in a restaurant where the cook was gay. Sex and blood are the ways AIDS is spread. All the rest (of the theories) is bunk.

"There is no case where it was transmitted by tears; no case where it was transmitted through saliva, although there is theoretical risk from that. There is no case where casual contact resulted in AIDS."

mass reps consider limits on aids hysteria

X GCN 4/28/86

BOSTON — A bill which would prohibit employers from testing job applicants for the HTLV-III antibody or antigen will be voted on by the Massachusetts House of Representatives on April 28. The bill, sponsored by Rep. John McDonough (D-Jamaica Plain), received a favorable report from the legislature's Committee on Health Care in March.

In related news, controversial legislation which would prohibit insurers from giving HTLV-III antibody tests to prospective customers has not yet been voted on by the legislature's Committee on Health Care, due to negotiations with members of the lesbian and gay community by insurance industry representatives. Arline Isaacson of the Mass Gay Political Caucus (MGPC) told *GCN* that insurance representatives hope negotiations with representatives of MGPC, Gay and Lesbian Advocates and Defenders and the AIDS Action Committee will lead to a compromise. "At the moment, we have not yet found a compromise acceptable to the gay and lesbian community," said Isaacson, "but we remain willing to discuss the issues further."

— Kim Westheimer

Heritage Church

(BOARD OF CHRISTIAN INVOLVEMENT)

file: OCT 19 1978
gay rights

AN URGENT MEMO
TO ALL
CONCERNED CITIZENS

"SHOULD THE
HOMOSEXUAL LIFESTYLE
BE LEGALIZED?"

FROM: Rev. Richard E. Pritchard
902 Mohican Pass
Madison, Wis. 53711

(authorized by the Board of Christian Involvement, Heritage Congregational Church)

On November 15, 1977, a majority of the Madison City Council revised the Equal Opportunities Ordinance. Not many knew the details of it. I didn't, until recently. It removes discriminating practices in employment, housing, and public accommodations.

But included is the requirement that there can be no restrictions in the employment of individuals who are practicing homosexuals or bisexuals.

This means, for example, that if a public or a private school, or a Church, had an applicant for a teacher, administrator, or youth advisor who was an actively practicing homosexual, there could be a lawsuit for damages and a Court could order you to hire that person if his or her homosexuality were the reason for not wanting to hire.

Many of us are troubled about it. As President Jimmy Carter said in his Playboy interview: "The issue of homosexuality always makes me nervous." He admitted that his Christian faith and his lack of personal knowledge were contributing factors.

We don't like to discriminate against anyone's lifestyle - and yet we feel uneasy about legislation that would say homosexual behavior is an equally acceptable and normal lifestyle.

This Fall, Madison homosexuals and others are planning to initiate meetings to present their viewpoint. A number of clergy, believing that it is a matter of fair play and human rights, have come out in support of the "gay" community's request for its lifestyle to be openly accepted as normal without restrictions.

I have had several conversations with leaders in the gay community, and with their supporters. I respect their sincerity and can understand their desire to be accepted. But the more I listened and studied, the more I became persuaded that their lifestyle is not healthy. Instead of confirming it and thereby encouraging others to go into it by dropping the barriers, I believe its orientation should be discouraged and its practice stopped. There is growing evidence that it can be healed.

IT CAN BE HEALED

As a strong advocate of human rights for over 30 years in Madison, it was not an easy decision to reach that, while homosexual preference may be an understandable sickness, given the imperfect society in which we live, active homosexual practice is a direct violation of the rights of a moral society under God.

The Madison Ordinance, relative to the employment of practicing homosexuals, violates the State Statutes and should be amended. It is considered a grievous sin, in the Bible, as indeed are greed, unloving attitudes, and a contentious temper. It is the employer, and those who are concerned about their children, who are now being discriminated against.

Today, we are facing an onslaught from every side against the stability of the home and the moral integrity of society.

The attached paper will describe why I believe that homosexual practice contributes to that problem, much as I am sorry to disagree with respected friends of mine. I hope this paper will be informative and help you in your discussion of it.

You are invited to order additional copies in the quantity you need. Your friends, and the members of your congregation or organization, may welcome this pamphlet as a resource for understanding this perplexing problem. Contributions to help cover the costs will be welcome. It is my earnest prayer that this paper will be helpful to you, and to the homosexual.

HOW YOU CAN HELP

Very Sincerely,

Dick Pritchard

October, 1978

UPDATING WISCONSIN'S CRIMINAL CODE ON SEXUAL MORALITY

WHO HAS UPDATED: At present, more than twenty states have updated their criminal codes on sexual morality. In addition, the Modern Penal Code has provided for updating laws regarding sexual morality. In keeping with this tendency for reform, the Plan of Action of the International Women's Year Conference in Houston has called for the decriminalization of private sexual acts between consenting adults.

Wisconsin's criminal code on sexual morality has not as yet been updated. Legislation is, however, now underway to bring Wisconsin up to date.

WHO SUPPORTS SEX LAW REFORM IN WISCONSIN: Groups and individuals who have testified, or otherwise registered support, for sex law reform in Wisconsin include: The Wisconsin Civil Liberties Union, The Center for Public Representation, The Wisconsin League of Women Voters, The Madison Police Department, The Wisconsin Women's Political Caucus, The Democratic Party of Dane County, The Wisconsin National Organization for Women, Madison Community United, Common Sense Coalition, The Wisconsin Privacy Coalition, various locals and individuals within labor, members of the clergy and lay religious groups, health professionals and, with regard to the cohabitation statute, 49% of District Attorneys (compared to 20% opposed).

Opposition to sex law reform has been registered by The Christian Decency League and PULL (People United for Legislative Legality).

THE SCOPE OF SEX LAW REFORM IN WISCONSIN: Referred to either as The Sexual Privacy Bill or the Consenting Adults Bill, sex law reform in Wisconsin decriminalizes only that sexual behavior that takes place (1) in private; and (2) is between adults or married minors; and (3) is based on consent.

More specifically, the legislation would:

1) add the words "in public" to the sodomy and fornication statutes, making these acts criminal only when performed in public;

2) repeal the cohabitation statute, thereby decriminalizing the behavior of those who "openly cohabit in circumstances implying sexual intercourse;"

3) restore to those convicted under the sodomy statute the right to obtain a driver's license.

Under the proposed legislation, sexual acts performed for anything of value (i.e., prostitution) will remain criminal offenses, as will sexual acts involving adults and minors. Where there is not consent, laws on sexual assault will continue to apply.

ISSUES INVOLVED IN SEX LAW REFORM: Many are concerned over Wisconsin's present laws on sexual morality:

-- individuals in their private lives are concerned over *the unwarranted invasion of privacy* required to enforce these laws;

-- families and friends are concerned over *the harmful social consequences of such laws*-- for example, the suicide following upon prosecution under these laws in Sheboygan;

-- clergy and laity are concerned over *the weakening of the moral authority in religion, the family and individual conscience* when government takes over a moral obligation it is ill-designed to carry out;

-- labor is concerned over *the arbitrary firing of employees* judged by their employers to be 'criminals' under these laws, though their sexual behavior was in no way related to job performance;

-- health professionals are concerned over *the inhibiting effects of such laws*on persons who are in need of treatment for sexually transmittable diseases, but do not seek it because of their criminal status under the law;

-- counsellors are equally concerned over *the inhibiting effects of such laws* on persons in need of counselling on responsible sexual behavior, but turn away from it because of their criminal status under the law;

-- children's advocates and women's groups are concerned over *the debilitating effects of sexual morality laws on sexual assault and child molestation laws,* as the repeated flouting of laws on adult sexual morality establishes a climate for the flouting of all laws governing sexual conduct;

-- civil rights advocates are concerned over *the discriminatory impact of such laws, and their selective enforcement against those working for unpopular causes;*

-- legal professionals are concerned over *the difficulty of a fair defense* because of the inflammatory nature of charges brought under these laws, and because of the fear of undue and sensationalized publicity if one mounts a defense.

DISTRICT ATTORNEYS AND SEX LAW REFORM: Those responsible for prosecution under the cohabitation statute do not by and large support Wisconsin's present law. According to data from law professor Martha Fineman's research on District Attorneys:

67% said that "cohabitation is not a matter which can or should be properly addressed by criminal sanctions and the criminal justice system;" only 14.5% thought cohabitation should be addressed through the criminal justice system;

51% said they did not believe "cohabitation is morally wrong and ought to be discouraged through the criminal justice system;" only 18% thought cohabitation is morally wrong and should be addressed through the criminal justice system;

(remaining percentages are accounted for as "missing data" or "undecided" answers.)

f
gay rights

PLAYBOY

SEX & SIN IN SHEBOYGAN

"When the crime is loving someone, is there a fitting punishment"

Article by Richard Rhodes

Sheboygan, Wisconsin. The name of the town is borrowed from the name of the river that winds through it. Sheboygan, an Algonquian word, means a passage connecting two bodies of water. It also means a hollow bone. When Sheboygan was a village, its inhabitants called it "the mouth." The Sheboygan River rises in the hills only a short portage away from Lake Winnebago and flows north and then bends eastward, and on the shore of Lake Michigan halfway up the Wisconsin coast at the river's mouth lies the city of Sheboygan. It is not a.....

picturesque city, but it is located in a picturesque place. Kettle moraines, hills with kettle-shaped holes ground out between them by the Lake Michigan glacier, mark the land westward, and in the winter the river freezes like a miniature glacier to break at the shore line jaggedly into the huge unfrozen lake. Indians fished here and steamboats docked pioneers to settle the wilderness West. Yankees came to girdle the trees and grow corn. Germans came to escape religious and political persecution and settled and started dairy farming and built exercise halls. Serbs and Croats came to work in furniture factories and mills. Yugoslavs came, and Lithuanians and Luxemburgers and Russian Jews. Fourierist utopians such as those who founded New England's Brook Farm came and established a short-lived socialist colony, a phalanx, but their crops failed and reluctantly they moved on.

Sheboygan is possessed of two other picturesque distinctions. Its main industry today is a toilet-and-bathtub factory. And, although it is a city of only 48,484 people, it annually prosecutes more adults for fornication, adultery and lewd and lascivious behavior than any other city in the United States. (Detailed records in these matters are scarce, but all available evidence suggests the statement is true. Sheboygan police investigated 118 cases in 1971 of class-two sex offenses, excluding rape. In 1967, the only year for which a statistical breakdown is available, Sheboygan arrested 35 people for adultery, 27 for lewd and lascivious behavior, 11 for fornication, ten for intercourse without consent, four for bigamy and one for sexual perversion. In contrast, New York City has prosecuted two people for adultery and none for fornication in the past 50 years; Boston in 1966 reported six arrests for fornication and seven for adultery.)

A few years ago, a young man named Jim Decko came to Sheboygan. He had been an exceptional student. He was an exceptional athlete. The Sheboygan school system had hired him to direct the city's extensive public-recreation program. It was a responsible job. Decko supervised more than 200 part-time employees, and because he was outgoing and handsome and athletic, people in Sheboygan soon came to recognize him on the streets of the city. He played semi-pro football. He was married to a beauty queen and had two small daughters, but the marriage wasn't going well. Decko began to look around. He met a girl and started divorce proceedings. He got the divorce.

Wisconsin winters blow long and cold. Decko shared an apartment with his girl. Stories of convictions for cohabitation turned up in *The Sheboygan Press* alongside stories of robberies and record snows. A police captain lived next door, and the sister of a detective down the hall. Decko moved out but continued to visit on weekends. Someone whispered into a phone. The young director of public recreation got a call and drove to the police station downtown.

Cohabitation is a crime in Wisconsin, as it is in many other states. The crime is defined in section 20 of chapter 944 of the Wisconsin Criminal Code. The chapter is titled "Crimes Against Sexual Morality" and the section, "Lewd and Lascivious Behavior." The law provides:

> Whoever does any of the following may be fined not more than $500 or imprisoned not more than one year in county jail or both:
>
> (1) Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others; or
>
> (2) Publicly and indecently exposes a sex organ; or
>
> (3) Openly cohabits and associates with a person he knows is not his spouse under circumstances that imply sexual intercourse.

The first clause protects the public from swingers and live sex shows, the second, from exhibitionists. The third is less precise. "Circumstances that imply sexual intercourse" is a phrase that requires of law officials an act of imagination. For example, the presence of 15 adult males, a German shepherd and a tin whistle in the home of a matron would not imply sexual intercourse, though the dog often barked and the whistle often blew, if the home were a licensed boardinghouse. The presence of a man in a woman's apartment overnight would, if they were known not to be married to each other. The statute does not forbid sexual intercourse. It forbids two people from "openly" behaving as man and wife. Wisconsin maintains the creature comforts of home and hearth under license and treats failure to obtain that license as a crime.

To establish that Jim Decko was behaving lewdly and lasciviously, the Sheboygan Police Department observed the behavior of the lights in his girlfriend's apartment and the behavior of his car. On August 27, 1970, Sheboygan police officers Frederick Zittel and Howard Durow filed a report:

"The area of ---------- was checked periodically during the night and this blue Ford, license R96-240, was parked at this location throughout the night."

The following night, Officer Durow and Officer William Eichmann filed a similar report. Other reports chronicled times when the apartment lights were on or off. From such facts the Sheboygan police could draw rigorous conclusions.

In 1970, the Sheboygan Police Department apprehended four windowpeepers, a fact mentioned prominently in its annual report.

Two detectives interviewed Decko. They asked him if he stayed overnight at the apartment. They asked him what the sleeping arrangements were. Decko answered some of their questions and evaded others. He asked the detectives what they thought to be logical hours. He asked if he could visit the apartment at all and they said yes. He asked how late he could stay and they said, well, 12 or one o'clock. The exchange reminded him of college. He said that after he left the station he felt ridiculous. He felt as if he had been placed under curfew. He continued to visit the apartment, but surreptitiously, leaving his car at home. Sometimes his amused friends, galvanized by the quaintness of a challenge to young love, dropped him off. Two weeks after Decko's interview, he was issued a summons and his world fell apart.

He was a talented and successful young man. He had been an all-state linebacker. His job required enthusiasm and a good measure of skill. When he was summoned by the state he should have been angry, but instead he was mortally afraid. Later, some would remember that he seemed a man inordinately concerned to please. He opened car doors for ladies and wrote "I love you" in the white Wisconsin snow.

When he got his summons, he called the Sheboygan chief of police, a man named Oakley Frank, and arranged to talk it over. He said, Look, I've been in this town a long time. What can we do? Can we keep this out of the paper? Can we settle this out of court? Chief Frank said he had come too late. He said he would like to help Decko, but the matter was no longer in his hands. He said he had the problem of the people who had encouraged him to prosecute. He said that if he didn't prosecute he would get the entire department in trouble.

Oakley Frank doesn't love the press. It hasn't done him honor. He consented to an interview reluctantly. He is a stocky man with graying hair combed back from the temples. He has a heavy face and a firm, forceful voice. He grew up in the same neighborhood I did in Kansas City, Missouri. That is most of what I know about him, except that his signature, printed on his glowing annual reports, is surprisingly immature for a man of his age and position, the letters round as babies' eyes and drawn without conviction leftward and vertically and leaning right. I asked Chief Frank if I could use a recorder to take notes. He said I might not have any notes to take, so I left the recorder off. One of his men entered the office then and sat beside me, a silent witness.

Chief Frank said that Sheboygan had been maligned. In 1968, *The Wall*

(continued on page 186)

SEX & SIN IN SHEBOYGAN

(continued from page 130)

Street Journal, in a story about renewed enforcement of archaic sex laws, possibly as a way of harassing welfare recipients and student activists, cited Sheboygan as a notorious example. A British journalist saw the story and went to Sheboygan with good cheer to set the record straight. He returned home and filed a story for one of London's dailies headlined "SHEBOYGAN: TOWN OF PEEPING TOMS." Chief Frank didn't like that kind of treatment, especially since he had gone down to the office on a Sunday morning to give the man his interview.

In fact, said Chief Frank, his department never aggressively ferrets out consensual crimes. His police investigate only when such cases are dumped on their doorstep. The cases result from citizen complaints. His job is to enforce the law, and if such laws are not enforced elsewhere, he doesn't see how other cities avoid enforcement. He suspects that blame for Sheboygan's record, which he believes to be less exceptional than some have claimed, lies with the legal profession. He believes Sheboygan lawyers encourage their clients to bring morals charges to beef up their divorce cases. The boys down in Madison, in the state legislature, ought to change the law, Chief Frank said. There's a difference, he believes, between the kind of man he called John Q. Lunchbox, down at the factory, who is arrested for lewd and lascivious behavior and pays his $35 fine and goes back to the factory a hero, and a doctor or schoolteacher or police officer who is similarly arrested and pays his fine but has his career ruined. I don't think that's justice, said Chief Frank. I think that's injustice.

But Jim Decko flaunted his situation. The sister of a detective lived in the same building, the chief said, and a police captain lived next door. By his behavior, Decko held them up to ridicule. We told him this couldn't go on, said the chief, but it went on anyway. Chief Frank also said that Sheboygan is a good place to raise a family and he intended to keep it that way.

Stung by Frank's refusal to negotiate, Decko submitted his resignation to the Sheboygan school board and left for the weekend. When he got back, he found his picture on the front page of the newspaper under the headline "'REC' DIRECTOR, DECKO, RESIGNS." The lead said that he had been charged with a morals offense. One of the first things he did that day was shave off the mustache he had been growing and have his sideburns shortened and his hair cut.

The Sheboygan County district attorney had jurisdiction in Jim Decko's case. His name is Lance Jones and he is an elusive man. He has been known to speak to the press, but he doesn't take calls from PLAYBOY. He is not yet 30, is single and lives at home. He is an "active" district attorney who likes police work and rides with the patrol cars whenever he can. He is believed to show promise of a considerable political future in Wisconsin. After Decko had been charged with lewd and lascivious behavior, his attorney, Peter Bjork, appealed to District Attorney Jones to consider amending or dismissing the charges to avoid destroying Decko's career. Jones responded with a formal letter to the judge who would hear the case and carboned "all law-enforcement agencies." The letter said that lewd and lascivious charges were not negotiable and would be fully prosecuted. The letter angered Bjork, and he responded with a letter to the judge that described Lance Jones sarcastically as "savior of the morals of Sheboygan County." Bjork said that henceforth he would enter a plea of not guilty for every client charged with a consensual sex crime and would insist on a jury trial. "If the district attorney's office has nothing better to do," Bjork wrote, "than to play around with this sort of matter, it apparently has plenty of time to clog up its own office and the court's docket by trying all cases to conclusion." In fact, in 1969, faced with a heavier-than-usual load of consensual sex cases, Jones had reduced most of them to charges of disorderly conduct. With the Decko case, and without giving any reason for his decision, Jones inaugurated a new and more punitive policy of full prosecution—a policy, Jones's decision made clear, that was optional and arbitrary.

Decko left town, first to Chicago and then to Los Angeles. In L. A., encouraged by Bjork, he agreed to fight the case. The Playboy Foundation offered financial support. Bjork filed a legal brief in Sheboygan County Court that supported a motion to dismiss the Decko charges on the grounds that they were unconstitutionally vague and overbroad and violated Decko's right to privacy. Judge John G. Buchen, county judge of branch number two of the Sheboygan County Court, soon denied the motion. In his opinion, the laws in question were clear to common understanding and applied to a specific kind of behavior. He noted that the constitutional right to privacy is subject to the law, including Wisconsin's lewd and lascivious law. The defendants, Judge Buchen wrote, "see nothing wrong in their alleged conduct and therefore [feel] they should not be subject to any criminal penalty. If this is the position taken by these defendants and others of the younger generation, their remedy is through the legislature, not the courts. It should be remembered that the legislature reenacted the lewd and lascivious statute in its present form in 1955 in the general revision of the criminal code of Wisconsin.

"The state of Wisconsin," Judge Buchen concluded, "has a legitimate interest and duty to uphold moral dignity and general welfare of its citizens, and what constitutes conduct harmful to such public interest is for the state legislature to decide. . . . A state law may not be invalidated on due-process grounds because [it] may be unwise, improvident or out of harmony with a particular school of thought."

Judge Buchen's father was an attorney and a Wisconsin state senator. He studied history in college under the famous historian Frederick Jackson Turner, who revolutionized the study of American history at the turn of the century by proposing that the advancing Western frontier made Americans the civilized and democratic people they are. Gustave Buchen took up Turner's implicit challenge and late in life published privately a history of Sheboygan County. He thought the county had a past "as colorful and romantic as can be found anywhere," but that today "farms, towns, schools, churches and factories . . . provide the comforts of life and the amenities of civilization where only raw and untamed nature had since the dawn of time held sway." Gustave Buchen is dead, but his face and his political name live on in his son, whose eyes shine as bright and whose hair is cut as close above the ears.

The present Judge Buchen was Sheboygan County district attorney during the Fifties, when the county was notorious throughout Wisconsin for its whorehouses. "There was quite a hullabaloo," Judge Buchen told me in his chambers on the fourth floor of the county courthouse. "The League of Women Voters and other do-good organizations were getting quite irate about the number of houses of ill fame. I remember seeing an article in a Minneapolis paper pointing out that Sheboygan County was *the* place to go. I didn't run on any ticket of reform, but there was a growing feeling that Sheboygan County wasn't very proud of its reputation. Busloads of college kids used to come up from Madison. So I did start an investigation with the help of what were then called state beverage-tax agents. We raided the houses several times and finally brought padlock proceedings. It took practically a year to get rid of them. But as district attorney, other than in that area of morals, I didn't prosecute except where necessary. I'm sure the cases of adultery and fornication and lascivious conduct I did prosecute were very isolated. The increase in prosecutions came after my time. For what reasons I don't know. More and

more of these cases were investigated and prosecuted. Once something like that starts, successor district attorneys can't very well stop it. I'm sure there aren't many communities where some neighbor can call up the police department and say, 'I've seen his car out there night after night, I know she's separated from her husband but not divorced,' and get the police to investigate. I remember when I was district attorney, if somebody came to me with a complaint like that—usually it would be a wife who suspected her husband—came to me like that without proof, I'd say, 'If you don't want to live with him, get a divorce, this is grounds for divorce, this is your personal problem, not a community problem.' Most prosecutors take that point of view. In the first place, you've got *enough* crime that you're concerned about without ferreting out this type of thing."

Judge Buchen's belief that consensual sex crimes are relatively harmless is probably reflected in his usual fine for such crimes, $35 and costs, about as stiff as a fine for speeding. But in the Decko case, he was not willing to carry his belief further and throw the law itself out of his court. "I wasn't about to declare the statute unconstitutional. I wish Pete had taken that up to the Supreme Court. If I'd said it was unconstitutional, it wouldn't mean it was, except for the purposes of the case. If I had said so, it would have resulted in the dismissal of the case. No one would have been able to bring any more cases of that kind in my court. Wouldn't prevent them from going to some other court. We have three county courts and a circuit court that have almost identical jurisdiction." Judge Buchen was elected, not appointed, to office. You can imagine, in Sheboygan County, where they closed down the whorehouses only yesterday but where cohabitation is still a living crime, what an opponent might have to say if Judge Buchen took a firmer stand.

In California, Decko wasn't faring well. No work in recreation turned up, possibly because prospective employers were checking back with the Sheboygan school board, possibly because California is a veritable outdoor gymnasium of recreation directors at least as well qualified as Decko was. He went six weeks without a job before accepting a position as a salesclerk, and he lost that job because he cashed a customer's bad check. In some desperation he became a night guard at a factory, and one night, brooding over his decline, he drove to a town an hour from Los Angeles and parked in a parking lot and slashed his wrists. The police found him before he bled to death and returned him to L. A. With some encouragement, he committed himself to a mental hospital but

"Last night he told me to open my mouth and close my eyes—and, like a fool, I did!"

stayed only a few days and then checked out. When the police found him again, he had taken a bottle of tranquilizers and had passed out on a beach. He wanted no more institutional group therapy. When he had slept off the tranquilizers, he got in his car and drove to Ohio. Home.

A movement is abroad in Wisconsin to clear the books of consensual sex laws, and gambling and prostitution laws, too. A year ago, Governor Patrick J. Lucey appointed a Citizens' Study Committee on Offender Rehabilitation. That committee recommended removing criminal prohibitions among consenting adults for gambling, fornication, adultery, "sexual perversion," lewd and lascivious behavior, lewd, obscene or indecent matter, pictures or performances, and prostitution. State attorney general Robert W. Warren takes issue with the committee's recommendations. "The repeal of our criminal statutes [in these matters]," he told a meeting of the Wisconsin district attorneys' association, "in no way improves criminal justice. It in no way represents a disciplined or professional response to social problems." Whatever that means. Warren found the idea of repealing laws against prostitution "most shocking of all." The report said that legal prostitution would protect prostitutes from criminal exploitation. Warren cited a "kidnap-torture-prostitution ring" recently uncovered in Madison to prove his contention that prostitution is a "sordid business not deserving of legal protection.

A Wisconsin circuit judge ruled this year that the Wisconsin law that finds only female prostitution illegal is not discriminatory against women. "No one but a female can be a prostitute," Judge W. L. Jackman of the Dane County Circuit Court wrote to explain his decision. "The female alone is capable of the repeated and indiscriminate intercourse which makes prostitution a profitable occupation." In fact, of course, male prostitutes service far more clients in an average night than female prostitutes do.

Jim Decko got a job managing a department in a Penney's store in Toledo, and for a time seemed to be recovering from his depression. He wasn't. He was quietly going mad. After a party on Halloween night in 1971, he cut himself up some more, tore a gas stove off a wall and swallowed another bottle of tranquilizers. Friends recommended treatment. He wanted no more treatment. He said he knew that after treatment his life would never be the same—which is the point of treatment, but he didn't see that point. He wanted his life to be the same as it had been before Sheboygan, before he was publicly branded a criminal for a crime for which he had not yet been tried. He had been a successful person. He wanted to be successful again. Penney's fired him for lack of initiative.

Ray Schrank is a Madison attorney. He

was assistant district attorney in Sheboygan when the Decko case came up. Lance Jones was his immediate superior.

"I think both Lance Jones and Oakley Frank had the attitude that they would enforce the law," Schrank says. "If someone called them, they would send someone out. If a case came up, it would be investigated and charged. I don't think [the Decko case] had a high priority with Lance. I suspect the reason for enforcing the consensual sex laws is to get convictions. Most people who are charged on a morals charge will plead guilty, so you get a lot of convictions. Eighty percent

STATE PENALTIES FOR

STATE	ADULTERY	COHABITATION	FORNICATION	CRIMES AGAINST NATURE**	GENERAL LEWDNESS
ALABAMA	up to 6 months and/or $100 up	up to 6 months and/or $100 up		2–10 years (a, b, c, d)	up to 12 months and/or up to $500
ALASKA	up to 3 months or up to $200	1 to 2 years and/or up to $500		1–10 years (b)	3–12 months or $50–$500
ARIZONA	up to 3 years	up to 3 years		1–5 years (a) 5–20 years (b, c)	1–5 years
ARKANSAS		$20–$100		1–21 years (a, b, c)	
CALIFORNIA	up to 1 year and/or up to $1000			up to 15 years (a) not less than 1 year (b, c)	up to 6 months and/or up to $500
COLORADO					
CONNECTICUT	up to 12 months and/or up to $1000			up to 12 months and/or up to $1000 (c, d)	up to 6 months and/or up to $1000
DELAWARE	up to 1 year and/or up to $500			up to 3 years plus up to $1000 (a, b, c)	sentence at the court's discretion
DISTRICT OF COLUMBIA	up to 1 year and/or up to $500		up to 6 months and/or up to $300		up to 90 days and up to $250
FLORIDA	up to 12 months and/or up to $1000	up to 60 days and/or up to $500	up to 60 days and/or up to $500	up to 1 year (under common law) (a, b, c)	up to 60 days and/or up to $500
GEORGIA	up to 12 months and/or up to $1000		up to 12 months and/or up to $1000	1–20 years (a, b) 1–5 years (c)	up to 12 months and/or up to $1000
HAWAII*	(men) 2–12 months and/or $30–$100 (women) 2–4 months and/or $10–$30		1–3 months or $10–$50	up to 20 years and up to $1000 (a, b, c)	up to 1 year and/or up to $1000
IDAHO	3 months–3 years and/or $100–$1000	6 months and/or $300	6 months and/or $300	not less than 5 years (a, b, c, d)	6 months and/or $300
ILLINOIS	up to 1 year and/or up to $500	up to 6 months and/or up to $200	up to 6 months and/or up to $200		
INDIANA	up to 6 months and/or up to $500	up to 6 months and/or up to $500		$100–$1000 (a, b, c) up to 2 to 14 years	$5–$100 up to 6 months
IOWA	up to 3 years or up to 1 year and up to $300	up to 6 months or up to $200		up to 10 years (a, b, c)	up to 6 months or up to $200
KANSAS	up to 1 month and/or up to $500			up to 6 months and/or up to $1000 (a, b, c)	up to 6 months and/or up to $1000
KENTUCKY	$20–$50		$20–$50	2–5 years (a, b, c)	up to 1 year and/or up to $200
LOUISIANA				up to 5 years and/or up to $2000 (a, b, c)	up to 5 years and/or up to $1000
MAINE	up to 5 years or up to $1000	up to 5 years or up to $300	up to 60 days plus up to $100	1–10 years (a, b, c, d)	up to 6 months and up to $25
MARYLAND	$10			up to 10 years and/or up to $1000 (a, c, d) 1–10 (b)	up to 60 days and/or up to $50
MASSACHUSETTS	up to 3 years or up to $500	up to 3 years or up to $300	up to 3 months or up to $30	up to 5 years or $100–$1000 (a) up to 20 years (b, c)	up to 3 years or up to $300
MICHIGAN	up to 4 years and/or up to $2000	up to 1 year or up to $500	up to 5 years or up to $2500	up to 5 years or up to $2500 (a, d) up to 15 years (b, c)	up to 1 year or up to $500
MINNESOTA	up to 1 year and/or up to $1000 (doesn't apply if female unmarried)		up to 90 days or up to $100	up to 1 year and/or up to $1000 (a, b) up to 90 days or up to $100 (c, d)	up to 90 days or up to $100

NOTE: IN MANY STATES, THE VIOLATIONS MUST BE PROVED TO BE "OPEN AND NOTORIOUS."

* Effective January 1, 1973, consensual sex between adults is legal under the revised Penal Code.

**Key: a. Oral intercourse (fellatio, cunnilingus) b. Anal intercourse c. Sex with animals d. Sex with the dead

convictions. That looks good. If they get 80 percent convictions from arrests, that looks very good and that makes them feel like they're doing a job. It makes the police look good when they apply for funds, when they apply for more officers, when they apply to the city or for Federal funding. And morals charges are easy to get convictions on, because, first of all, so many people when they're arrested are probably guilty and, second of all, they're embarrassed by their arrest and so they plead guilty and get a $35 fine or something like that and they'd just as soon get out of the court and not have anybody

CONSENSUAL SEX OFFENSES

STATE	ADULTERY	COHABITATION	FORNICATION	CRIMES AGAINST NATURE**	GENERAL LEWDNESS
MISSISSIPPI	up to 6 months and up to $500	up to 6 months and up to $500		1–10 years (b, c)	up to 6 months or up to $500
MISSOURI	up to 1 year and/or up to $1000			not less than 2 years (a, b, c)	up to 1 year and/or up to $1000
MONTANA		up to 6 months and/or up to $500		not less than 5 years (a, b, c)	
NEBRASKA	up to 1 year	up to 6 months and up to $100		up to 20 years (a, b, c)	up to 90 days or up to $100
NEVADA				1–6 years (a, b, c)	up to 1 year and/or up to $1000
NEW HAMPSHIRE	up to 1 year		up to 1 year or $50	up to 1 year (a, b, c, d)	up to 1 year and/or up to $200
NEW JERSEY	up to 3 years and/or up to $1000		up to 6 months and/or up to $50	up to 20 years and/or up to $5000 (b, c)	up to 3 years and/or up to $1000
NEW MEXICO				2–10 years and/or up to $5000 (a, b, c).	up to 6 months and/or up to $100
NEW YORK	up to 3 months and/or up to $500			up to 3 months and/or up to $500 (a, b) up to 1 year and/or up to $1000 (c, d)	
NORTH CAROLINA		up to 6 months and/or up to $500		up to 10 years and/or any fine (a, b, c)	
NORTH DAKOTA	1–3 years or up to 1 year and/or up to $500	30 days–1 year or $100–$500	up to 30 days and/or up to $100	up to 10 years (a, b, c, d)	1–5 years and/or up to $1000
OHIO		up to 3 months plus up to $200		1–20 years (a, b, c)	
OKLAHOMA	up to 5 years and/or up to $500			up to 10 years (a, b, c)	up to 5 years and/or up to $5000
OREGON					
PENNSYLVANIA	up to 1 year and/or up to $500		up to $100	up to 10 years and up to $5000 (a, b, c)	up to 1 year and/or up to $500
RHODE ISLAND	up to 1 year or up to $500		up to $10	7–20 years (a, b, c)	up to 1 year and/or up to $5000
SOUTH CAROLINA	6–12 months and/or $100–$500	6–12 months and/or $100–$500	6–12 months and/or $100–$500	5 years and/or not less than $500 (b, c)	sentence at the court's discretion
SOUTH DAKOTA	up to 5 years and/or up to $500			up to 10 years (a, b, c)	up to 1 year and/or up to $2000
TENNESSEE				5–15 years (a, b, c)	
TEXAS	$100–$1000	$50–$500	$50–$500	2–15 years (a, b, c)	$50–$200 and/or 1–6 months
UTAH	up to 3 years	up to 5 years (polygamous cohabitation only)	up to 6 months or up to $100	up to 6 months and/or up to $299 (a, b) 3–20 years (c)	up to 6 months and/or up to $300
VERMONT	up to 5 years and/or up to $1000			1–5 years	up to 5 years or up to $300
VIRGINIA	$20–$100	$50–$500	$20–$100	1–3 years (a, b, c)	up to 1 year and/or up to $1000
WASHINGTON	up to 2 years or up to $1000	up to 1 year and/or up to $1000		up to 10 years (a, b, c, d)	up to 90 days or up to $250
WEST VIRGINIA	not less than $20	up to 6 months and/or not less than $50	not less than $20	1–10 years (a, b, c)	up to 30 days and/or not less than $50
WISCONSIN	up to 3 years and/or up to $1000	up to 1 year and/or up to $500	up to 6 months and/or up to $200	up to 5 years and/or up to $500 (a, b, c)	up to 1 year and/or up to $500
WYOMING	up to 3 months plus up to $100	up to 3 months plus up to $100	up to 3 months and up to $100	up to 10 years (a, b, c)	

else know about it rather than drag it on. Plus, because it's a misdemeanor, these people do not have the right to court-appointed counsel. Consequently, unless they can afford an attorney, they aren't going to get an attorney into the picture who's going to challenge the state either on the facts or on the law in general. And so it's kind of like disorderly conduct. The police use it because they know they'll get a conviction on it.

"I think Sheboygan is a very bigoted town," Schrank concludes. "They can say, Well, if people are violating the law, then they ought to be prosecuted, but I assume if *they* were violating that law, they wouldn't want to be prosecuted for it. When you have people like that who aren't hurting anybody and you destroy their lives, you aren't fulfilling your role. The court's not fulfilling its role. Nobody's fulfilling his role. Because people's lives are being destroyed for no reason at all."

Late in November, Jim Decko got hold of a gun and walked out into a city park one night and fired one shot into the air, perhaps to make sure the gun worked, perhaps halfheartedly hoping someone would hear it and save him from himself. But no one came, no one would save him, and after a while, breathing despair, overwhelmed by grief, emptied at last of everything except dread, he turned the gun around and squeezed the trigger and shot himself to death. His body lay all night face down in the snow. The police found it the next morning. He died innocent even of a victimless crime. The charge against him was never tried.

Sheboygan didn't kill Jim Decko, but it is implicated in his death more than accidentally. Suicide, self-murder, comments violently on every experience the suicide has had of joy and sorrow and love and hate and indifference, back all the way to the nipple and the womb. Like a contract torn in anger, it shreds across the large print and the small. But because it is a sickness, and because it is constructed not of present pain but of past experience, it is not inevitable. Decko might have lived. The immediate focus of his conflict was Sheboygan's capricious decision to select him for public humiliation. All his life his distorted inner voice had warned him to be a good boy. When he tried to be a man, looking for his own way, that voice sounded forth again in the voice of the community where he lived and thought he had earned respect. Sounded forth with considerable cynicism, by the way, and even now the principal officials in the case pass the buck. Many believe the consensual sex laws are wrong. Jim Decko thought *he* was wrong. Sheboygan rejected him. Perhaps sensing his despair, employers rejected him. Toward the end, his terrified girl rejected him. By then his anger had become pathological, and to control that anger and also to release that anger, he destroyed the only world he dared destroy: himself. And stilled his inner voice, but stilled his human voice, too, forever.

Decko's case isn't even typical of Sheboygan. A law so banal that it is used to fatten police statistics ought to protect the public from banal behavior, and, by and large, that is what Wisconsin's consensual sex laws do. A typical Sheboygan case on the books involved a couple living together in a trailer near the outskirts of town. The woman called the police because the man had been beating her. The police arrived, discovered that the two weren't married and charged them both with lewd and lascivious behavior. They pleaded guilty and were each fined $35 plus court costs.

Judge Buchen described another case to me, a low comedy. A Sheboygan woman on the outs with her husband picked up two men in a bar and, as the judge put it, "shacked up with them in the back of their car" and then was driven to her home, where she "shacked up" with them again. While the men were taking turns with the woman, they took turns relieving the house of her husband's gun collection. The police stopped the men because of the guns in their car; an adultery charge followed when they made their confession.

In both cases, the police stumbled onto the crime. That much, at least, is unusual about them, because the usual lewd and lascivious investigation in Sheboygan is initiated by a tip from a neighbor or a relative. The tip leads the police to conduct their own investigation, thereby relieving the tipster of the distasteful democratic necessity of confronting the accused.

A law that butts into private lives and sunders them with public humiliation is squalid enough, but Wisconsin's lewd and lascivious law is even more squalid, because it isn't really designed to stop cohabitation: It is designed to spare the sensibilities of neighbors who might better spare their sensibilities simply by minding their own business. The act of imagination required of police is also required of informers, who must construct, from the dim form of a parked car or the wink of a light going out, those unmarried bodies joined in criminal lubricity, and must wrench that construction across emotions of outrage and disgust, and then swell up indignantly and call the police. And people who can abuse themselves that way are the kind of people the laws encourage.

The consensual sex laws in the United States are backward and bizarre. Most of us agree on that by now. They enjoin behavior that even our churches, no avant-garde in such matters, have approved within the conjugal bed—and sometimes without it. They criminalize behavior that harms no one, and therefore they encourage blackmail, including the blackmail of one spouse by another at divorce proceedings. Even more dangerously, they stand on the books as an invitation to officials to use them to harass minorities: welfare recipients, blacks, activists, all those with whose opinions or life styles the officials do not agree. That is part of what happened to Jim Decko. Says Ray Schrank: "I think one reason Lance Jones issued against Jim Decko was because he could then say, 'Look, I'm not just going after the little people, I'm going after the big people.' "

As in every city where the police use consensual sex laws for their own purposes, Sheboygan's enforcement of its laws is capricious. Even the most conservative application of Kinsey statistics to a city the size of Sheboygan indicates that far more people must be breaking the law than are caught. That is true of most kinds of crime, but people convicted of burglary or robbery may at least be assumed to have done some actual harm to someone else's property or person. Victimless crime does have its victims: the accused and their families.

Nothing is right about Sheboygan's enforcement of the consensual sex laws, not the laws themselves, with their pious horror of nonprocreative physical love, not the encouragement the laws' enforcement gives to self-righteous Peeping Toms, not the embarrassment or hardship or worse that capricious enforcement inflicts upon the laws' victims, not the cynical and despicable use of convictions to lard police and prosecutor statistics, and not the damage done to the tradition of law itself when it is used, as it has been used by state legislatures, to impose religious sanctions upon all of us whether we like them or not.

Sheboygan has made itself notorious, and the lesson of that notoriety ought not to be lost on us. Laws in the hands of unscrupulous men, and laws in the hands of men with so many scruples they would like to visit them upon us all, are never dead letters. So long as they are on the books, they can be revived and enforced. No politician dares take a stand in favor of premarital sex or homosexuality or cunnilingus, nor should he presume to, those matters being private. But every politician ought to take a stand in favor of our right to privacy, a right that consensual sex laws violate. It is a right that is eroding in the United States of America. It is a right that is finally the source and the support of all other rights. Without it we would live looking over our shoulders like retreating thieves, and that is a way no man can live. Not Jim Decko, not I, and not you.

Criminal Law and Procedure

PROSECUTORIAL MISCONDUCT—

State prosecutor's unsuccessful attempt to discourage convicted defendant from pursuing her statutory right to trial de novo in second-tier trial court, through statements creating reasonable apprehension on defendant's part that reconviction after appeal would result in imposition of greater sentence, violates defendant's due process rights.

Petitioner Koski was arrested for criminal trespass following a week-long demonstration at the construction site of the Seabrook nuclear power plant. She was found guilty in district court and received a fine of $200 and a sentence of 15 days imprisonment. Following a trial de novo in superior court, she was again convicted and sentenced to six months imprisonment (with three months suspended and 13 days credit for time served) and ordered to pay a fine of $200.

About 1,400 demonstrators were arrested following the Seabrook demonstration, and the prospect of having to conduct superior court trials in each of these cases placed a severe strain upon the county's judicial and prosecutorial resources. Documents submitted by the petitioner revealed that Assistant County Attorney McFarlane responded to this situation by seeking to discourage convicted defendants from pursuing their right to trial de novo. In a newspaper article McFarlane said that if the defendants were found guilty in superior court "I'll recommend a six-month jail sentence." According to Koski's testimony, just before the jury was drawn McFarlane pointed his finger at her and said "Remand now back to district court. We're slapping them with six-month sentences. I don't care if you're a nun, or what, we're slapping them with six-month sentences. Remand now." Koski's attorney and another demonstrator testified to similar incidents.

In North Carolina v. Pearce, 395 U.S. 711 (1969), the Supreme Court held that vindictiveness against a defendant for successfully attacking his conviction must play no part in the sentence he receives after a new trial. The Court added that a defendant must be free of apprehension of such a retaliatory motive on the part of the sentencing judge. The Court developed an analogous rule in Blackledge v. Perry, 417 U.S. 21 (1974), where the alleged vindictiveness lay with the prosecutor. And in Lovett v. Butterworth, 610 F2d 1002 (CA1 1979), a case similar to Blackledge, it was pointed out that a reasonable apprehension of vindictiveness is enough to require relief.

The state argues that this case is distinguishable from Lovett in that any prosecutorial vindictiveness was reflected only in the recommendation of sentence and was not translated into any increase in the charge. This argument is not persuasive. The rule of Lovett is designed not only to relieve the defendant from bearing the burden of the prosecutor's "upping the ante" but also to prevent chilling the exercise of such rights by other defendants. A major goal of the rule is to insure that the defendant will not have to fear even the possibility that the exercise of the right will result in the imposition of a penalty for doing so.

Thus it is not necessary to find that a prosecutor actually has the means to implement an increased sanction posed to a defendant as a consequence of their exercise of the right to appeal. Due process is violated if a defendant could reasonably fear that the prosecutor had the power to carry out the threats made.

In this case it is obvious that the prosecutor's intent was to discourage demonstrators such as the defendant from exercising their rights to de novo trials in the future. This petitioner could well have believed that the prosecutor himself could guarantee an increased sentence if she chose to appeal her district court sentence. That the petitioner herself did not knuckle under to this pressure to remand does not affect her standing to complain of prosecutorial vindictiveness.

The petitioner's exercise of her right to a trial de novo effecively vacated her district court sentence. Because retrial or resentencing at the superior court level would have no purging effect on the prosecutorial vindictiveness that has tainted her case, and because the court perceives that the prophylactic rule's purpose of preventing the chilling of the exercise of rights of other defendants similarly situated in the future will best be served by releasing the petitioner completely from custody, the writ of habeas corpus is hereby granted.—Devine, Ch.J.

—USDC NH; Koski v. Samaha, 6/4/80.

SEX OFFENSES—

Pennsylvania statute that prohibits unmarried adults from engaging in voluntary acts of oral and anal sex violates Equal Protection Clauses of federal and state Constitutions.

[Text] The Commonwealth's position is that the statute in question is a valid exercise of the police power pursuant to the authority of states to regulate public health, safety, welfare, and morals. Yet, the police power is not unlimited, as was stated by the United States Supreme Court in Lawton v. Steele, 152 U.S. 133, 137 (1894). * * *

The threshold question in determining whether the statute in question is a valid exercise of the police power is to decide whether it benefits the public generally. The state clearly has a proper role to perform in protecting the public from inadvertent offensive displays of sexual behavior, in preventing people from being forced against their will to submit to sexual contact, in protecting minors from being sexually used by adults, and in eliminating cruelty to animals. To assure these protections, a broad range of criminal statutes constitute valid police power exercises, including proscriptions of indecent exposure, open lewdness, rape, involuntary deviate sexual intercourse, indecent assault, satatutory rape, corruption of minors, and cruelty to animals. The statute in question serves none of the foregoing purposes and it is nugatory to suggest that it promotes a state interest in the institution of marriage. The Voluntary Deviate Sexual Intercourse Statute has only one possible purpose: to regulate the private conduct of consenting adults. Such a purpose, we believe, exceeds the valid bounds of the police power while infringing the right to equal protection of the laws guaranteed by the Constitution of the United States and of this Commonwealth.

With respect to regulation of morals, the police power should properly be exercised to protect each individual's right to be free from interference in defining and pursuing his own morality but not to enforce a majority morality on persons whose conduct does not harm others. * * *

Not only does the statute in question exceed the proper bounds of the police power, but, in addition, it offends the Constitution by creating a classification based on marital status (making deviate acts criminal only when performed between unmarried persons) where such differential treatment is not supported by a sufficient state interest and thereby denies equal protection of the laws.

The Commonwealth submits that the classification is justified on the ground that the legislature intended to forbid, generally, voluntary "deviate" sexual intercourse, but created an exception for persons whose exclusion is claimed to further a state interest in promoting the privacy inherent in the marital relationship. We do not find such a justification for the classification to be reasonable or to have a fair and substantial relation to the object of the legislation. If the statute regulated sexual acts so affecting others that proscription by law would be justified, then they should be proscribed for all people, not just the unmarried. **[End Text]**—Flaherty, J.

Dissent. [Text] The record plainly demonstrates that these appellants engaged in the proscribed conduct on a stage before a public audience and in plain view of the arresting officers. Thus there is no basis, constitutional or otherwise, for the majority's hasty invalidation of our Legislature's Crimes Code. **[End Text]**—Roberts and O'Brien, JJ.

Dissent. [Text] Here we have a public display of the most depraved type of sexual behavior for pay. Any member of the public who pays the fee can witness and

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participate in this conduct. That the majority would suggest that this is beyond the state's power to regulate public health, safety, welfare, and morals is incredible. I assume that regulation of prostitution and hard core pornography are also now prohibited by todays ruling. * * *

[T]he majority's conclusion that the statute violates equal protection presents a "red herring." * * * The marital exception was designed to protect the intimacy and privacy of the marital unit. It did not give married couples the license to publicly engage in lewd and lascivious public acts. **[End Text]**—Nix, J.

—Pa SupCt; Commonwealth v. Bonadio, 5/30/80.

Damages

PUNITIVE DAMAGES—

California statute that precludes recovery of punitive damages in wrongful death actions does not violate equal protection guarantees of federal or state Constitutions.

The issue is whether the California rule that punitive damages are not permitted in wrongful death actions is consistent with the equal protection guarantees of the federal and state constitutions.

The less difficult question arises under the federal Equal Protection Clause. If there is a rational relation between the statute and a legislative object, then the statute limiting tort liability is valid. The damage limitations imposed on tort plaintiffs by the statutory classifications in two recent Supreme Court cases were more severe than the one at issue here. In Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 46 LW 4565 (1978), a certain class of plaintiffs was deprived of one type of compensatory damages all together. In Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 46 LW 4845 (1978), the Court sustained a ceiling on aggregate liability for nuclear accidents. Avoidance of excessive liability is also the goal advanced in support of the California limitation precluding punitive damages in wrongful death suits. This purpose is sufficient to sustain the validity of the statute under federal law.

The court below decided the statute denied equal protection only after subjecting the classification to the strictest scrutiny. It determined that the right to be free from oppressive, fraudulent, or malicious conduct is personal and substantially within the protections accorded fundamental rights by the Fifth and Fourteenth Amendments. However, this logic would apply to all areas of civil law in every state, and all civil remedies would be subject to the strictest standard of review. There is no authority for that proposition, and it is quite inappropriate in this case. The wrongful death plaintiffs are not without a remedy for personal loss sustained in fact. California's wrongful death statute allows full compensation for loss of companionship and financial support. Therefore, the case is quite different from one in which the plaintiff has suffered a serious loss through the death of a relative and is left with no effective remedy. The principles of strict scrutiny do not apply, and the statute is rational.

Under the state equal protection clause, the California Supreme Court in two cases has invalidated limits on tort recovery. But both those cases involved a guest statute. Limitation of recovery under the guest statute was found to be more burdensome and anomalous than other limitations for four reasons. First, it denied a large class of persons any compensation at all. Second, it was based not on a contemporary justification, such as limiting recovery to reasonable amounts, but rather on vestigial analogies to the law of bailments. Third, guest statutes were generally thought to be irrational and vestigial. Fourth, the cause of action judicially altered in those cases was a common-law cause of action in origin, while the cause of action in this case is viewed by many as wholly statutory.

The principal argument of the court below was that the punitive damage limitation is irrational because it permits damages for injury to property while prohibiting punitive damages for death of a person in the same accident. In California as elsewhere the amount of punitive damages must be proportional to the amount of compensatory damages. Assimilating a punitive damage award for the destruction of property to the enormously greater punitive damages likely to be awarded for the death of a person, and suggesting that the presence of one ought automatically to import the other, is more effective rhetorically than logically.

The California equal protection guarantee requires that the classification must advance a discernible purpose in a rational manner. This court concludes that the punitive damage limitation is constitutional. The purpose is to enable the heirs of a person wrongfully killed to recover compensation for the economic loss and deprivation of consortium resulting from the death. Another goal of the statute is placing reasonable limits on wrongful death actions in California. Disallowance of punitive damages serves these goals.—Kennedy, J.

—CA 9; In re Paris Air Crash, 6/2/80.

Elections

PRIMARIES—

Washington law that allows voter, regardless of political preference, to vote for any candidate of any party for each office in primary election does not unconstitutionally restrict party members' freedom of association.

Not only have the plaintiffs not shown a substantial burden on their freedom of association, they concede that they cannot do so. They seek to avoid establishing a substantial burden by asserting that the court places a "burden of negative proof" on them to which they cannot respond because voter ballots are made secret by another state action, the secret ballot. The plaintiffs suggest that we abandon the substantial burden test and adopt the "modified review standard," something that we decline to do.

The plaintiffs' failure to even attempt to show a substantial burden on their freedom of association is dispositive of this case. Nonetheless, consideration should be given to two recent cases that deal with primary elections: Rosario v. Rockefeller, 410 U.S. 752 (1973), and Nader v. Schaffer, 417 FSupp 837 (USDC DConn 1976), aff'd, 429 U.S. 989, 45 LW 3415 (1976). In each case, the plaintiffs challenged a primary system that restricted participation in primary elections and not, as here, a system that encourages participation. Both cases held that a state may, if it chooses, institute a closed primary system. These cases neither establish any mandatory duty that a state must have closed primaries nor do they forbid the blanket primary system under attack in this case.

The plaintiffs also argue that their party, the Democratic Party, is a private party and a voluntary association. The last time this claim was seriously made was in Smith v. Allwright, 321 U.S. 649 (1944). In Smith, the Supreme Court struck down the "white primary" and in doing so rejected arguments strikingly similar to those advanced by the plaintiffs in this case.

Finally, even though the plaintiffs' case fails because they have shown no substantial burden to their associational rights, it is important to indicate certain compelling state interests that support a blanket primary. Among these are: allowing each voter to keep party identification, if any, secret; allowing the broadest possible participation in the primary elections; and giving each voter a free choice among all candidates in the primary. Moreover, the state interest in allowing voters to support the candidates of their choice in a primary can be achieved only by the blanket primary, which allows complete voter freedom in alternating votes between parties, because an open primary, on the other hand, restricts a voter to candidates of only one party.—Dolliver, J.

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Gay Community Is Holding On to Political Gains Despite AIDS, Pressure From Some Conservatives

By Ellen Hume
Staff Reporter of The Wall Street Journal

WASHINGTON—The big political news for the gay community is what *hasn't* happened.

Despite widespread public concern about the AIDS epidemic and pressure by some elements of the New Right, political experts see little evidence of erosion in the gains gay people have made in politics and public tolerance over the past two decades.

Politicians trying to stir up support with anti-AIDS, anti-homosexual attacks haven't met with much success. And the New York City Council just passed a new gay civil-rights law, which had been pushed for 15 years by gay activists and bitterly opposed by Roman Catholic Cardinal John O'Connor and other religious groups.

"The widely expected national backlash against gays never happened," concludes public-opinion analyst William Schneider of the American Enterprise Institute.

Republican campaign consultant Doug Watts agrees. "Anybody trying to capitalize on the linkage between gays and AIDS is just off the mark," he says. "Gays are one more thing we've accepted about our political landscape, like long hair and feminists."

Poll Results

To be sure, a new national Wall Street Journal/NBC News poll finds more people are unsympathetic to homosexuals (54%) than are sympathetic (37%). Acquired immune deficiency syndrome remains a potential political land mine. Neither party is comfortable about the gay issue: The Democratic Party has tried to loosen its official ties to gay and other constituency groups, and the Republican Party, known as less hospitable to overt homosexuals, must juggle a new, openly gay faction and the anti-homosexual Religious Right.

Should Homosexuals Be Hired?

When the Gallup Poll asked people in December 1985 whether homosexuals should be hired for the following jobs, here is how many said they should, compared with earlier Gallup polls in 1982 and 1977:

(In percent)

	1985	1982	1977
Salespersons	71%	70%	68%
The armed forces	55	52	51
Doctors	52	50	44
The clergy	41	38	36
Elementary school teachers	36	32	27

But the steady gains of homosexuals in the political process seem to be continuing. They work quietly in both the Democratic and Republican party establishments; they're even in the White House and Congress. President and Mrs. Reagan had an overtly gay couple, their decorator Ted Graber and his companion, as overnight guests in the White House. Openly gay officials are getting elected to public office in greater numbers, identifying themselves with mainstream, as well as gay, issues.

"I'm the local official who is the expert on offshore oil development. I'm showing that I'm openly gay and competent," says Robert Gentry, a city council member in Laguna Beach, Calif.

A New Awareness

The AIDS crisis has undoubtedly stirred up some new anti-gay feeling. But analysts and the gay community suggest it has also made many people recognize that some familiar public figures like actor Rock Hudson, and perhaps some of their own friends, relatives and co-workers, are homosexuals.

"AIDS has increased the exposure of the gay community as human beings," observes Jeffrey Levi, political director of the National Gay Lesbian Task Force. "The more they get to know us the more acceptance there is."

New Right activist Rep. Newt Gingrich (R., Ga.), who once suggested the anti-gay/AIDS issue might become a powerful theme for Republican realignment, has now dropped the idea, an aide says. Greg Schneiders, an analyst for pollster William Hamilton, concludes: "It's an issue that looks good to some until they touch it. It has the potential to explode on anyone who's trying to use it."

New York Contest

Some conservatives hope that opposition to New York City's new gay-rights law will be a major plus for Westchester County Executive Andrew O'Rourke's dark-horse challenge to New York Democratic Gov. Mario Cuomo this fall. Yet while Mr. O'Rourke says he supports a referendum to overturn the ordinance, which Gov. Cuomo endorsed, he doesn't relish raising the issue. "I have gays on my staff. I have discussed this issue with them many times," says the Republican challenger. "I don't see it necessarily as a political plus."

In California, Rep. William Dannemayer launched a bid for the Republican Senate nomination on a sharply anti-homosexual platform. "God made Adam and Eve, not Adam and Steve," he said, charging that AIDS carriers gave off deadly "spores" and might engage in "blood terrorism" by deliberately infecting people. But Rep. Dannemayer's campaign failed to generate either enthusiasm or money, and he dropped out of the race.

Some evangelical Christians continue to use anti-homosexual, anti-AIDS messages in fund-raising letters, but find that "you can't make it the only overriding issue" in a political campaign, says Gary Jarmin, a consultant to the Religious Right. The Rev. Jerry Falwell's efforts to stir up his Moral Majority supporters with anti-gay literature and pictures during the 1984 Democratic Convention in San Francisco met with disappointing results. "I'm not going to tell you that was a crackerjack fund-raiser," says Charles Judd, a spokesman for Mr. Falwell's group, since renamed the Liberty Foundation.

Gay PAC

On the other hand, "AIDS has gotten more people involved in gay rights than were ever involved before," says Vic Basile, executive director of the Human Rights Campaign Fund, a gay political-action committee that raised about $650,000 last year, compared with $425,000 in 1984. David Scondras, a Boston city councilman, says: "I would have assumed that AIDS would push more people back into the closet; I'm seeing just the opposite. It's like a call to action."

Nonetheless, many homosexuals say that their political position remains vulnerable. In Washington state, opponents led by religious groups have an initiative on the fall ballot that would prohibit homosexuals from employment in any public agency dealing with children, the disabled and the elderly. That measure would also repeal some local gay-rights ordinances.

And in California, followers of Lyndon LaRouche, the controversial political figure, are gathering signatures for a statewide initiative aimed at quarantining AIDS carriers.

An Issue in Seattle

"I feel the last thing these people need to be told is what they're doing is okay," concludes Paul Barden, a King County, Wash., councilman who supports a Seattle-area drive to repeal the county's gay-rights law. "We don't have an adulterers' club, a shoplifters' club or a drunks' association that marches. But homosexuals do. Their political organization is the only thing that has afforded them this momen of special rights."

Anti-gay activists may be able to mob lize more support in the future on such si gle-issue votes, since the intensity of fee ings is greater on their side. The Journal NBC News poll found that only 11% those surveyed were "very sympathetic to homosexuals, while 33% said they wer

California's Gay Republicans Gain Clout Through Skill and Toil of Political Clubs

By John Emshwiller
Staff Reporter of The Wall Street Journal

LOS ANGELES—Members of the Log Cabin Republican Club here proudly proclaim their party allegiance. And that sends some fellow Republicans right up the wall.

"They are an abomination, and as long as I am alive and kicking they won't go anywhere in this party," says H.L. Richardson, a state senator from Southern California and a candidate for the Republican nomination for lieutenant governor this year.

What so angers Mr. Richardson and other California Republicans is that Log Cabin members, besides being staunchly GOP, are openly gay. But some other Republican leaders disagree with Mr. Richardson and say homosexuals should be welcomed by the party.

In recent years, gay Republican organizations have sprung up around California. Members hve gained increasing power in the party through their political skill, open checkbooks and hard work. Gay Republicans even played a role in electing the vice chairman of the state party last year.

Potential Backers Ignored

The Democratic Party, of course, has long been an arena for gay political activists. But in Republican circles, homosexuals have been about as visible as Watergate souvenirs. Gay Republicans argue that their party has been ignoring a potentially large constituency, because many homosexuals are affluent, successful and politically conservative.

Frank Ricchiazzi, the political-action chairman of the Log Cabin Club, estimates that in well-to-do areas of Southern California such as Palm Springs, as many as half of the homosexuals tend to favor Republican principles. "We are part of the party," Mr. Ricchiazzi says.

There are also Log Cabin clubs in Orange County and San Diego as well as a gay Republican group in San Francisco, known as Concerned Republicans for Individual Rights. The groups claim a total membership of several hundred.

Though some of the groups have been toiling in the party for several years, they've been making an increasing splash lately. Last year, for instance, the Los Angeles Log Cabin group was chartered by the county party organization.

Candidates in Losing Races

In the 1984 election, gay Republicans were the party's candidates in several state legislative races where Democratic incumbents were considered unbeatable. "We volunteered to put up candidates. Without us, there wouldn't have been Republicans" in those races, says Don Genhart, former president of the Los Angeles Log Cabin club.

Moreover, even losing Republican candidates get a place in the party and the right to make appointments to the state party committee. Through such efforts, gay Republicans had more than 50 delegates at last year's state GOP convention, Mr. Ricchiazzi says. He contends that this group, voting as a bloc, was crucial to the narrow victory of William H. Park as the state party's vice chairman.

Mr. Park says the gay vote was "certainly important" in his election but that the support of other groups within the party was too.

Republican leaders, like Mr. Park, argue that homosexuals have a right to be Republicans if they want. "If we are ever going to be the majority party, we must make anyone who agrees with Republican principles welcome," says Ed Davis, a state senator and candidate for the party's U.S. Senate nomination this year.

Minority View

But Mr. Davis, who has received strong support from homosexuals for his opinion, says he doesn't believe his view is shared by a majority of the party yet.

f: Gay Rights "

Baraboo News-Republic

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Wisconsin legislative session had some accomplishments

editorial

During the recent Wisconsin legislative session we were, and we continue to be, critical of the legislature's inaction on a number of crucial matters.

For instance, they did not pass a clean air act which would protect nonsmokers from smokers in public places in the state. They dragged their feet on legislative reapportionment; diluted the bill on competency testing; failed to pass the proposal to tighten the governance of vocational schools; and wasted time on matters such as allowing horse racing.

Having said that, we think it is appropriate to compliment the legislature where they deserve it.

We were impressed with the legislators' passage of a first-class bill to make easier and more accountable the public's access to governmental records. The politicians also began work on amending the state's constitution to include an Equal Rights Amendment. They protected urban wetlands of five acres or more; set up guidelines for solid and hazardous waste disposal sites; and prohibited discrimination in employment and housing on the basis of sexual preference.

Not leaving out the farmer, the legislature protected farmers from nuisance suits by more urban neighbors who might complain about odors or other farm activity. Then, too, they were humane in allowing marijuana to be used to ease the pain of some cancer patients.

While they didn't reapportion their own districts, they did accomplish the job for federal legislators.

Thoughout all of this session, we — and we suspect many people in the state — have been less than impressed with the caliber of legislative leadership. Too many of the heads of the house or senate spent a great deal of their time in petty wrangling and public nitpicking. Maybe that is why the session did not have more accomplishments to its record.

Janesville Gazette

MAY 26 1982

Oshkosh Northwestern

MAY 28 1982

Reapportionment weakening system

Reapportionment remains one thorny issue that keeps the Wisconsin Legislature and Gov. Lee Sherman Dreyfus poles apart. Unfortunately, this polarization has weakened the system of checks and balances on which our state government is founded.

It is an issue that should be resolved by elected officials because representative government is what reapportionment is all about. It is, after all, an effort to restructure the state's voting districts according to its population trends, and it should most accurately provide representation for residents of all parts of the state.

The question may ultimately be settled by three federal court judges who are not elected, but appointed to their terms for life. This is not one of the checks and balances of state government, and it is not representative government. Therefore, that outcome is far less desirable than the legislators remapping the state's electoral district.

We would urge the governor and the Legislature to reach a compromise on this issue. It is preferable for elected officials — the governor and the Legislature — to restructure the voting patterns in the state.

Failure to do so cedes the power to decide who votes for who to lifetime political appointees. Giving political appointees this power is not in keeping with our tradition of representative government.

High Interest Symptom of Economic Disease

One of the most painful symptoms of the nation's economic sickness has been the exorbitantly high rates of interest that accompany it.

It is generally agreed that recovery will be signalled by those rates' decline, as is most often the case with a fever in a physical illness.

It is to be hoped that a turning point may have been reached—or at least may be in sight. At least one major New York Bank lowered its prime rate this week, and at the auction of short-term Treasury securities in Washington on Monday, the discount of 11.677 percent was the lowest in nearly five months. The Treasury reported that yields on these T-bills have fallen in seven of the past eight weeks.

This means, of course, that citizen investments in the money markets and certificates of deposit are likely to earn less also.

Despite that effect—which investors won't welcome—a decline in interest rates is generally thought to be essential to economic recovery.

High interest rates, signalling the unavailability of capital, figured in the stagnation of business and industry. Especially hard hit have been the automobile and construction industries.

Last week the Treasury auctioned off almost $10 billion in six-month and three-month bills. These represent a call on the private sector's cash reserves. Discounts on interest rates directly reflect that demand. The trend toward lower rates is encouraging, but recovery must await a substantial lowering of government borrowing activity.

Congress has done a lot of arm waving and shouting about its intentions in that direction, but this political gesturing is no substitute for enacting needed economies. And that, considering Congress' political motivation, is unlikely to happen until after the November elections.

Thus, the continued high interest rates measure more than the extent of our economic difficulty. They also measure with uncommon precision the intractibility of Congress where the spending is authorized.

Common sense would make it appear that to cure a disease, one must get at the cause. Citizens will get that chance in the next elections. Interest rates may provide the earliest indication that their treatment worked.

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