To the Reader:

The background to the enclosed material is as follows. In 1969 the New Jersey "Criminal Law Revision Commission" was established "to study and review the New Jersey Statutory Law pertaining to crimes . . . and to prepare a revision . . . thereof for enactment by the Legislature." The Commission was composed of nine members, with Prof. Robert E. Knowlton, sometime dean of the Rutgers University Law School as chairman.

After I had received a copy of the Commission's interim report in 1970, I insinuated myself into Professor Knowlton's good graces. I complimented him on the Commission's fine work, particularly for its having removed private consensual sexual conduct between adults from the criminal sanction. But I went on to recommend that section 2C:34-1 of the proposed code, the pan-sexual solicitation provision, be excised when the Commission draughted its final report. Professor Knowlton agreed with my recommendation, and he undertook to persuade the other Commissioners in this sense. For this purpose I submitted to him a copy of the memorandum which I had previously written for distribution to all the members of the New York State legislature regarding that state's homosexual solicitation statute. (The New York and the New Jersey provision were both open to the same objections.) Many months later Professor Knowlton informed me that he had been able to persuade only two other members of the Commission to agree to the solicitation recommendations. He attributed his lack of success to the "large number of former law-enforcement officers and prosecutors on the Commission." (I suspect one of the worst of these was Alvin E. Granite, former Gloucester County prosecutor, later partner in the law firm of Granite & Granite.) As a consequence, the Commission's proposed code, as presented to the Legislature in its final report in 1971, retained section 2C:34-1.

My anger at this development was reflected in the pages of the memorandum I wrote and sent to the Commission in June, 1972, under the signature of Walter Barnett as well as my own. This is marked in the enclosures as item no. 1 and should be read first. Soon thereafter the Judiciary Committee of the state Assembly, under the chairmanship of Assemblyman William Dickey, who had been one of the Commissioners, held a single day of public hearings on the proposed penal code. However, though the hearings themselves were open to the public, the opportunity to testify was by invitation only.

As is clear from the Index to item no. 2, only nine persons were invited, the list having been headed by Professor Knowlton, as spokesman for the Commission. By means which need not be discussed here, I managed to obtain invitations to testify for myself and for Michael Valente. Equally important was the fact that Professor Knowlton gave me a personal commitment that he would not testify against the recommendations regarding solicitation which I intended to make in my testimony. (As Chairman of the Commission which had refused to delete the solicitation provision, it would not have been inappropriate for him to have opposed me regardless of his own personal views on the matter.) Michael's and my testimony constitute item no. 2, which should be read next.

In the event, our testimony produced no results, and, as a consequence of state elections over the succeeding years, the composition of the Assembly Judiciary Committee changed. By 1974 the chairman was Assemblyman Eldridge Hawkins, a black attorney from East Orange. Since Dickey's committee had done nothing to promote any part of the code, I visited Hawkins. My ostensible reason was to discuss a letter I had sent to his immediate predecessor -- not Dickey, but one of his several successors as chairman -- who had not moved on my communication. Soon after my interview with Hawkins began, the subject of the letter was put aside, and, before the afternoon was over, he had asked me to become a member of his own political action committee. So began my attendance at the monthly meetings of this political group. At the time I became a member, I was one of about four white persons on the committee, the remaining ten or so being black. But as time went by, the other white members lost interest, so that I eventually became the only white person who continued to attend the committee's meetings throughout its existence. I suspect this was something Hawkins never forgot. (My motives at the time were not quite as altruistic as might appear, since I had hoped to meet through those meetings some fitting black stud as an ancillary dividend -- a hope which never materialized.) After serving on the political action committee for several months, Hawkins invited me to sit as an observer at the meetings of his Judiciary Committee. There were about ten or twelve members of the Committee, of which about eight were usually in attendance. I found myself one of six persons attending who was not a Committee member. These were the Governor's own counsel, a deputy attorney-general representing the Attorney-General, a deputy repre-

sending the Public Defender -- in New Jersey he is a cabinet member like the Attorney-General -- the aide to the Committee, and, finally, a representative of the Legislative Research Office, who sits with all legislative committees that propose legislation, since the function of his office is to provide legislators with an appraisal of the consequences of the laws they propose.

I commenced my three years on the Judiciary Committee -- which met weekly during session time -- with the firmest resolve to keep my eyes and ears open and my big mouth tightly shut. But after several months of attendance and with a growing acquaintance with the members -- fostered sometimes by having lunch with some of them in the State House cafeteria -- I found I could communicate with other members without being considered officious. With the passage of time I realized that there was little distinction between observers and Committee members so far as participation in the discussions of the Committee was concerned, except when it came to voting. For example, when there was a serious division on the Committee between those strongly favoring law and order and those who emphasized individual rights, Hawkins would frequently turn the entire disputed matter over to the deputy attorney-general and the deputy public defender, with insructions to come back at a later meeting with some kind of a compromise. Invariably the solution which those two non-members recommended would be adopted by the Committee, usually unanimously. This was but one example of the thin line between members of the Committee and non-members. Eventually my original intention not to speak at all was abandoned. My initial tactic was to make friends with the other non-members, particularly the deputy public defender. The latter eventually became a good friend, and he remains to this day an important personal contact in the executive branch of the state government. My continuing objective, of course, was to have the sexual solicitation provision removed from the proposed code. With this end in mind, I tried to identify those who might support me. One day I discussed informally the idea of dropping the sexual solicitation provision with the director of the legislative research office, who personally represented his department on the Committee. I was taken aback when he informed me that it was very necessary to retain this provision in the code in order to "protect the public from the queers in places like Washington Park in Newark." (As a Washington Park solicitor of more than thirty-years standing, I feigned

appreciation for this most valuable intelligence and departed his presence. From then on I kept my distance from this worthy, but, to my delight, he died within a year of this encounter. His successor on the Committee enjoyed none of his predecessor's influence, nor was he as regular in attendance as the latter had been.

When I first started on the Judiciary Committee the group was still in the early stages of going over the proposed penal code section by section. In this it was acting not only for the Assembly, but as surrogate for the Senate Judiciary Committee, which had earlier relinguished most of its role with respect to the code to its counterpart in the other House. Because the clauses in the code with which I was concerned were toward its end, they were not reached until the second year's legislative session. By that time I had had ample time to consider how to proceed. I approached Hawkins alone, and told him that I felt section 2C:34-1 should be dropped. He agreed. (If he had had his way, the code would also not have punished prostitution.) He asked me for a memorandum which he could distribute to the members of the Committee on the day when the sections involved came up for discussion. The result was my three-and-one-half page memorandum for the Judiciary Committee -- probably the briefest thing I ever wrote -- which constitutes item no. 3 of these enclosures. This contained two recommendations, the first having to do with solicitation, the second with open-lewdness. Both recommendations were unanimously agreed to by the Judiciary Committee and, in that form, became part of the proposed penal code as voted out by the Committee and as subsequently passed by the Assembly. The first of these was part of the code later passed by the Senate and is today the law in New Jersey. The second proposal, however, was later emasculated due to the clumsy intervention of an ignorant young lawyer representing the National Organization of Women. At the last stage of the legislative process, not many weeks before the Senate as a body was due to vote on the whole code as it had been passed months before by the Assembly, she appeared before the Senate Judiciary Committee, which was now perfunctorily reviewing the code as it had been received from the Assembly. She claimed that nothing in the code protected women against "flashers", that is, men who publicly display their genitals, usually as a form of aggression against or intimidation of women. In truth the open-lewdness provision <u>did</u> cover the "flasher" situation, but she was too stupid to see this and the

Senate Judiciary Committee accepted her proposals. At this stage there was no opportunity nor time for anyone to appear before the Senate Committee in opposition to her proposals. The best I could do was to speak to Senator Greenberg, the chairman of the Committee, after the damage had already been done. He promised to try to remedy the matter, but it was now too late in the session. The Senate passed the code with a new provision against "flashers".

By itself, this event would not have been disastrous. However, the passage by the Senate of a code containing a provision not to be found in, or differing in any way from, the version already passed by the Assembly necessitated sending the entire code back to the Assembly so that the latter body could either accept or reject the Senate changes. (The New Jersey legislature does not have any system of conference committees by means of which the Federal Congress and the legislatures of some other states resolve differences in the enactments of its two houses.) Thus the Senate version of the code now found its way back to the Assembly Judiciary Committee preparatory to its consideration by the full Assembly. But the composition of the Assembly Judiciary Committee had now changed, and its chairman was no longer Eldridge Hawkins, who was no longer a member of the legislature. I did not have the influence in the new Assembly Judiciary Committee which I had once enjoyed under Hawkins, and many of its members were strangers. The new chairman, Assemblyman Herman, was interested in only one thing -- getting a penal code enacted, any code, no matter what the specific language. There was now time for only one Judiciary Committee meeting on the code, which Herman decided to throw open to the public, since all the women's groups, the right to lifers, the moral majoritarians and others were getting into the act. At an emotionally-charged public meeting in a large public hearing room filled to capacity with scores of people, the Assembly Judiciary Committee voted to include the Senate-passed "flasher" provision within the open-lewdness section. Again, this would not have been disastrous had the Committee not, as part of the "flasher" change -- simultaneously voted to make the entire section applicable to lewdness wherever it occurs, rather than limiting it to lewdness occurring in public, as had been the case until then. Thus in one dark instant the carefully crafter New Jersey open-lewdness provision, which had been steered around so many legislative shoals, foundered, to be replaced by what is now the present law, namely a statute which punishes lewdness anywhere. My several

attempts to speak against the new proposal in the crowded hearing room were unsuccessful. The Committee and then the Assembly repassed the code with the new language, as did the Senate when it met for one day later that Summer. With the Governor's signature, the new penal code became law.

Princeton, New Jersey
27 August 1983

Arthur C. Warner