

98 Olden Lane  
Princeton, New Jersey  
10 February 1970

Dear Bill,

I was delighted to receive your good letter and to learn that you approved of the report on the ERCHO meeting to the MSNY Board. The reaction which we have received has been almost entirely favourable. H.U.B. (Homophile Union of Boston), which has blossomed forth into a viable organization of more than 70 members, with its own meeting place, its own office, a regular attorney, etc., etc., has asked for permission to reprint it and distribute it to all its members. The only sour grapes have come, as expected, from the Kamenyites. Kameny described it as a "scurrilous pamphlet" and stated that I was "making a laughing stock" of myself in the movement. (This was at a meeting of last week of the ERCHO executive committee.) One of his cohorts sent me a letter, a copy of which I am taking the liberty of sending you. You will note that not a single one of the charges brought against the Kamenyite administration of the ERCHO is answered in it.

Last week, as I indicated, an executive committee meeting of the ERCHO was held, at which a motion was introduced by H.A.L. of Philadelphia and adopted by the executive committee. This suspends all the ERCHO rules for a trial period of one year. During this time there will be no organizations accredited to ERCHO, no officers, nothing -- merely informal discussions for purpose of consultation which any interested person may attend as an individual. Each individual will pay a door charge to be set by a coordinating committee in order to cover expenses of the meetings. There will be no motions, no resolutions, nothing, because the meetings will have no authority whatsoever, and not be able to take any action. The whole purpose of them will merely be to exchange information between people and groups. MSNY voted for this plan, which will take effect for one year if approved by two-thirds of the constituent organizations now composing ERCHO. We voted for it, not because we felt it was anything very wonderful, but because it was better than the mess which has existed until now, and because it opens up the doors to all interested individuals to attend. After a year's time, if the plan is successful, it will be continued, otherwise, in theory, we go back to the old mess. But in practice, everyone knows that we will never return to the old structure, because a unity committee, intended to recommend changes in the ERCHO structure had already been formed, and was about to convene, when the H.A.L. resolution was passed. This had the effect of suspending the Unity Committee, but, should the H.A.L. plan not work out, that committee will almost certainly be reinstated.

I suppose you have by this time learned of the stunning legal victory won in Dallas by Henry McCluskey, Jr., the brilliant young Dallas lawyer connected with the Society of Friends, who instituted a constitutional challenge to the Texas sodomy statute last year. As a consequence, the Texas law was unanimously declared unconstitutional last month by a three-judge federal court in Dallas. It was primarily to confer with McCluskey that I went to Dallas after last year's Kansas City conference. There I learned that the Dallas chapter of the A.C.L.U. had declined to enter the case as amicus. (At that time the case had not yet come to trial, let alone been appealed.) Accordingly I got on the phone from Dallas and telephoned Mr. Melvin Wulf in New York, who is the national legal director of the A.C.L.U. and also a member of my legal committee. As a result of this, and after several letter conferences with him, the Dallas chapter of the A.C.L.U. was ordered from New York to reverse itself and to enter the case. One consequence of this was to bring Professor George Schatzki of the University of Texas Law School into the case. He it was who wrote the brief on appeal, which contributed much to the final victory, the result of which is that the state of Texas is presently without any sodomy law at all until the legislature in Austin gets around to enacting a consti-

tutionally proper one. The case, of course, will be appealed by the state of Texas. This appeal will go directly to the Supreme Court because a decision on the constitutionality of a state statute by a three-man district court requires no writ of certiorari to be heard by the Supreme Court, nor does it have to go through the Federal Court of Appeals. The chances are good, so I understand, that the decision will be confirmed on appeal. I expect to be with McCluskey and the civil liberties attorneys in Washington when the case is heard.

The success in this action is a tribute to the unusual legal strategy devised by McCluskey, who has an extraordinarily inventive legal mind. What he did was to use an ordinary, garden-variety case of sodomy arising in public as a means of challenging the constitutionality of the sodomy laws to the extent that they prohibit homosexual conduct in private. Until now we have been waiting and waiting -- and would probably have continued to wait until Kingdom come -- for a case where the authorities actually prosecuted an act of sodomy occurring in private between consenting adults in order to challenge the constitutionality of laws penalizing such acts when performed in private. The trouble with this is that there just are no such prosecutions. What McCluskey did was to devise a legal technique to test the constitutionality of such private acts of sodomy by using cases where the acts themselves occur in public. There is no claim made that the state does not have a constitutional right to proscribe acts of sodomy when they take place in public. McCluskey's technique, however, makes use of cases occurring in public in order to test constitutionally state laws which also punish acts of sodomy taking place in private. And since none of the laws against sodomy in any state draw any distinction between sodomitical acts occurring in public or private, McCluskey's strategy can be used with probable success in every state except possibly in New York, where there is a distinction drawn between acts of heterosexual sodomy and acts of homosexual sodomy, at least to the extent that the former are committed by married persons. Thus the McCluskey technique is little short of a tour de force, and opens up every sodomy law in the country to constitutional challenge. I should also point out that the final success in Dallas is also a tribute to the efficacy of cooperative action, because I believe that McCluskey would be the first to agree that the result might well have been different had the A.C.L.U. not been finally persuaded to intervene. In sum, all this cooperation became possible because McCluskey joined our legal committee last summer, and we were able to work together on this thing from then on, although McCluskey himself did all the real work. He is now prepared to assist in the institution of similar cases anywhere in the country. With this end in view the Board of Directors of M.S.N.Y. has already authorized its attorney, Mr. Frank Patton, to mount such a case in New York. When the time comes, we expect to ask McCluskey to come to New York to assist in the action, which the A.C.L.U. in New York has already promised to enter as amicus. We have also conferred with Mr. Donald Cantor of Hartford, also a member of the legal committee, who was one of those responsible for the repeal of the Connecticut sodomy laws by the Connecticut legislature last year. Our present thinking is to have him join Patton and McCluskey when the time comes.

During the coming months I shall be writing you about proposals which M.S.N.Y. intends to submit at the August NACHO conference. Of course, any such proposal will require repeal of the Kameny-inspired rule which prevents consideration of any changes until 1971, but our feeling is that it will not be too difficult to do so. Our main proposal is to abolish representation on the executive committee from the regions, since these "representatives" really represent no one but themselves and the Midwestern conference and Pacific coast conference have never gone for this idea anyway. In place of these representatives, we feel that those persons who do the work of the NACHO should be represented on its executive committee. This means that the chairman of every NACHO committee should be a member of the executive committee. There has always been some question whether people like Madolin Cervantes, in charge of publicity, Louis Crompton in charge of the religious committee, and me, are executive committee members, but I guess that technically we are not. M.S.N.Y. feels that such committee chairmen should be on the executive committee. What is your thinking on this?

Enclosed you will find a copy of the decision of the federal court in Dallas. You will notice that, strictly speaking, the decision rested on the appeal of the married heterosexual couple who intervened in the case. However, the legal consequence was to throw out the Texas sodomy law for both heterosexuals and homosexuals. I write this because the case stands as a challenge to the ghetto mentality of the Kamenyites and their policy of having homosexuals "go it alone."

It is true, too, that Texas, when it comes to rewrite its sodomy law, could limit its change to legalising private acts of heterosexual sodomy, but for reasons which I shall not go into here, but which I discussed thoroughly over the phone with McCluskey, this is very unlikely to occur. When a new sodomy law is written in Texas, it is likely to eliminate all criminal sanctions against private acts of sodomy between consenting adults, whether they are heterosexual or homosexual in character. Furthermore, we are hoping to have this aspect of the case remedied on appeal.

I am sure I need not tell you what an outstanding person Louis Crompton is, and what valuable contributions he is making to the movement. Since the enclosed copy of my letter to him in January, I have been in telephone communication with him, and a number of suggestions have passed back and forth between us for strengthening the legal aspects of the very fine seminar which he is organising for San Francisco. I think one of the greatest things you ever have done as chairman was to appoint Lou to head the religious committee.

Once again let me thank you for your letter and for your encouraging remarks. I do hope things are going well with you.

All good wishes.

As ever,

*Arthur*