

NORTH AMERICAN CONFERENCE OF HOMOPHILE ORGANIZATIONS

98 Olden Lane
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Mr. Richard Michaels
Los Angeles Advocate
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Dear Mr. Michaels:

I understand that a news article recently appeared in your pages reporting that Professor Walter Barnett, counsel for the NACHO, had informed Dorr Legg of ONE that the names of individual homophile organizations could not appear in the brief which the NACHO hopes to file as amicus curiae in the Buchanan appeal. I understand, too, that there is considerable dissatisfaction on the West Coast with this decision and misunderstanding regarding the reasons therefor.

Let me state at the outset that, though I serve as chairman of the NACHO legal committee, I have never considered the Buchanan case, or any of the other cases in which the committee is presently involved, as the special province of the NACHO or of any of the individual homophile organizations composing it. On numerous occasions I have instructed Professor Barnett that his primary and overriding consideration in the Buchanan case should always be that which is likely to win it. Consequently the interests of any individual homophile group as well as those of the NACHO itself are to be subordinated to this grand design. Our objective is nothing less than to win first-class citizenship for all American homosexuals, whoever they may be and regardless of whether or not they belong to any homophile organization. In truth, we are only too well aware that the overwhelming majority of homosexuals belong to no organization at all. They are the true "silent majority". It is for these millions of nameless homosexual Americans as well as for those more formally identified that we on the NACHO legal committee stand as surrogate.

Allow me briefly to review some of the history of this epoch-making case for your readers. The NACHO legal committee has been officially involved in the Buchanan case for almost a year, since the time when Henry J. McCluskey, the brilliant young Dallas attorney who first conceived of this legal action, joined the NACHO committee. Late last summer I held a high-level conference in Dallas with McCluskey, at which time the general strategy of the case was reviewed and agreed upon. This was before the trial of the case in the state court, at which defendant Buchanan was found guilty as charged and then imprisoned. An appeal was immediately begun in the Dallas division of the U.S. Federal District Court for northern Texas, in connexion with which the NACHO legal committee arranged for the A.C.L.U. to enter the case as amicus curiae, with Professor George Schatzki of the University of Texas Law School as A.C.L.U. counsel. It is important to note that throughout this appeal at the district court level there was only one amicus, the A.C.L.U., and that this was a consequence of a deliberate strategy decision by those of us responsible for the case. Only after the district court's decision last January did McCluskey and I conclude that intervention as amicus by the NACHO itself would be desirable. For this purpose the NACHO legal committee enlisted the services of Professor Walter Barnett of the University of New Mexico School of Law as attorney for the NACHO, in which capacity he is serving without compensation. The same is true of Professor Schatzki, who continues to represent the A.C.L.U. in the forthcoming appeals to the U.S. Supreme Court. I say "appeals" because, in reality, there are three appeals,

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one by the State of Texas and two cross appeals, one by Strickland, who, as a homosexual who admits to acts of sodomy in private, was permitted by the district court to intervene in the litigation, the second by Buchanan, the original defendant in the case at bar. After some discussion, the legal committee decided that the NACHO should enter as amicus in all three appeals.

Coming now to the promise Professor Barnett made during his recent visit to Los Angeles, it should be noted that, at that time, Professor Barnett, was not fully aware of certain fundamental decisions which had been made by the NACHO legal committee prior to his involvement in the case. Those decisions had been made at the time when the whole question of the NACHO's entrance into the case as amicus was still under discussion. The Mattachine Society of New York, mindful of the fact that the NACHO itself is without any funds to support such an intervention, had offered to enter the case as amicus in lieu of the NACHO and to undertake alone to raise all the necessary funds -- now estimated at about \$3,500 -- for that purpose. On the advice of Mr. McCluskey, the legal committee rejected this offer, and decided that the Buchanan case and all other test cases which might come within the committee's purview should never be allowed to become the property of any individual homophile organization. It was and continues to be the position of the legal committee that these cases are the rightful patrimony of all homosexuals everywhere and belong as much to those without the formal homophile movement as to those within. As the only national homophile conference, the NACHO is the only body sufficiently broad and disinterested to represent this amorphous constituency in a court of law. Even so, the NACHO makes no claim to being its exclusive representative.

That is why the NACHO legal committee deemed it advisable to append a list of the names of homophile organizations to the NACHO brief, not as additional amici, but for the purpose of demonstrating to the Supreme Court the amplitude of the homophile cause and the breadth of the interests which will be affected by the decision in this case. Since the NACHO does not pretend to represent all homophile groups -- much less all homosexuals -- the legal committee has insisted that the names of the organizations comprising this list shall in no way be dependent upon membership in the NACHO or upon any contribution from the organization to the Buchanan appeal. Two principles were thus established. No organization was to be permitted to buy its way into the case, and the NACHO's own role was to be free of any taint of partisanship or self-dealing. In sum, there was to be only one amicus, the NACHO, not because the NACHO wished to engage in power politics, but (1) because the NACHO is the only homophile body with a sufficiently broad representation to make a legitimate claim to being a national entity and to be recognized as such in a court of law and (2), as a national conference rather than a national organization, it is the only homophile body which can intervene in a case in a non-partisan manner.

When, therefore, Professor Barnett seemed to retract his earlier commitment, this was only partially true. What he was unable to do was to accept additional amici in the case. To do so would not only have compromised the legal tactics which had been decided upon long before, but would have served as a source of invidious comparisons and endless controversy throughout the homophile movement itself. Just one illustration amongst many will serve to demonstrate the point. A special "Friends of the Buchanan Appeal" was recently formed in New York under the chairmanship of Dr. Henry Messer, a prominent surgeon. This was set up expressly to solicit funds from amongst well-to-do Easterners. The minimum contribution through this committee has been set at \$100, and the appeal has been sent out to more than 400 people. As the contributions to this fund come in, the question naturally arises as to whether the individual contributors to the Messer Committee should have been accorded the same privilege of having their

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names added as amici. Merely to ask the question is to conjure up the utter confusion which would prevail if individuals as well as organisations were permitted to enter this case as amici. To open the doors of this litigation to individual amici would constitute a travesty of the intervention process and subvert the favourable image of the homophile movement which the committee has sedulously cultivated. There can, therefore, be only one policy, and that is the one which limits the amici to the NACHO itself.

But to say this is not to ignore the real need to append to the NACHO brief a list of homophile organisations as long and as imposing as can be garnered. Let me reiterate that these names should come from all homophile groups regardless of whether they have ever been accredited to the NACHO or have contributed to the Buchanan case. This is what Professor Barnett was trying to explain to Dorr Legg. Many people fail to appreciate, however, that even the appending of such a seemingly simple list involves certain procedures. Names of organisations cannot just be pulled out of a hat and added by Professor Barnett at will, much as we all may wish to make the list as impressive as possible. This is an appeal to the highest court in the land, and there are necessary legal formalities which must be observed. Before an organisation can have its name added in support of the NACHO brief, it must formally notify Professor Barnett to this effect, if only by telephone, otherwise he cannot, consistent with legal ethics, include it. I should point out that there are, in reality, two briefs involved in these appeals. One of them is submitted at what is known as the time of the jurisdictional statement stage, while the other is prepared for the real hearing on the merits. The first of these was filed earlier this month and since -- as of that time -- Professor Barnett had received no letters of authorisation or telephonic authority from any group, he notified Dorr Legg that the names of no organisations could appear on the NACHO brief; it was simply too late. The truth is, as Professor Barnett himself has pointed out, that "events moved faster than anyone had anticipated (the jurisdictional statements of the State of Texas and of McCluskey having been sent off on May 14, much earlier than we had anticipated)." Consequently, the NACHO "brief had to go to print early Thursday morning, the 21st of May." What else could Barnett do without any authorisations and the deadline upon him?

None of this should prevent planning now for a long list of organisational names to be appended to the NACHO brief which will, hopefully, be prepared for the hearing on the merits in Washington. Since this is not likely to come until the Autumn term of the court at the earliest, the brief for this will probably not be submitted before the middle of the summer. Between now and then those organisations wishing to associate themselves with the NACHO brief should make their intentions known to Professor Walter E. Barnett, University of New Mexico School of Law, 1915 Roma, N. E., Albuquerque, New Mexico, 87106. However, in view of the notorious propensity for procrastination and inaction which characterises so many homophile organisations, I cannot too strongly urge the necessity for prompt and expeditious communication with Professor Barnett now, not in July.

I trust that the above will serve to brand the ugly rumour that the NACHO is using the Buchanan case for self-serving purposes for what it is -- a gross calumny -- whilst simultaneously absolving Professor Barnett of the charge of deception. And for this reason I strongly urge that this communication be published in your paper in toto, without deletions.

Very sincerely yours,

Austen Wade

Austen Wade, chairman
NACHO Legal Committee