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FOREWORD

The attached résumé is in two parts.

Part I consists of an exposition of the individual and social consequences of the continued existence on the statute books of our repressive sex laws. Because many of these laws are, to a large degree, either unenforced or unenforceable, many people have erroneously concluded that they are of little or no moment. The truth is that millions of otherwise law-abiding people are made criminals by so-called "morals" laws, their careers destroyed and their lives effectively ruined for conduct which harms no one. Part I explains, in brief compass, how this comes about. It points out that these laws are open licences for blackmailers and extortionists, and it discusses how they contribute to the corruption of law enforcement. Finally, the serious social consequences which flow from these laws are explained.

Part II discusses the work of the National Committee for Sexual Civil Liberties, detailing briefly a few of the Committee's more important accomplishments during the period of less than 2½ years of its existence. It describes the Committee's plans for carrying forward the work in which it has been engaged as a voluntary organization, and shows that this is now dependent on the Committee's ability to become a professionally-funded operation. It concludes with a specific plan for a three-year Sexual Privacy Project, involving a number of specific goals, and it contains an annual budget. At the end of the three-year period, the results would be assessed, and the question of continued operation considered. As indicated in this budget, no allowance has been made for office rent. Because the American Civil Liberties Union considers the Committee's work of such merit and importance, offices would be provided by the A.C.L.U. and the cost would be borne by the A.C.L.U. Foundation. Mr. Aryeh Neier, executive director in New York of the A.C.L.U., assisted in the planning of this project, and he can testify to the work of the Committee.

Princeton, New Jersey
7 March 1973

PART I

The National Committee for Sexual Civil Liberties consists of a group of lawyers with experience in the field of civil liberties and of authorities in related disciplines working for the dismantling of the entire structure of criminality and discrimination which surrounds private sexual conduct between consenting adults. The Committee's initial inspiration came from the American Civil Liberties Union, and its purpose is to emulate in the special field of sexual civil liberties the work of the various chapters of the Union in the general area of civil liberties. Specifically, this means working for repeal of fornication, adultery and sodomy laws to the extent that they punish private consensual conduct between adults, repeal of sexual solicitation statutes, and repeal of statutes prohibiting prostitution, reserving to the state only its right to regulate prostitution where it involves some commercial enterprise in the same way it now regulates other commercial activities.

Because arrests for these crimes are not very visible, because prison terms, when imposed -- at least for first offenders -- are usually short, and especially because some of these laws are, in terms of the number of offences committed, largely unenforced and unenforceable -- for all these reasons the average man has no comprehension of the degree of human suffering they inflict. The immensity of the problem was recognized by the American Law Institute as long ago as 1955 when, in recommending the repeal of all sex laws intruding upon private relations between consenting adults, it wrote as follows with respect to illicit relations, both heterosexual and homosexual:

> ". . . existing law is substantially unenforced, and there is no prospect of real enforcement except against cases of violence, corruption of minors and public solicitation. Statutes that go beyond that permit capricious selection of a very few cases for prosecution and serve primarily the interest of blackmailers. . . . Further, there is the fundamental question of the protection to which every individual is entitled against state interference in his personal affairs when he is not hurting others. Lastly, the practicalities of police administration must be considered. Funds and personnel for police work are limited, and it would appear to be poor policy to use them to any extent in this area when large numbers of atrocious crimes remain unsolved." [Model Penal Code, Tentative Draft No. 4 (Philadelphia, 1955), comments on article 207.5 at pp. 278-279.]

The question nevertheless arises why one should insist on repealing laws which are, for the most part, unenforced and unenforceable so far as most private adult conduct is concerned. The reasons are cogent and compelling. To maintain on the statute book laws which are not intended to be enforced and incapable of enforcement violates every

rational principle of jurisprudence. It not only brings the law itself into general disrepute, fostering contempt for law generally, but it stands as an open invitation to blackmail, extortion, and other corruption. Laws are supposed to be enforced even though no criminal statute ever succeeds in reaching all its violators. As long as there is some reasonable connection between the number of offences and the number of prosecutions, the equitable sense of the community is not outraged and public respect for the law is not corroded. But where, as has frequently been pointed out, there are at least 1,000,000 offences for every prosecution, the law itself becomes a mockery and can then be used as an instrument for private vengeance. The two prosecutions under the New Jersey fornication statute instanced in Part II below serve as clear-cut examples. These are the only cases in the past 70 years where any prosecution was ever instituted under this law, which goes back to 1796. The first case involved a mother whose maternity of two illegitimate children came to official attention through her application for welfare. After prolonged investigation, the father was found, and both he and the mother were prosecuted. The second prosecution was only recently instituted. It involves a movie actor and his director, charged with fornication and conspiracy to commit fornication in the course of filming a movie which has been widely distributed to several drive-in theatres in New Jersey. Believing that he would be unable to obtain a conviction on the ground that the film was obscene, the prosecutor decided to use the fornication law as a substitute. In addition to the criminal proceedings, a civil action is about to be brought by the state in an attempt to seize the assets of the corporation which owns the film. Another legal action is threatened against the corporation's stockholders.

Cases such as these, however, are only a small part of the picture. It is the cases which are not prosecuted, but where prosecution is threatened, the cases which are not reported, but where the victim was successfully blackmailed, that convey a better idea of the dimension of the human suffering which our repressive sex laws engender. Whitman Knapp, chairman of the New York City Commission which recently completed its investigation of corruption in the New York City police department, has stated publicly that "our laws dealing with such problems as gambling . . . and sex are . . . an important source of [police] corruption." (As quoted in the New York Times, 7 June 1970, p. 65, column 1.) He could, with greater accuracy, have stated that these laws corrupt not only the police, but the entire fabric of our society. In 1968 the New York Times reported on a study of one hundred cases of

mugging in New York City, which indicated that "at least 20 per cent of the attacks studied were against chronic drunks or men seeking the company of prostitutes or homosexuals, victims who by their habits are unusually vulnerable to being mugged." (20 May 1968, p. 52, columns 1-2) Since the investigation was limited to court cases, it was, by definition, confined to what had come to the attention of the authorities. It involved only the visible portion of the iceberg which constitutes sex-related beatings and robberies. It is no exaggeration to say that, for every such crime which is reported, at least four others go unreported and undetected. The same Times article cited "a survey by the National Opinion Research Corporation" which "indicated that about 50 per cent of all robberies are never reported to the police." (Ibid., p. 52, columns 2-3) But those robberies involved all forms of the crime, not just robberies with sexual overtones. In view of the fact that the proportion of sex-related crimes which are reported to the authorities is far lower than that for other types of crime, one can only speculate on the proportion of sex-related robberies which go unreported.

To consider the effects of these laws only on those who indulge in promiscuous sexual relations would be a disservice to the thousands of persons whose lives have been blighted, not because of some passing sexual indiscretion, but because they are known to be living with persons -- either of the opposite or of the same sex -- under conditions amounting to a violation of some archaic sex law. Adulterers and homosexuals are particularly open to this kind of discrimination, which includes loss of employment, inability to obtain housing, and denial of access to numerous professions. In truth, cohabitation with someone for illicit sexual purposes is not really necessary. Mere knowledge that a person is homosexual -- without any evidence of violation of any law -- can result in various forms of discrimination or of sanctions. Important for our purpose is the central fact that all these discriminatory practices rest on the assumption that the individual's putative conduct constitutes a violation of law. Within the compass of these pages it is not possible to instance the manifold ways in which the existence of these sex laws is used to wreck havoc with the lives of thousands of otherwise law-abiding persons. Only a few situations can be touched upon, and these must serve as surrogate for many others. The vulnerability to blackmail and extortion of persons who violate these laws is obvious. Further, as victims of assaults and robberies, they are unable to complain to the authorities without themselves risking prosecution for the crimes their sexual conduct represents. A substantial body of people are thus denied the legal protection which every civilized society customarily makes available to all those

who suffer violence to person or property. The injuries which these laws inflict are even more apparent in the wide area of employment. Their perdurance as crimes on the statute books, even though usually unenforced, is used to justify wide-spread discrimination by both government and private employers. Private employers can, of course, fire or refuse to hire anyone they please, limited only by the rather narrow restrictions imposed on them by existing fair employment laws. Obviously they are likely to fire or deny employment to persons whom the law denominates as criminal. Homosexuals, in fact, need not have actually violated any law in order to lose their jobs or be denied employment. Mere knowledge that an individual is homosexual is sufficient. Adulterers and fornicators have also fallen within the same discriminatory net. New York City policemen have been dismissed for living with women not their wives, and F.B.I. agents have been sacked for similar reasons. A Federal postal clerk was fired for "illicit cohabitation" with a woman not his wife, and an air controller lost his job with the Federal Aviation Administration for the same offence. (Their cases reached the courts respectively as Mindel v. U. S. Civil Service Commission, 312 Fed. Sup. 485 (1970) and Pope v. Volpe, Fed. Dist. Court for the Dist. of Columbia, civil suit #1753-69, filed 5 February 1970.)

As the nation's largest employer, government -- national, state, and local -- is the largest discriminator. Its role in this regard is not limited to those it employs directly, since, through its licencing authority, it controls the pattern of employment in a myriad number of ostensibly private occupations. The instances of homosexual denied an opportunity to earn a livelihood because they have been denied a licence to engage in certain occupations or professions are so numerous as to beggar enumeration. The best known involve the denial of security clearances, which are issued by the Federal government and are required for anyone working in a firm having some connection with national security. For many a person in a scientific or engineering field, denial of a security clearance is tantamount to life-time unemployment in his chosen career, since there are virtually no openings in his profession which do not require a government clearance. The ostensible rationale for these denials is that homosexuals are vulnerable to blackmail and are therefore likely to betray secrets vital to the national interest. This reasoning fails where the homosexual openly acknowledges his sexual orientation to his employer and his own associates, and is thus blackmail-proof. On other occasions the Government has claimed that homosexuality constitutes a psychological disability disqualifying the employee from his work. The speciousness of this reasoning becomes increa-

singly apparent from the cases where the homosexuality has had no conceivable nexus with the employment sought. The denial of work permits to homosexual taxi-drivers and of a driver's licence to a homosexual automobile mechanic constitute examples.

In strict legality, it is only homosexual acts which are criminal, not the mere condition of homosexuality, to punish which would clearly violate long-settled constitutional principles. But this distinction is continually ignored in government employment, from which known homosexuals are all but totally excluded. A few government firings have been successfully challenged in the courts, but this is not a viable remedy for most persons, who are likely to be reduced to penury before they have exhausted the necessary administrative and judicial procedures. That the existence of sodomy as a crime on the statute book is the true warrant for all such government discrimination is made clear by a current case involving a homosexual engineer in California, whose security clearance the Federal government is attempting to revoke. Rebuffed in its efforts to depict the man as unstable and unreliable by affidavits from his employers deposing to his unquestioned reliability and fine performance as an employee, and faced with the fact that, as an acknowledge homosexual, the man cannot be blackmailed, the government has fallen back on what always constitutes the true reason for such action, namely, that the man engages in conduct which is criminal.

The discrimination which exists in employment is matched in other areas. Bonding, often necessary for purpose of employment, is all but impossible for a known homosexual to obtain. There is substantial evidence that known homosexuals charged with <u>non-sexual</u> offences who seek release on bond pending trial are likely to have their bails set at substantially higher figures than those set for heterosexuals charged with the same offences. Known homosexuals are denied insurance, not because the risks against which they seek to be insured are any greater because of their homosexuality, but simply because of prejudice. The ability to obtain suitable housing and to remain in it once obtained is continually being denied to homosexuals. This is true even though they may have been model tenants. Because homosexuality is against the law, it takes only a stranger's knowledge that an individual is homosexual to cause him to be evicted from an apartment which he may have occupied for years. Some of the cruelest injustices take place where child custody is involved. On the fiction that they are unfit mothers, lesbians who have been exemplary parents are often deprived of their own children in child-custody cases. This despite the all-but-universal rule in such proceedings

that the mother is to be awarded custody of her children unless there exists overwhelming evidence of her actual unfitness as a parent. Visiting rights are similarly denied to homosexual fathers. These cases merely confirm the corrupting influence of our present sex laws, for, though there be no specific legal provision that homosexuality, per se, constitutes grounds for denying a mother custody of her children, judges are not immune to public attitudes, particularly when exercising discretionary authority, as in custody cases. Rooted as they are in archaic moral concepts, our repressive sex laws reinforce these moral prohibitions, as they were intended to do. Thus the law shares responsibility with other agencies, such as the church, the schools, and the family for shaping public attitudes and mores.

The injustices here described cannot be cured merely by amending present anti-discrimination laws so as to include "sexual orientation" within the list of reasons for which discrimination may not be practiced. All such amendments will rest on parlous legal grounds so long as the basic conduct involved remains criminal. Discrimination will continue to be practiced by those who will claim -- probably with success -- that no law can constitutionally require an employer to hire or a landlord to rent to anyone who engages in criminal conduct. Though the city of San Francisco last year amended its fair employment ordinance so as to prohibit discrimination in employment for reasons of sexual orientation, the Pacific Telephone & Telegraph Company in San Francisco has openly flouted the law with impunity, and continues to maintain a publicly-declared policy of refusing to hire any homosexual.

Until now we have considered only the cost to the victims of discrimination. There is, however, a social price which is being paid, and no estimate can be made of its cost. The existence of the sodomy laws is one of the strongest forces responsible for the continuation of that deviant subculture best described as the homosexual ghetto, a phenomenon to be found in all of the very large cities of this country. Like all ghettos, the homosexual one has its distinctive argot, its peculiar dress, and its own mannerisms -- that is, its own life-styles. Where a ghetto is the result of linguistic, religious and/or other cultural differences unconnected with any legal discrimination, the way is always open to members -- or at least to their children of a new generation -- to leave the ghetto and, through the process of acculturation, to join the mainstream of American life. In this manner the American melting pot served to dissolve the earlier Italian, Jewish, and other ethnic ghettos which once existed in many American cities. The inhabitants of those ghettos were objects of open economic and

social discrimination at the time of their existence, but there never were any legal barriers to the disappearance of these separate enclaves.

The same is not true where a ghetto is reinforced by specific legal discrimination. Then the process of assimilation becomes difficult, if not impossible. The history of the black ghetto is impressive witness to the need for affirmative legal action if these barriers are to be broken, because they exist as the minority's response to the discrimination against it. Where the law serves to perpetuate rather than eliminate the ghetto, its members feel trapped, and there rises a subculture which is not only distinct from the general society, but one which is alienated, disgruntled, and disaffected. Members of such a ghetto do not and cannot contribute their full potential to the larger society to which they belong. Sullen and discontented, they are open to the syren calls of every visionary or revolutionary who promises some improvement in their lot. This is recognized today in the case of the black ghetto. It is less true in the case of the homosexual ghetto only because the homosexual, unlike the black man, is not indelibly marked by color with the raison d'être for the discrimination against him. Because he can "pass", he can escape from the ghetto or need never live in it, but to do this he must, in most instances, be prepared to live a life of deviousness, duplicity, and deceit. Outside of the ghetto -- and sometimes even within it -- a viable existence is possible for most homosexuals only within the interstices of society, where the prying eyes of employment agencies, police, draft boards, the F.B.I., insurance agents, inquisitive landlords and neighbors, and all the other types whose presence involves some form of investigation, do not probe too deeply.

We are now not considering the obvious human toll which such a twilight existence represents. What needs to be noted is the social cost to the community, the cost in terms of human potential unrealized, which such discrimination entails. Homosexual ranks are littered with wasted careers, with people of ability and talent unable to put their abilities to best use, whose actual occupations represent tactical compromises between what they are capable of achieving and what they are in fact able to achieve if they are to maintain their precarious place within our persecuting society. Cases to confirm this are legion. No actual legal conviction is necessary; just knowledge that an individual is homosexual and that homosexuality is against the law is sufficient to destroy him. All walks of life are represented -- the would-be lawyer who, upon passing his state bar examinations, is turned down by the

character committee of his local bar association with the result that he finds a job in a law office helping with briefs, the highly-regarded teacher discharged when his homosexuality becomes known during his participation on a T.V. program, whose school administration demonstrates its sense of compassion by offering him a job as a janitor in the same school, the automobile mechanic instanced above who is refused a driver's licence, the Ph.D. in astronomy, whose field of expertise is one of those in very great demand, unable to obtain a security clearance, and hence denied meaningful employment for most of his working life. These constitute but a small sample of cases taken from real life.

The fact that homosexuals are the principal sufferers in matters of employment and related areas should not obscure the fact that our repressive sex laws are pan-sexual in their effects. The prostitution laws are a good example. In recent times the purview of these laws has been much broadened, so that many of them are no longer limited in their application to the women partners in heterosexual intercourse. In an even-handed display of injustice, many modern penal codes punish both the prostitutes and their customers, and include homosexual as well as heterosexual conduct. As indicated at the beginning of these pages, if prostitution statutes were limited to the regulation of the commercial and health aspects of these relationships in situations where business enterprises -- rather than two individuals -- are involved, little objection could be made to them. It is the intrusion of the criminal law into the private sexual conduct of willing adults who choose to give or take something of value in connection with their sexual relationships which makes them so objectionable. These are the kind of laws, par excellence, which provide the widest opportunities for extortion by the police; they create situations where "pay-offs" and graft are all but universal. Together with anti-gambling and drug statutes, the prostitution laws are among the most important factors making for corruption within our society. They are an open invitation to the spread of criminal syndicates in the same way they conduce to the wholesale corruption of law-enforcement officers. The modern practice of punishing the prostitute's customers means that these laws no longer affect only one social class, but injure persons in all walks of life. Even a mere arrest under these statutes, without any conviction, can have a scarifying effect. Like all "morals" laws, the harm they produce cannot be measured by the relatively light penalties they inflict. Particularly where the person involved is a professional, all that is necessary is for news to get abroad of his arrest under one of the prostitution

laws and he can find himself without a job, his career destroyed, and himself confronted with serious domestic complications with wife or family.

A few jurisdictions have repealed their general sexual solicitation laws and now penalize only solicitations for the purpose of prostitution. In some of those jurisdictions the police have de facto reinstituted the repealed statutes by employing the solicitation-for-the-purpose-of-prostitution statutes to arrest simple sexual solicitors who are no longer guilty of any offence. It is relatively easy for a vice-squad officer to fabricate a charge by claiming that the solicitor either offered or requested money in connection with his sexual proposal. This situation is particularly prevalent in Chicago, in the state which was the first in the country to reform its fornication and adultery laws and to repeal its sodomy and general sexual solicitation statutes. Thus the soliciting-for-prostitution laws, which are invariably a part of all prostitution legislation, are sometimes used to defeat the legal reform which is accomplished when a state repeals its general sexual solicitation law.

The foregoing has merely touched on the countless ways in which our repressive sex laws continue to affect the lives of thousands of people. Because of the shroud of secrecy which continues to surround everything connected with sex, because of the arbitrary, capricious, and oftentimes corrupt manner in which these laws are enforced, because the victims of these laws — unlike victims of other forms of injustice -- are either unwilling or unable to speak out -- for these and other reasons the myth persists that these laws are dead letters and that few people are affected by them. Nothing less than their complete excision from the statute book can remove from the lives of millions of Americans the intolerable burden of suffering they produce.

PART II

As stated at the beginning of Part I, the purpose of the National Committee for Sexual Civil Liberties is the dismantling of the entire structure of criminality represented by our repressive sex laws. In pursuit of these goals, the Committee operates on three levels -- administrative, legislative, and judicial. Examples of the first involve representations before penal or criminal law revision commissions or committees in states where such bodies have been appointed. The Committee also appears before appropriate legislative bodies, usually judiciary committees of one or the other house of state legislatures which are considering penal law reform. Thus committee members have appeared personally before penal law revision commissions -- sometimes only before individual commission members -- in Massachusetts, New Jersey, Ohio, Nebraska, and California. In Nebraska the mere placing of the Committee's brief on sexual solicitation in the hands of the chairman of that state's penal law revision commission -- through personal contact -- produced surprising results. The commission had been instructed to follow the newly-enacted Colorado code, which continues to criminalize sexual solicitations even though the Colorado criminal law revision commission had itself recommended in a contrary sense. Despite the Colorado precedent, and even though the Nebraska commission had, in its original draft, proposed a solicitation statute, the Nebraska commission accepted the reasoning of this Committee's brief and recommended to the Nebraska legislature a criminal code sans any sexual solicitation provisions. (It had already followed the Colorado code by recommending that fornication, adultery, and consensual sodomy between adults in private be dropped as crimes.) Regrettably, the Committee has had neither the funds nor the personnel to make personal representations in most jurisdictions, and it has therefore had to limit its activities in most instances to written communications with chairmen of penal law revision commissions. This is obviously a far less effective method of operation. The same factors have limited personal appearances before legislative bodies considering penal law reform. Committee members have appeared personally before legislative committees or members of such committees in New York, New Jersey, and Ohio, and they have been in correspondence with legislators in Pennsylvania and Maryland. Personal representations by the Committee last year before the Judiciary Committee of the Ohio Senate -- after the Ohio Assembly had passed the proposed new Ohio Criminal Code, but when the fate of the sexual provisions of that measure were in doubt in the state senate -- are recognized as having been an important factor in

insuring the bill's ultimate passage with the provision for repeal of the Ohio sodomy law intact.

The Committee's most salient success in the area of criminal law revision came soon after its formation in 1970, and involved the National Commission on Reform of Federal Criminal Laws, headed by former Governor Brown of California. That body, in its preliminary draft, had recommended an odious solicitation provision, punishing the most harmless forms of sexual solicitation, both heterosexual and homosexual. Through personal contacts -- in this case with the head of the national commission's staff, Professor Louis Schwartz of the University of Pennsylvania Law School -- the Committee succeeded in having this noxious provision excised, and, in the Commission's final draft, as submitted by the President to Congress in January, 1971, it was replaced by an innocuous disorderly conduct provision of a non-sexual character which the Committee had itself drafted. In this connection, the Committee's monograph, entitled "Why Reform the Sodomy Laws?", appeared in the published volumes of the hearings on reform of the federal criminal laws held by the subcommittee on criminal laws and procedures of the Judiciary Committee of the U. S. Senate.

In the judicial area the Committee was the moving force behind the so-called Buchanan case, in which the Federal District Court for the northern district of Texas held the Texas sodomy statute unconstitutional on grounds that the law was applicable to heterosexual conduct between married persons. The case eventually reached the U. S. Supreme Court, where it was returned to the district court without any decision on its merits in the light of a recent Supreme Court ruling that restricted the ambit of the Dombrowski decision on which the entire litigation had hinged. This would have made it necessary to exhaust all state remedies before any federal determination of the issues could have been had. This, and other considerations, made it prudent not to continue further with the case. The Committee and the American Civil Liberties Union were amici in the case. In Colorado the Committee instituted two suits on its own. The first succeeded in overturning the sexual solicitation portion of a Denver municipal ordinance. The second has resulted in a decision that the solicitation provision of the newly-enacted Colorado Criminal Code is unconstitutional. The latter is presently on appeal to the Supreme Court of Colorado, where the prospects are good that the decision will be sustained. The importance of this last case is enhanced by the fact that the Colorado law at issue is virtually identical with the solicitation provision of the New York penal code,

both having been derived from section 251.3 of the Model Penal Code.

Two years ago the Committee was amicus in a New Jersey prosecution involving the fornication statute of that state. The case went to the Supreme Court of New Jersey, where the defendant was acquitted. However, the court's decision avoided the constitutional issues which the Committee had raised, thus saving the statute. The Committee has recently entered the second New Jersey fornication prosecution as amicus, one in which the prospects of reaching the ultimate constitutional questions are good. In addition to the above cases, the Committee has been involved in other actions, either directly or as amicus, which never went beyond the trial stage or which were dropped for various reasons. The most promising of these involved a constitutional challenge to the combined sodomy and solicitation statute of Pennsylvania, which was dropped after the trial stage.

It is clear from the foregoing that the Committee's activities have been sporadic and uneven. As a voluntary group, without funds for necessary travel, and usually without the financial ability even to communicate by long-distance telephone, it has had to limit its activities to areas close to its members and within their financial reach. Thus golden opportunities for effective sexual law reform have gone begging in many jurisdictions. Because they have not been exploited, some of these are being permanently lost. So hampered is the Committee by lack of funds, that it has been unable to furnish copies of the pleadings and decisions in its own cases to more than the two or three of its members who are directly involved. Even more tragic is the Committee's inability, for want of money, to follow through on the successes which it does attain. This is particularly evident with respect to its several accomplishments with penal law revision commissions -- achievements which are continually placed in jeopardy by the Committee's inability to appear personally before the legislatures to which these reform proposals are presented. The presence of a Committee representative on the legislative scene would go far to insuring the actual enactment of the proposals into law. In Nebraska, for example, the ultimate success of sexual law reform is presently in the hands of the legislature, but the Committee has no funds to send a representative to appear before the appropriate legislative committees in Lincoln to see that what was accomplished within the state revision commission is not lost in the legislature. So, too, with the national Congress; the ability to follow through on the Committee's initial success with the National Commission on Reform of Federal Criminal Laws depends on its ability to defend the reform proposal before the Congressional committees involved.

Lack of money frequently causes the Committee to attempt to do by correspondence what should be done through personal contact. The situation in Montana is an example. The criminal law revision commission of that state recommended reducing the punishment for sodomy in its proposed code from the present penalty of life imprisonment to five years. The co-chairman of the Committee, Professor Walter Barnett, wrote to the Montana commission chairman and succeeded in convincing him that the entire sodomy provision should be expunged to the extent that it penalized private consensual conduct between adults. At this point communications between the two ended, with the chairman indicating that the entire code was being held up for about a year in order to consider other legal questions. When the proposed code once again saw the light of day, the penalty for sodomy had not been deleted. Rather it had been increased to ten years. This is a case -- unfortunately too typical -- where it is reasonable to believe that, had the Committee been able to send someone to Helena, it might have been possible to have induced the Montana commission to jettison the entire sodomy provision.

In California several groups have recently come together and drafted an entire package of sexual law reform measures. These were shown to Professor Barnett, who, though impressed by the group's good intentions, was struck by its complete lack of professional knowledge, by its ignorance of legislative procedures, and by its obvious ineptitude in the area of legal draftsmanship. At the group's request, Professor Barnett provided assistance, devoting what time he could spare from his duties as professor of law at Hastings School of Law to the drafting of legislation which could pass legislative muster. Even so, he could not spare all the time the project required. The situation is made even more distressing by knowledge of the fact that prospects for sexual law reform are brighter in California than anywhere else in the country. When in addition it is recognized that California, like New York, is a bell-whether state, so that what happens in California has more than a proportionate effect on other jurisdictions, the importance of an effective reform campaign in that state is self-evident. Yet even in California, where the Committee does have three members, those members are unable to devote sufficient time to its efforts, with the result that the job which needs to be done is not being done even though the Committee has the expertise to do it. The California situation is further compounded by the fact that the voluntary, though inept, groups presently working in that state for sexual law reform are precisely the kind of voluntary organizations which need to be formed in every state where sexual law reform is to be pursued. Once such groups

have been established, they can provide a local base to which this Committee could furnish professional assistance. The ultimate goal would be the existence of competent and viable local groups in every jurisdiction working for reform. Were such a voluntary group presently in existence in Nebraska, there would exist a genuine alternative to the Committee's sending its own representative to appear before the Nebraska legislature. Over the period of its existence, the Committee has come into contact with many people in different states who are anxious to start such voluntary groups, but who lack the knowledge and experience as to how to organize them, how to proceed when organized, and how to formulate realistic goals. The Committee is most anxious to set up such local groups and to provide them with the basic knowledge of legislative procedures -- knowledge which it can provide in abundance -- but, once again, this requires time and money.

The Committee is assisted in its work by a Board of Consultants consisting of authorities in various disciplines, who make available research materials or provide position papers to buttress the Committee's formal presentations before legislative or administrative bodies. However, the consultants are not limited to this role, and, on occasions, they have joined regular committee members in personal appearances before such bodies. Members of the Committee as well as those on its Board of Consultants have an impressive list of publications to their credit. Professor Barnett's forthcoming book, Sexual Freedom and the Constitution: An Inquiry into the Constitutionality of Repressive Sex Laws, has already been described as "the definitive word on the subject." Though not yet published, it has been cited by a judge of the New Mexico Court of Appeals in support of his dissent from a sodomy conviction. (State v. Trejo, 494 P. 2d 173 at pp. 175 et seq.) Professor Lee Rainwater of Harvard, a member of the Board of Consultants, is a national authority on the sociology of deviance. His protégé on the Committee, Professor Laud Humphreys of Pitzer College, Claremont, California, won the C. Wright Mills award of the American Sociology Association for his Tearoom Trade: Impersonal Sex in Public Places. This study opens entirely new perspectives in our understanding of the sociology of so-called "public" sex acts. Professor Humphreys is currently writing what is expected to be the authoritative word on sex in prisons -- hopefully, to be published under the Committee's own imprimatur. Dr. Michael Valente, sometime head of the department of theology at Seton Hall University, South Orange, New Jersey, and also one of the Committee's consultants, won wide-spread acclaim with his Sex: The Radical View of a Catholic

Theologian. The book is a brilliant assault on the entire Judeo-Christian sexual ethic in all its ramifications. It is perhaps the most important intellectual challenge to the assumptions implicit in that ethic ever to appear in print. As a means of changing our thinking about pre-marital intercourse, fornication, adultery, sodomy, prostitution, and pornography, it is without a peer.

The above are only a sampling of books and articles by members of the Committee or its consultants. In addition, the Committee has itself produced two monographs, one on sodomy, the other on sexual solicitation, which have had wide distribution and have come to be recognized as constituting a significant contribution to their subjects. It was the Committee's monograph on solicitation which proved decisive in causing the deletion of the solicitation provisions from the codes proposed for the United States and the state of Nebraska.

In terms of over-all strategy, the Committee is mindful of the importance of encouraging professional and opinion-moulding organizations to take public positions in favor of sexual law reform. Here, too, lack of money has prevented the Committee from implementing its plans except with respect to the American Bar Association. Beginning with personal appearances by two committee members at a meeting last June of the Executive Council of the A.B.A.'s Section of Individual Rights and Responsibilities, the Committee has steadily pursued its goal of having the House of Delegates of the A.B.A. take a forthright stand in favor of repeal of state sodomy statutes, reserving for the criminal law only conduct involving rape, public indecency, or relations with children. As a result of the Committee's efforts, its proposal was referred to the section's subcommittee on Equal Protection of the Law. The latter group unanimously reported if favorably to the Council of its parent body, the Section of Individual Rights and Responsibilities. That group, in turn, has now approved the resolution and has recommended its adoption by the A.B.A.'s House of Delegates. A similar proposal, which was presented to the A.B.A.'s Section of Criminal Law, was favorably recommended by that section to the House of Delegates at the Cleveland meeting of the A.B.A. held this past February. As a consequence, the House of Delegates of the A.B.A. will, at its next meeting this coming summer, have resolutions from two of its sections urging it to take a stand in favor of sodomy repeal, recommendations which are almost certain to be adopted. There are other professional organizations which the Committee feels should make similar public statements, but the Commit-

tee has neither the necessary funds nor the ability to make further claim upon the time of its members -- all of whom are volunteers -- to bring this about. (The Committee's success with the A.B.A. rests largely on the fact that the Committee last year decided to hold semi-annual plenary meetings of its own at the same time and place as the A.B.A. meetings, so that committee members would be at the A.B.A. scene for this purpose.)

The Committee attaches great importance to the recruitment of law students to work in the field of sexual civil liberties. One of its newly-appointed members is still a law student, due to take his California bar examinations this summer. Another was admitted to the Ohio bar only a few months ago, after having amassed an extraordinary record of academic distinction while a student at the Ohio State University School of Law. It is the Committee's view that success in the area of sexual civil liberties may, to some extent, depend on recognition by a sufficient number of practitioners that this is an important and distinct branch of the law. Older attorneys are not likely to recognize this need, nor do they have the necessary sense of commitment which success in this field requires. The Committee would like to visit different law schools to recruit potential volunteer lawyers for its work, but, here again, it is handicapped by lack of personnel and funds for the purpose.

The Committee has plans in other areas as well, but they have not been implemented for the same reasons. In sum, the Committee has concluded that sexual law reform cannot be accomplished through the spare-time efforts of unpaid volunteers alone. Volunteers are essential, but there must also be available a few full-time professionals together with the necessary financial resources in order for the undertaking to be successful. In an effort to remedy these weaknesses, the Committee is proposing a three-year Sexual Privacy Project, which would be carried out in coöperation with the American Civil Liberties Union. This would be headed by the Committee's co-chairman, Professor Walter Barnett, who would give up his position on the faculty of the Hastings School of Law, University of California, in order to devote full time to the work. In addition to filling the lacunae in the Committee's present operations, the project would:

(1) mount a coördinated national litigation attack against laws involving sexual privacy;

(2) develop case materials, model pleadings, and other litigation tools to assist attorneys in instituting affirmative suits to enjoin enforcement of these laws and to bring about their repeal. (Similar materials would be developed to strike down patterns of administrative discrimination.)

(3) serve as a national clearing-house to monitor and report on the progress of chal-

lenges to these laws and practices anywhere in the country. (Periodic reports would probably be issued.)

(4) make an initial investigative survey of the sex laws of each jurisdiction, and

(5) make an investigative survey of discrimination arising from the existence of these laws in every jurisdiction;

(6) issue a major report detailing the results of these surveys;

(7) make these findings available to legislatures, law revision commissions, and other interested groups.

To implement this program and to enable the Committee to carry on along the lines already developed, the following annual budget will be necessary:

	ANNUAL COST
Two attorneys	$ 40,000
One secretary	8,500
F.I.C.A. and employee benefits	4,000
Telephone	6,500
Travel	6,000
Litigation Costs	4,500
Office Supplies, xerox, etc.	6,000
	$ 75,500

Cost of office rent will be absorbed by the A.C.L.U. Foundation.
The project has been planned so as to provide for tax-deductibility.

As indicated in the foreword, the work will be reviewed after three years to determine whether it should be continued and, if so, what changes, if any, may be indicated.

Résumé of Walter Barnett

Born June 19, 1933 in Lubbock, Texas

Degrees: (1) B.A. summa cum laude, Yale University, 1954

(2) LL. B. with honors, University of Texas (Austin), 1957

(3) Diplôme, College of Europe (Belgium), 1958

(4) LL. M., Columbia University, 1972

Honors: (1) New York Yale Club Award for High Scholarship in Freshman Year, 1951

(2) Phi Beta Kappa in Junior Year, 1952

(3) Carrington, Gowan, Johnson & Walker Award as the Outstanding First-Year Law Student, 1955

(4) Order of the Coif, 1957

(5) Editor-in-Chief, Texas Law Review, 1956-57

(6) Fulbright Scholarship in Law and International Affairs, Belgium, 1957-58

(7) Harlan Fiske Stone Fellowship, Columbia University Law School, and Ford Foundation Fellowship, 1970-71

(8) Playboy Foundation Fellowship, spring 1972

Career: (1) Associate Attorney, Carrington, Johnson & Stephens, Dallas, Texas, 1958-60

(2) Attorney-Adviser (International), Office of the Legal Adviser, U. S. Department of State, Washington, D. C., 1960-64

(3) Assistant Professor of Law, University of Miami, Coral Gables, Florida, 1964-67

(4) Associate Professor of Law, University of New Mexico, Albuquerque, New Mexico, 1967-69

(5) Visiting Professor of Law, University of Texas (Austin), summer 1969

(6) Professor of Law, University of New Mexico, Albuquerque, New Mexico, 1969-72

(7) Visiting Professor of Law, University of California, Hastings College of Law, San Francisco, California, 1972-73

Admitted to the Bar: (1) Texas, 1957

(2) New Mexico, 1970

(3) U. S. Supreme Court, 1970

Major Articles: (1) Criminal Punishment in Texas, 36 Texas Law Review 63 (1957)

(2) The Position of Organized Labor in the American Legal System, 8 Les Cahiers de Bruges 97 (1958)

(3) When the Landlord Resorts to Self-Help: A Plea for Clarification of the Law in Florida, 19 University of Florida Law Review 238 (1966)

(4) Marketable Title Acts--Panacea or Pandemonium?, 53 Cornell Law Review 45 (1967) (The conclusion of this article is reprinted in Axelrod, Berger & Johnstone, Land Transfer and Finance--Cases and Materials at 763 (1971))

(5) Law Reform and Law for the Layman: A Challenge to Legal Education, 24 Vanderbilt Law Review 931 (1971)

(6) Corruption of Morals--the Underlying Issue of the Pornography Commission Report, 1971 Law and the Social Order 189

Book: Sexual Freedom and the Constitution--An Inquiry into the Constitutionality of Repressive Sex Laws (to be published in the spring of 1973 by the University of New Mexico Press)