

# NATIONAL COMMITTEE FOR SEXUAL CIVIL LIBERTIES

## FACT SHEET

### It's Time You Knew About The National Committee for Sexual Civil Liberties

NCSCL is unique:

- For over 10 years it has fought and won the Constitutional battles on the issues affecting all our lives.
- It has educated countless legislators with its special knowledge and expertise.
- It has monitored and influenced the administrative bureaucracies and expanded our rights—both at state and federal levels.

• It has given us the Executive Branch of government as a tool to effectuate social and legal change.

NCSCL has:

the history and background, the record, the legal expertise and the political understanding to win the cases of the '80s in the courts, and to educate those entrusted with government to ensure that liberty, equality and justice become reality.

#### Purpose and Goals

The National Committee for Sexual Civil Liberties is a private, nonprofit organization dedicated to the pursuit of sexual civil liberties through education, both public and within the executive, legislative, judicial, and administrative branches of government.

The purpose of the Committee is to work to ensure equal rights in all areas in which government is involved, no matter what the sexual, affectional, or relationship status of the person.

The Committee consists of a select group of men and women chosen for their dedication to the concept of total civil rights in the sexual area and for their expertise and scholarship in their various professional, academic, and practical disciplines, such as law, sociology, history, psychology, medicine, education, science, and theology.

Through its members and its distinguished Board of Consultants, the Committee strives to gather together, from all regions of the nation and beyond, those whose achievements, aptitudes, and temperaments may prove to be a valuable resource in the pursuit of sexual civil liberties.

#### Activities of the NCSCL and Its Members

Since its beginnings over a decade ago, the Committee and its members have been active in litigation, education of officials in government and private organizations, and research and writing in the field of sexual liberties. Much of the work has been done in the name of the Committee; some has been in the names of individual members who have credited the Committee as the source of information, ideas, and other assistance.

The Committee meets twice a year and presents an annual program of scholarly papers and panels. Some time is usually devoted to reviewing the current publications of interest, including books and articles by Committee members.

#### Some Current Projects

The National Committee is assisting in the development, expansion, enforcement, and implementation of **executive orders** banning sexual orientation discrimination and invasion of sexual privacy in several states and on the federal level. Its most recent achievements have been in California, where Governor Edmund G. Brown Jr. issued an order banning discrimination in certain areas of state government under his jurisdiction. A similar executive order issued earlier by the governor of Pennsylvania was obtained through the work of members of the Committee. In conjunction with this project, the Committee is actively concerned with establishing a **Sexual Privacy and Orientation Commission** in California and several other jurisdictions.

The Committee is working with, educating, and serving as a consultant for various **administrative agencies**, departments, commissions, and councils throughout California state government and in several other states.

The Committee is concerned with the establishment of new criteria for publication of appellate opinions and changing policy regarding citation of **unpublished opinions** as precedent.

The Committee continues to educate those with past convictions for "lewd conduct" or "sexual solicitation" in California, of the **retroactive effect of the new law** in this area (see Litigation Project for information on the case of *Pryor v. Municipal Court*) and to assist the judiciary in creating a procedure to administer the effect of the new law.

**Jury instruction committees** (both ad hoc committees and those associated with bar associations) have worked and are working with the Committee to ensure that the jury instructions developed for sexual cases are a fair and correct statement of the law. This includes correcting previous misinterpretations of the law contained in standard instructions used by judges to inform juries of the applicable law at the conclusion of a criminal case.

## Litigation Project

### Major Victories of the 1970s

**Sexual Solicitation/Lewd Conduct:** In the case of *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, the Litigation Project was successful in challenging the constitutionality of the California statute prohibiting soliciting or engaging in lewd conduct. The California Supreme Court held that the statute was vague, and it established a totally new definition for the term "lewd conduct." The Court also held that solicitation of a lawful sex act may not be criminalized by the state, and that the state may not constitutionally prohibit sex in public absent a showing of the presence of someone who may be offended. Under the new statutory interpretation, a prosecutor must prove that a defendant knew or should have known of the presence of someone who may be offended. The new definition and this new interpretation were made retroactive, even to cases which have been final and closed for years. The Litigation Project had previously attempted to overturn this law in numerous cases, including *Silva v. Municipal Court* (1974) 40 Cal.App.3d 733; *People v. Williams* (1976) 59 Cal.App.3d 225; *People v. Deyhle* (1976) 76 Cal.App.3d Supp. 1. The Litigation Project also filed an amicus brief before the Ohio Supreme Court in the case of *State v. Phipps* (1979) 58 Ohio St.2d 271, urging the Court to declare that state's homosexual solicitation law unconstitutionally overbroad. Although that Court did not declare the statute overbroad, it did place a limiting construction on the statute.

**Employment Discrimination:** After two years of unsuccessful attempts to administratively secure a favorable interpretation of the California Fair Employment Practices Act to include protection for homosexuals, the Litigation Project involved itself in the case of *Gay Law Students' Association v. Pacific Telephone and Telegraph Company* (1979) 156 Cal.Rptr. 14. The California Supreme Court held that being openly gay is a "political activity" protected by the California Labor Code section which prohibits employers from regulating or attempting to influence the political activities of employees. This was a landmark decision in that it was the first time any state supreme court had granted protection to homosexuals against discrimination by private employers.

**Prostitution:** The Litigation Project was successful in establishing that soliciting for an act of prostitution is a specific intent crime under California law. In the case of *People v. Norris* (1978) 152 Cal.Rptr. 134, the Appellate Department of the Los Angeles Superior Court held that in every case involving solicitation for prostitution, the prosecutor must prove that the defendant intended that an act of prostitution actually occur. Since the purpose of the statute, the Court held, is to prevent the solicitation of a crime, if the defendant does not intend for a crime to be committed, he or she must be found not guilty. This ruling has resulted in more frequent acquittals.

**Sexual Battery:** After the Los Angeles City Attorney established a policy of filing battery charges in sexual cases involving allegations that a male defendant touched the genital area of a plainclothes vice officer, the Litigation Project became involved in the establishment of standards of guilt and innocence. In the case of *People v. Sanchez* (1978) 147 Cal.Rptr. 850, the Appellate Department of the Los Angeles Superior Court held, for the first time in California, that a jury must return a verdict of not guilty if it has a reasonable doubt as to whether the defendant had a reasonable belief that the officer would not object to the touching and therefore

would not be offended. Prior to the *Sanchez* case, defendants had to raise the defense of entrapment, which must be proved by a preponderance of evidence. The *Sanchez* case reversed that burden so that a defendant now need only establish a reasonable doubt as to whether the officer was acting in an enticing manner. As a result of this case, juries are returning not guilty verdicts more frequently.

**Loitering/Solicitation:** In the early 1970s, the Colorado Legislature enacted a penal code revision decriminalizing private sex between consenting adults as well as sexual solicitation. The Legislature, however, enacted a law prohibiting loitering for the purpose of soliciting deviate sexual conduct. The Litigation Project successfully challenged the constitutionality of that statute in the case of *People v. Gibson* (Colo. 1974) 521 P.2d 774. This case became a model for similar challenges in other states, including the attempt by the Litigation Project to have a similar law in California declared unconstitutional. See *People v. Ledenbach* (1976) 132 Cal.Rptr. 643. A Municipal Court judge declared the California law unconstitutional but was reversed on appeal. The Litigation Project is participating in further litigation in this area (see below).

**Privacy:** The first case of the Litigation Project involved a challenge to the Texas sodomy law, which punished oral and anal sex between all consenting adults in private. The Litigation Project was successful in having a 3-judge Federal District Court declare that statute unconstitutionally overbroad in the case of *Buchanan v. Batchelor* (N.D. Texas, 1970) 308 F.Supp. 729. Although this decision was reversed on procedural grounds only by the United States Supreme Court, the substantive holding by the District Court remains a landmark decision.

### Some Test Cases for the 1980s

**Consenting Adult Private Sex:** A majority of states in this country continued to criminalize private sexual acts between consenting adults. Some of those states allow married couples to perform oral and anal sex in private, but deny the same rights to unmarried persons, whether heterosexual or homosexual. The Litigation Project has become involved in several major test cases challenging the so-called "sodomy laws." The New York sodomy law prohibits consenting adult sex of this nature except if the parties are married to each other. The Litigation Project filed an amicus curiae brief in the case of *People v. Ronald Onofre*, Case No. 914/1979. On January 24, 1980, the Appellate Division of the Supreme Court of the State of New York unanimously declared the New York sodomy law unconstitutional, stating that sexual privacy is a fundamental right. Because of its importance, the case has been accepted by the New York Court of Appeals. The Litigation Project will remain involved in the case until an opinion is rendered by that Court. The Pennsylvania sodomy law is similar in scope to that of New York and is also under attack by the Litigation Project. *Commonwealth v. Scagliano* was argued before the Pennsylvania Supreme Court. The Litigation Project filed an amicus curiae brief and participated in oral argument in that case. The Massachusetts, Rhode Island, and Maryland laws prohibiting various forms of private sexual conduct are also being scrutinized in cases in which the Litigation Project is participating.

**Sex Registration:** California law provides that anyone convicted of certain sex crimes must register as a sex offender in the community in which he lives. This requirement applies to persons convicted of rape, child molestation, as well as certain forms of consenting adult sexual behavior. The Litigation Project is working toward having the sex registration requirement declared unconstitutional as it applies in cases of consenting adult sexual behavior (*People v. Ripley*, presently on appeal in the California appellate courts). Although many prosecutors, judges, and police agencies are of the opinion that sex registration for consenting adult conduct is unnecessary and too severe a penalty, no one has been successful in having either the Legislature of the courts eliminate the requirement. In the last three years, the state Senate has, on two occasions, rejected attempts to limit the registration requirement. The courts therefore seem to be the appropriate avenue.

**Loitering/Solicitation:** California prohibits loitering in a restroom for the purpose of soliciting a lewd act. The word "lewd" is not defined, and the statute is so vague that it allows for arrest based upon suspicion rather than probable cause. Anyone convicted of this offense must register as a sex offender. If a teacher is merely arrested for this offense, he may be immediately suspended without pay. The Litigation Project was successful in a constitutional challenge to this law, at the trial court level. The prosecution has appealed and the Project will continue litigation in this area until there is a definitive decision by the California Supreme Court.

**Sexual Solicitation/Lewd Conduct:** When a Municipal Court judge in Tulsa, Oklahoma declared that city's lewd conduct ordinance unconstitutionally vague, the prosecution appealed. The Litigation Project filed the main brief in support of the decision of the Municipal Court. The Project is currently awaiting the decision of the Court of Criminal Appeals for the State of Oklahoma in that case (*City of Tulsa v. Carmack*, Case No. 0-79-58).

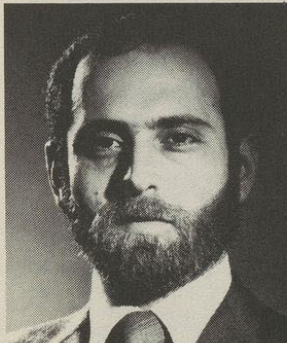
In addition, the Litigation Project is participating in several California appellate cases which will clarify some of the ambiguities of the decision in *Pryor v. Municipal Court*, establishing criteria for arrest and prosecution, setting forth the roles that plainclothes vice officers may and may not play, and testing the appropriateness of the jury instructions which were developed by California's official jury instruction committee (CALJIC) as a result of the work of the National Committee's jury instruction project (see above.)

**Student Organizations:** The Litigation Project filed an amicus curiae brief in the case of *Gay Student Services v. Texas A&M University*, which was recently decided by the United States Court of Appeals for the Fifth Circuit, Case No. 77-3395, opinion filed February 20, 1980. The student organization was denied recognition by the University, and filed suit in Federal Circuit Court for injunctive relief. The Federal District Court dismissed the complaint on a number of procedural theories. The Court of Appeals reversed and ordered the District Court to reinstate the complaint and allow the students to prove their case. The Court of Appeals held that if the facts stated in the complaint were true, the students had stated a cause of action entitling them to a decision on the merits. The Project has also acted as consultant to attorneys and student organizations in similar cases around the country in which universities have denied official recognition to gay student organizations.

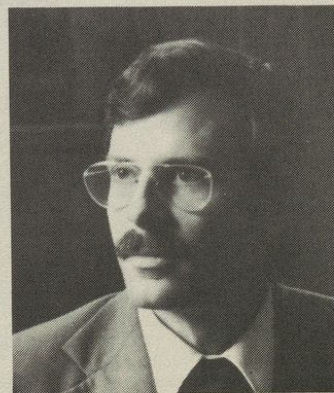
**Prostitution:** The Litigation Project is currently involved in a challenge to the prostitution laws in this coun-

try. The Project has chosen California as the battleground for this litigation for three reasons. First, the California statute is one of the broadest and most prohibitive in the country, if not the world. Second, the California Supreme Court has demonstrated a willingness to strictly scrutinize statutes regulating sexual conduct and speech. Third, the Project has enlisted the support of a historian, a sociologist, sex therapists, and several attorneys and law students to work on the project (all of whom reside in Los Angeles). The research material and the briefs developed in this case will be a model for challenging prostitution laws in other states.

In *People v. Farnia, et al.*, presently before the Los Angeles and Beverly Hills Municipal Courts, the Project is seeking to establish that private sex between consenting adults is a constitutionally-protected right, and there is no compelling state interest or rational basis for criminalizing private sex simply because money or other consideration is involved. The Project is seeking to limit the statute so that only the public aspects of prostitution are regulated, not the private aspects. On March 19, 1980, the California Court of Appeal, Second Appellate District, issued its decision in one of the Litigation Project's cases, *People v. Hill* (2 CRIM. No. 34488, Super.Ct.No. A077132), which decision severely limited the definition of prostitution in the context of a pimping and pandering case to the types of "lewd" acts set forth in *Pryor v. Municipal Court*. Nude modeling and such other sexual acts not involving activity between two persons thus can no longer be prosecuted under the prostitution statute.



Jay M. Kohorn  
Co-Director of the  
Litigation Project



Thomas F. Coleman  
Co-Chairperson and  
Co-Director of the  
Litigation Project

## Reporting the News

### The Legal Periodical

The Sexual Law Reporter (SLR), published by Co-Chairperson Thomas F. Coleman, has been a valuable resource for lawyers and judges throughout the country for over half a decade and is increasingly used by scholars, educators, legislators, administrative officials, and other professionals for much source material available nowhere else.

The periodical has included judicial and administrative case summaries, pending litigation, crucial portions of trial and appellate briefs, special original articles, and analyses which are being cited with increasing frequency in the courts. In addition, important court opinions and, especially, unpublished opinions, have often been reprinted in full. Supporting and contributing to the SLR has been a major activity of the Committee.

The SLR remains available as a consulting service to those in need of its expertise in drafting legislation, administrative guidelines, preparing court briefs, implementing executive orders, or conducting educational seminars. When appropriate, the SLR publishes monographs on subjects of particular interest in the area of sexual law. It also continues its news release service by sending stories and information about important current developments in the area of sexual civil liberties to appropriate newspapers and other periodicals.

## Making the News

### In the Federal Government

**Immigration and Naturalization:** Statutes and regulations regarding aliens' private sexual orientation and conduct have been reviewed with the Commissioner of the Immigration and Naturalization Service. Some proposed changes have been adopted.

**Public Housing Assistance:** The Committee was consulted by the General Counsel's office of the Department of Housing and Urban Development (HUD) regarding regulations defining "family" to include unmarried couples of the same and opposite sex living in a "stable relationship."

**Employment Discrimination:** A national effort was begun to reverse the Equal Employment Opportunity Commission's (EEOC) decision that it lacks jurisdiction to process complaints alleging private employment discrimination for reason of sexual orientation.

**Civil Rights:** Testimony was given before the United States Commission on Civil Rights concerning violations of sexual minorities' civil rights, urging complete investigations.

**Child Pornography:** Members of the Committee have given testimony before and made recommendations to the United States Senate subcommittee investigating child pornography.

**Legal Services:** The Committee has been a consultant to members of the United States House of Representatives regarding authority of the Legal Services Corporation to aid litigation involving gay rights issues, resulting in defeat of a bill to oust the corporation of that authority.

**Criminal Law Reform:** The Committee has participated in the monitoring and advising of the National Commission for Reform of Federal Criminal Laws (Brown Commission) so that the sexual provisions of the proposed Federal Criminal Code are brought into conformity with the principles of sexual civil liberties.

**Military Law:** A special brief for voir dire was submitted in the administrative court martial of Air Force T/Sgt. Leonard Matlovich; also, members of the Committee served as expert witnesses.

### In the State Governments

The Committee and its members have been or are involved in:

**Consultations and meetings** with governors (for the purpose of obtaining gubernatorial executive orders to prohibit discrimination in jobs, housing, etc.), attorneys general, legislators, city councils, and various administrative leaders, personnel and groups:

Work on **penal code revisions and legislation** regarding sexual offenses ("loitering," "deviate sexual conduct," "sodomy," "lewd conduct," solicitation, prostitution, sex offender registration, etc.);

Development of programs of **pardon or sentence commutation** for persons still in prison for now-abolished sexual offenses;

**Testimony before various governmental agencies and commissions**, such as the Florida State and Pennsylvania State advisory committees to the United States Commission on Civil Rights, and the Illinois Department of Insurance (including a successful effort to achieve adoption of a regulation prohibiting discrimination because of marital status or sexual orientation in issuance of life and health insurance policies);

**Trials and appellate cases**, primarily concerning the constitutionality of state penal statutes or discrimination on the basis of sexual orientation or practices (including nonrecognition of gay student groups on college campuses); and

Work as **advisors and consultants** to judges, prosecutors, public defenders, and private attorneys regarding specific statutes, their constitutionality under state and federal Constitutions, and their practical administration.

### In Professional Associations

The Committee and various members have written resolutions for, have worked with various sections of, and have testified before the *American Bar Association*, resulting in adoption of official policies urging state legislatures to provide legal remedies against discrimination against single persons in such areas as housing, credit, and employment; and urging state legislatures to repeal laws criminalizing private sexual conduct between consenting adults. The Committee is also urging that the ABA go on record against discrimination because of private sexual conduct or sexual orientation in regard to lawyers or applicants for admission to the bar.

In addition, members of the Committee are taking active roles in the American Historical Association, the American Sociological Association, and the American Association of University Professors.

## NCSCL

National Committee for Sexual Civil Liberties  
Headquarters and Litigation Project Office  
1800 North Highland Avenue  
Suite 106  
Los Angeles, California 90028  
(213) 464-6666

East Coast Office  
Dr. Arthur C. Warner, Founder and Co-Chairperson  
18 Ober Road  
Princeton, New Jersey 08540  
(609) 924-1950

The National Committee for Sexual Civil Liberties is a Committee of the Sexual Law Reporter, which has been granted tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Financial statements are available for inspection by the public at the Headquarters of the National Committee.