

NATIONAL COMMITTEE FOR SEXUAL CIVIL LIBERTIES - - - FACT SHEET

Thomas F. Coleman, Esq., Co-Chairperson  
1800 North Highland Avenue, Suite 106  
Los Angeles, California 90028  
(213) 464-6666

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

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 might 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 civil liberties. Much of the work has been done in the name of the Committee; some has been in the name of individual members who have credited the Committee as the source of information, ideas, and other assistance.



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: national effort begun to reverse Equal Employment Opportunity Commission's (EEOC) decision that it lacks jurisdiction to process complaints alleging private employment discrimination because of sexual orientation.

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



Legal Services: consultations to members of the United States House of Representatives regarding authority of 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: monitoring and advising 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.

Child Pornography: testimony before the United States Senate subcommittee investigating child pornography; recommendations.

Private Sexual Conduct: amicus curiae briefs in the Federal District Court and the United States Supreme Court case of Buchanan v. Batchelor, regarding the Texas sodomy statute, resulting in a 3-Judge District Court decision declaring the Texas sodomy law unconstitutional. This was the first such declaration by any federal court in the country. (Reversed on procedural grounds only by the United States Supreme Court.)

Military Law: special brief for voir dire in the administrative court martial of Air Force T/Sgt. Leonard Matlovich; also 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 and state legislation 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, fornication, 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 (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 non-recognition 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.

Through these activities, the Committee has been or is participating in the following states: Arkansas, California, Connecticut, Colorado, Florida, Illinois, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, Oklahoma, Pennsylvania, Texas, Virginia, and the District of Columbia.

#### 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.

#### Other Activities

The Committee, through its members, has been engaged in scholarly research on various topics, including the effects of decriminalization of certain sex acts, discriminatory enforcement of sex statutes, and historical research regarding sexual subjects.

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.

The Committee has testified before national and some state platform committees of the Democratic and Republican parties since 1972, urging the adoption of a platform plank on behalf of the rights of sexual minorities.



Members, on behalf of the Committee, accept public speaking engagements at colleges, universities, conferences, and meetings, in order to further the educational purposes of the Committee.

### Litigation Project

#### Major Victories of the 1970's

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 1970's, 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).

Sodomy/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 1980's

Prostitution: The Litigation Project is currently involved in a challenge to the prostitution laws in this country. 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.

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 to the Appellate Department of the Los Angeles Superior Court). 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 or 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 is currently handling two cases involving constitutional challenges to this law, and the Project is prepared to 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).

Student Organizations: The Litigation Project filed an amicus curiae brief in the case of Gay Student Services v. Texas A & M, which is presently pending before the United States Court of Appeals for the Fifth Circuit, Case No. 77-3395. 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.



Consenting Adult Private Sex: A majority of states in this country continue 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 two 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. In People v. Onofre, presently pending in the Appellate Division of the Supreme Court, Fourth Department, the Litigation Project filed an amicus curiae brief challenging the constitutionality of the New York law. The Pennsylvania sodomy law is similar in scope to that of New York and is also under attack by the Litigation Project. In Commonwealth v. Gagliano, presently pending in the Supreme Court of Pennsylvania, a judge of the Court of Common Pleas in Pittsburgh declared the Pennsylvania law unconstitutional as violating the right to privacy and equal protection for unmarried individuals. The Litigation Project has filed an amicus curiae brief supporting the position of the judge.

#### Other Current Projects

Assisting in the enforcement and implementation of the California Governor's Executive Order banning sexual orientation discrimination in state employment within his jurisdiction (which Executive Order, along with a similar Executive Order in Pennsylvania, was obtained through the work of the Committee).

Establishing a Sexual Orientation and Privacy Commission in California.

Educating and working with Administrative Agencies such as the Alcoholic Beverage Commission, regarding enforcement procedures and parameters.

Establishing new criteria for publication of appellate opinions and changing policy regarding citation of unpublished opinions as precedent.

Educating those with past convictions for "lewd conduct" or "sexual solicitation" in California, of the retroactive effect of the new law in this area (see Pryor v. Municipal Court, page 5 above); assisting the judiciary in creating a procedure to administer the retroactive effect of the law.

Working with jury instruction committees (both ad hoc committees and those associated with bar associations) to ensure that the jury instructions developed for sexual cases are a fair and correct statement of the law; working to correct 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.

Establishing "sexual law" as a legal discipline in law schools.

END