AMERICAN ASSOCIATION FOR PERSONAL PRIVACY
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The National Committee for Sexual Civil Liberties has been reorganized during the past year so as to provide for the expansion of certain activities. For this purpose a parent organization, the American Association for Personal Privacy has been established. The National Committee remains, however, as a distinct entity with its own tax-deductible status.

Attached will be found the 1982 Report to the Association's Board of the legal work of the National Committee.

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LEGAL REPORT FROM THE NATIONAL COMMITTEE FOR SEXUAL CIVIL LIBERTIES TO THE BOARD OF THE AMERICAN ASSOCIATION FOR PERSONAL PRIVACY

NEW YORK STATE -- People v. Uplinger is an appeal of a conviction under section 240.35-3 of the New York Penal Code which punishes loitering "for the purpose of . . . soliciting another person to engage in deviate sexual intercourse." The case comes on the heels of the Onofre decision late in 1980 of the New York Court of Appeal, the state's highest tribunal. That case, which represented the successful culmination of a three-year effort on the part of the National Committee, struck down the New York voluntary deviate sexual conduct provision. The present action began in Buffalo, and involves a gay defendant who asked what later proved to be a plains-clothes vice officer, "Why don't you drive me to my place and I'll blow you?" Defendant is represented by William H. Gardner, the National Committee's attorney in western New York and the lawyer who won for the Committee the Onofre case. At his trial the defendant was convicted by the same magistrate who had previously declared the same statute unconstitutional in a prosecution involving a female prostitute. In that case, the judge had dismissed the charges against the defendant. Appeal in the instant case was subsequently taken to the County Court of Erie, which affirmed the conviction, whilst reversing the dismissal of the charges against the prostitute in the earlier case. Thus the statute was held to be constitutional for all purposes. This ruling is now on appeal to the New York Court of Appeal in Albany, where oral argument is expected in January next.

CALIFORNIA -- The several cases which the National Committee has in this state are all either at the appeal level or have been decided. People v. Rylaarsdam and People v. Loman were two case which were consolidated and were won last Spring. They were crucial to preserving the standard laid down in Pryor v. Municipal Court, the precedent-setting decision of the Supreme Court of California which the National Committee won in 1979. That decision held that, for anyone to be convicted of open lewdness in California, he must know or reasonably should know "of the presence of persons who may be offended by the conduct." Since the Pryor decision, some lower courts had attempted to relax this requirement so as to make it easier to convict under the statute. They had held that the mere likelihood of the presence of others who might be offended rather than actual presence was all that was necessary to trigger the law. The importance of the decision

in the Rylaarsdam and Loman cases is its upholding of the strict Pryor standard. As a result, sexual conduct is protected in places which are recognized by lawyers as being "grey" areas with respect to their designation as "public" or "private" -- areas such as certain rooms in bath houses.

In Re Reed involves a challenge to the requirement under section 290 of the California Penal Code of registration as a sex offender after conviction for engaging in lewd conduct under section 647(a) of the same code. People v. Farnia involved a solicitation for heterosexual prostitution. It was not a challenge to the California prostitution law in its entirety, but simply an attempt to restrict its scope so as to exclude from criminal sanctions any private consensual conduct between persons above the sexual age of consent, even if consideration were offered or requested. The case has now been decided adversely for us by the Appellate Division of the Los Angeles Superior Court, but the oral argument before that court provided an opportunity which had never been afforded before to educate appellate judges on issues which they had most certainly never considered previously. This was testified to by the fact that the judges, who had originally allotted only five munites for oral argument to the Committee's attorney, extended the time to more than an hour after he had begun to speak. For reasons which need not be discussed here, the decision of the Appellate Division was not appealed to the California Supreme Court.

The National Committee recently succeeded in having the California Department of Fair Employment restore its favorable ruling prohibiting discrimination for reasons of sexual orientation in the rental of housing. The Committee had been instrumental in obtaining the original ruling from this department several years ago, but subsequently, in an unpublished action, the department had rescinded it. It has now been restored.

ARKANSAS -- U.S. v. Lemons is an appeal from a conviction for sodomy under section §41-1813 of the Arkansas Criminal Code, which provides that "a person commits sodomy if such person performs any act of sexual gratification involving . . . the penetration, however, slight, of the anus or mouth of an animal or a person by the penus of a person of the same sex . . ." In 1975 Arkansas reformed its sodomy law by decriminalizing all sexual conduct in private between consenting persons above the sexual age of consent -- this in conformity with the recommendations of the American Law Institute in its Model Penal Code. But, in 1977, in response to Anita-Bryant type of political pressure, the legislature criminalized the

conduct once again, although limiting it this time to same-sex activity. The undersigned was in Little Rock in 1977 at the time this recriminalization was under consideration by the legislature, and, in consort with a Committee member from Arkansas, he obtained a commitment from the then Arkansas attorney general that the latter would recommend to the Governor that the measure be vetoed should it reach the Governor's desk. Despite this, however, the bill was signed and became law.

The present proceedings are in Federal Court because the offence took place in a federal enclave, in this instance a national park in Arkansas, thus providing grounds for federal jurisdiction. The United States does not have a complete criminal code, its criminal jurisprudence being exercised simply via a body of separately enacted criminal statutes. Thus it does not provide for many offences commonly punished by the states. To fill this lacuna when cases arise within federal enclaves in the territorial United States, the federal Assimilated Crimes Act directs the federal courts to apply where needed the pertinent criminal law of the state wherein the offence took place. It is through this anomalous procedure, which is called "assimilation", that the federal courts sometimes enforce state criminal statutes. This is what occurred here. Defendant was found guilty at his trial in the Federal District Court for the Western District of Arkansas, and that conviction is now on appeal to the U. S. Circuit Court of Appeals in St. Louis, where oral argument was heard last month. Defendant's attorney is Paul D. Gordon of Little Rock, a member of the National Committee from Arkansas. The Committee itself entered the case as amicus curiae, its attorney for this purpose being Jay M. Kohorn of Los Angeles, another Committee member.

NEW JERSEY -- The National Committe has two groups of cases in this state, some arising in a highway rest area on interstate #80 near Dover and the others in men's rooms in Paramus, all of which involve arrests by local police under the state's open-lewdness law, 2C:14-4. Hence they all involve judicial interpretation of the open-lewdness provisions of the new New Jersey criminal code, in the draughting of which the undersigned played a part when he sat for several years as an observer on the Judiciary Committee of the New Jersey Assembly. These cases are of paramount importance, since the local police are not prepared to accept the clear language of the state statute and are arresting people under factual situations which cannot by any reasonable interpretation be considered as coming within the purview of the state law -- this all for the purpose of harassing gay persons. In this connection the police are using plainclothesmen and all the other stereotypi-

cal entrapment methods to lure defendants. The National Committee is prepared for convictions in most if not all of these cases at the trial level, if only because of the traditional close relationship between the local magistrates who hear such cases and the police of their communities. But chances of winning on appeal are excellent and plans have therefore been made to appeal any convictions all the way to the New Jersey Supreme Court if necessary. An advantage to appeal is the fact that a reversal of a conviction on appeal results in a decision of much greater precedential value than one from a municipal court. Acquittal at the trial level provides little or no precedent for other courts throughout the state to follow. Presently there are about six of these open-lewdness cases, but the number seems to be growing as the weeks pass.

A different open-lewdness case, not connected with those just mentioned, involves a prosecution under a municipal lewdness ordinance. This arose in a public park in Cherry Hill. Defendant claimed to have been urinating beyond public view, but is charged by the arresting officer with masturbating in public view. The municipal ordinance under which defendant has been charged has clearly been preempted by the state open-lewdness law, which is much more restricted in its ambit than the local enactment. After the trial, decision was reserved by the trial judge pending submission of briefs on the issue of preemption by the Committee's attorney, Mr. Emerson Darnell of Mount Holly, and by the prosecutor. Mr. Darnell was the attorney who won the landmark case of State v. J.O. &. F.C. from a unanimous New Jersey Supreme Court in 1976.

A different case arose under a local loitering statute of Rockaway Township, but it also involves the question of preemption. This also occurred at the interstate #80 rest area. Because of a July 1982 of the New Jersey Supreme Court holding all municipal loitering ordinances to have been preempted by the state criminal code, the prosecutor will probably request a dismissal in this case.

The final case involves an actual dismissal, one in which defendant was charged with having his car parked without lights on at night on a public highway, in this case a rest area on interstate #80 in Lodi. This case was brought by the state police under a state statute. Despite the fact that the Committee had won several cases a few years ago in South Jersey in which the court had held that this statute applied only to highways and not to rest areas, the trial court in Lodi found defendant guilty. On appeal to the county court in Hackensack, the county prosecutor moved to dismiss the charges, which was done.

All New Jersey cases are being handled by Mr. Emerson Darnell.

COMMITTEE POLICY WITH RESPECT TO CASES -- The National Committee does not ordinarily provide legal service to private litigants and it enters cases directly only as amicus curiae when, in its view, the issues involved warrant such action. It furnishes legal representation to defendants in criminal actions only when their cases involve issues which the Committee believes should be litigated and which would not, but for the Committee's intervention, come before the courts. For similar reasons it assists the member clubs of the Club Bath Chain to obtain counsel when they or their customers are involved in criminal charges. The Committee also acts in a consultative capacity with respect to the attorneys for the member clubs. For example, during the past year the Committee was called upon on several occasions by both the proprietor and the attorney for Club Tampa for advice and assistance in defending the large number of criminal actions which arose as a consequence of two police raids on that club earlier this year. The undersigned suggested to the club's attorney the legal strategy which might be pursued and he is in continuing communication with him. He is informed of all developments in the cases and is furnished with the essential correspondence between the proprietor and the attorney in Tampa.

After the raids on Club Toronto, both Tom Coleman and Arthur Warner were consulted by Craig Patton, and the three had several conferences by telephone in connection with that case. Subsequently a meeting was arranged in Detroit, which was attended by the American defendants plus Craig, Tom, and Arthur, for the purpose of planning defence strategy. At one time it was thought that the Committee should arrange to have Mr. Stanley Fleischman, the Los Angeles attorney nationally prominent in obscenity trials, enter the case, and Arthur discussed the case with him and obtained his agreement to enter it, if he were called. Both Tom and Arthur continue to be available for consultation with the lawyers in this case.

The Committee was contacted last Spring by the owner of Club Jacksonville after it had received private word that it would be raided. (Fortunately, the club was shut down in time, so no raid took place.) The Committee was asked to assist in determining the reasons for the attempted raid and what threat, if any, it posed to the club's continued operation. The Committee contacted Mr. William Sheppard of Sheppard & Carithers of Jacksonville, an attorney with whom it has had long-standing relations and who has close contacts with municipal and state authorities. He assisted the club in its own quiet search for information. As a result of these joint efforts the club was able to re-open after closing the use of one of its rooms, and since then there have been no further problems from the authorities.

As a result of its involvement in Tampa and Jacksonville, the Committee is satisfied that the situation in Florida does not represent a planned or concerted effort on the part of the authorities, municipal or other, to close down steam baths in that state, and that, with the relatively small adjustments which, in some cases, have been made to their operation, they should be able to continue in business without further problems.

LEGAL ACTIVITIES OF THE GAY ACADEMIC UNION -- Like the National Committee for Sexual Civil Liberties, the Gay Academic Union of New York is a part of the recently established American Association for Personal Privacy. One of the Union's most important works this past year was the draughting of a scholarly memorandum discussing the philosophic and legal relationship between the criminal law and morals and the extent to which moral precepts may be enforced by the criminal law. This memorandum, which was a distillation of the most authoritative works in the field, was done by Professor Wayne Dynes of Hunter College, a Committee member whose scholarly endeavours have, on numerous occasions, been of immeasurable assistance to the Committee's work. The present memorandum has already proved to be of great help to the Committee's lawyers in the preparation of briefs, particularly in the New York and Arkansas cases instanced above. The Union has also focussed much of its work this year in considering the role of the family and its definition, with a view to providing a redefinition of the term more in consonance with the actualities of contemporary life and one which could be of use to the lawyers on the Committee. In this connection the Union was responsible for arranging one of the panel sessions at the Committee's annual meeting in Philadelphia last May, the one on "Alternate Families: Strangers in the Eyes of the Law." Presentations were made by Professor Dennis Rubini of Temple University and by Professor Richard Lonsdorf of the University of Pennsylvania Law School. These, together with the succeeding discussion, were extremely valuable.

Princeton, New Jersey
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Repectfully submitted,

Arthur C. Warner

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