

4304. TAYRIEN, MARY LEE. "California 'Consenting Adults' Law: The Sex Act in Perspective," **San Diego Law Review**, 13 (1976), 439-53.

The California legislature has acknowledged that the private and voluntary sexual behavior of adults is not properly the concern of the state. The "consenting adults" law constitutes a victory for individual freedoms through the elimination of unwarranted intrusion by the state into the private sexual lives of adults.

4305. TONG, ROSEMARIE. "Lesbian Perspectives on Women, Sex and the Law," in: **Women, Sex and the Law**. Totowa, NJ: Rowman and Allenheld, 1984, pp. 175-92.

A survey of lesbian attitudes and political demands in such areas as sado-masochism, family protection, pornography, heterosexual prostitution, cross-generational sex, sexual harassment, and rape.

4306. VETRI, DOMENICK. "The Legal Arena: Progress for Gay Civil Rights," **JH**, 5 (1979-80), 25-30.

Asserts that contrary to some misperceptions, the homosexual community does not seek special legal protection but equal treatment without regard to one's sexual orientation.

4307. VON BEITEL, RANDY. "The Criminalization of Private Sex Acts: A Jurisprudential Case Study of a Decision by the Texas Bar Penal Code Revision Committee," **Human Rights**, 6 (1977), 23-73.

On the question of the suitability of a state bar committee to decide upon the criminalization of the private homosexual acts of consenting adults. If the question were one of morality, then some moral philosophers should have been included; if the considerations were empirical, then some psychologists and sociologists were needed. The committee failed to include any representatives of the homosexual community.

4308. WARNER, ARTHUR C. "Non-commercial Sexual Solicitation: The Case for Judicial Invalidation," **Sexual Law Reporter**, 4:1 (January-March 1978), 1, 10-20.

Originally submitted as an amicus brief in the case of Pryor v. Municipal Court to the Supreme Court of California. The victory in this case was a landmark in legal reform in that state.

4309. WARNER, DOUGLAS. "Homophobia, 'Manifest Homosexuality,' and Political Activity: A New Approach to Gay Rights and the 'Issue' of Homosexuality," **Golden Gate Law Review**, 11 (1981), 635-716.

On a California case in which the state Supreme Court held that homosexual employees of a privately owned public utility could sue to challenge the employer's policy of arbitrary discrimination against homosexuals.

4310. WEISBERG, D. KELLY. "Children of the Night: The

Adequacy of Statutory Treatment of Juvenile Prostitution," **American Journal of Criminal Law**, 12 (1984), 1-67.

Based largely on a San Francisco study, evaluates the workings of the criminal justice system for both male and female juvenile prostitutes.

4311. WILKINSON, J. HARVIE, III, and G. EDWARD WHITE. "Constitutional Protection for Personal Life-styles," **Cornell Law Review**, 62 (1977), 563-625. Calls for a balanced and sensitive approach to the central dilemma examined in the article. Accomodation must be reached with the rights of dissident members of society, but not such as to leave the fabric of conventional society without legal support.

4312. WILSON, LAWRENCE A., and RAPHAEL SHANNON. "Homosexual Organizations and the Right of Association," **Hastings Law Journal**, 30 (1979), 1029-74. Examines a series of decisions in the area of gay rights, and concludes that they can best be furthered through the litigation process when the well-established right of association is used as the rationale for challenging restrictive actions on the part of the state.

4313. WOLFF, BENNETT. "Expanding the Right of Sexual Privacy," **Loyola Law Review**, 27 (1981), 1279-1300. On the constitutional challenge to the sodomy laws. By its summary affirmation in *Doe v. Commonwealth's Attorney*, the Supreme Court failed to provide the necessary guidance to state and federal courts as to the validity of similar statutes proscribing consensual sodomy. On the other hand, the New York State Court of Appeals, in its decision in *Onofre*, created a new fundamental value for both right of privacy and equal protection claims.

4314. ZERINGER, BRIAN D. "Tort Liability of the State for Injuries Suffered by Prisoners Due to Assault by Other Inmates," **Tulane Law Review**, 51 (1977), 1300-06. On a case in which an inmate of the Louisiana State Penitentiary was fatally stabbed while attempting to move a newly admitted prisoner from a dormitory where the latter had received threats upon his life. The Louisiana Supreme Court affirmed the state's liability on the basis of the failure of prison officials to take reasonable precautions against the attack.

#### H. US SODOMY LAWS

The sodomy laws are generally recognized as the linchpin on which discrimination against homosexuals, legal and extralegal, depends. Accordingly, much effort has gone

into studying their origin, nature, and modus operandi to prepare the way for the dismantling of this legislation.

4315. BADER, LOUIS. "Commonwealth v. Bonadio," **Duquesne Law Review**, 19 (1981), 793-800.  
On the 1980 Pennsylvania Supreme Court decision that struck down the state's Deviate Sexual Intercourse statute. The court held that the statute exceeded the valid bounds of the state's police power, and violated the equal protection clauses of the the Federal and state constitutions. Compare D. M. Barnhart, below.
4316. BARNETT, WALTER, and ARTHUR C. WARNER. **Why Reform the Sodomy Laws?** Princeton: National Committee for Sexual Civil Liberties, 1971. 24 pp.  
This pithy and comprehensive marshalling of the arguments for reform set the stage for the ensuing decade of progress.
4317. BARNHART, DEBRA MCCLOSKEY. "Commonwealth v. Bonadio: Voluntary Deviate Intercourse--A Comparative Analysis," **University of Pittsburgh Law Review**, 43 (1981), 253-84.  
Argues that such changes in the law reflect concurrent shifts in the concept of the immoral and the unnatural.
4318. COONEY, LESLIE LARKIN. "Constitutional Law--Right of Privacy--Sodomy Statutes--Supreme Court Summary Affirmance," **Duquesne Law Review**, 15 (1976), 123-32.  
The Supreme Court's summary affirmance in Doe v. Commonwealth's Attorney leaves the breadth of the right to privacy uncertain. Virginia and states with like statutes can continue to criminalize intimate sexual activity between consenting adults.
4319. "Deviate Sexual Behavior under the New Illinois Criminal Code," **Washington University Law Quarterly** (1965), 220-35.  
The new Illinois criminal code attempted to solve the problems resulting from the existence of an ambiguous "crime against nature" provision by regrouping the sanctions around four concerns considered to fall within the scope of legislative activity.
4320. FADELEY, EDWARD N. "Sex Crime in the New Code," **Oregon Law Review**, 51 (1972), 515-24.  
Victimless crimes have been eliminated from the Oregon Criminal Code, but the age of consent to sexual intercourse has been raised to eighteen without any social or psychological justification.
4321. FISHER, ROBERT G. "The Sex Offender Provisions of the Proposed New Maryland Criminal Code: Should Private, Consenting, Homosexual Behavior Be Ex-

cluded?" **Maryland Law Journal**, 30 (1970), 91-113. The Sodomy and Perverted Practice crimes should be redefined so that private consensual behavior between adults is no longer prohibited, only homosexual rape and statutory rape (where the victim is a minor).

4322. IGLOW, ROBERT A. "Oral Copulation: A Constitutional Curtain Must Be Drawn," **San Diego Law Review**, 11 (1974), 523-34.

California Penal Code Section 288(a), which prohibits oral copulation, is unconstitutionally overbroad in that it is "an attempt by the State to regulate atypical sexual behavior between consenting adults in private and as such constitutes an unconstitutional infringement on the individual's fundamental right to privacy in matters relating to sex.

4323. JOPLIN, LARRY E. "Criminal Law: One Examination of the Oklahoma Laws concerning Sexual Behavior," **Oklahoma Law Review**, 23 (1970), 459-72.

See esp. pp. 466-70, "The Crime against Nature." If society were really opposed to adultery and private homosexuality, it would insist that the present laws be rigidly upheld. It is unrealistic to "legislate against sin where a clear consensus is lacking and social change challenges old values." Retaining unenforceable laws forbidding private sexual activity brings the law itself into disrespect.

4324. KATZ, KATHERINE D. "Sexual Morality and the Constitution: People v. Onofre," **Albany Law Review**, 46 (1982), 311-62.

On the landmark New York state decision, which effectively decriminalized sodomy. As a matter of federal constitutional law, society may not invoke criminal sanctions to punish sexual conduct deemed immoral by the majority of the population unless harm to an interest other than morality is demonstrated.

4325. KETCHAM, CARLETON P., JR. "Criminal Law--Sodomy Statute Not Describing Prohibited Conduct but Referring Only to 'Crime against Nature' Held Unconstitutionally Overbroad," **Cumberland-Samford Law Review**, 3 (1972), 525-31.

In a Florida case, Franklin v. State, the Supreme Court of Florida overturned the "crime against nature" statute on grounds of vagueness and uncertainty. Though limited in its holding, Franklin can have a far-reaching effect in that new laws will, it may be hoped, cope with real criminal activity rather than attempt to enforce a moral code.

4326. LEVINE, LAWRENCE CARL. "Pryor v. Municipal Court: California's Narrowing Definitions of Solicitation for Public Lewd Conduct," **Hastings Law Journal**, 32 (1980-81), 461-98.

Examines the conclusion of California's Supreme Court that

the phrase "lewd or dissolute conduct" [Calif. Penal Code, 647(a)] is unconstitutionally vague. However, Levine warns that the decision may be weakened unless the court soon clarifies its holding.

4327. O'NEILL, TIM. "Doe v. Commonwealth's Attorney: A Set-back for the Right of Privacy," **Kentucky Law Journal**, 65 (1976-77), 748-63.

The Supreme Court's decision that the Virginia sodomy statute had a rational basis of state interest may lend credence to the continued existence of these statutes as well as limit the right of personal privacy.

4328. RIZZO, JAMES J. "The Constitutionality of Sodomy Statutes," **Fordham Law Review**, 45 (1976-77), 553-95.

Offers an overview of constitutional arguments against the statutes including void for vagueness, overbreadth, cruel and unusual punishment, right of privacy, and equal protection.

4329. SIMMONS, JOHN F. "Constitutional Law--Sodomy Statutes: The Question of Constitutionality," **Nebraska Law Review**, 50 (1970-71), 567-75.

On the Buchanan decision of the Nebraska Supreme Court, which extended legal protection to married couples, but not to others.

4330. "State Statute Prohibiting Private Consensual Sodomy is Constitutional," **Brigham Young University Law Review** (1977), 170-88.

On the United States Supreme Court's decision to uphold the Virginia sodomy statute [Doe v. Commonwealth's Attorney (1976)].

#### I. US LAW: COURTS

It is generally recognized that there may be a gap between legal theory and actual practice. Accordingly, it is necessary to examine courtroom procedures with respect to possible prejudice on the part of judges, district attorneys, and other significant figures. A special problem is the risk that some openly homosexual attorneys run of disbarment under the "good moral character" provisions of the bar.

4331. BAGNALL, ROBERT G., PATRICK C. GALLAGHER, and JONI L. GOLDSTEIN. "Burdens on Gay Litigants and Bias in the Court System: Homosexual Panic, Child Custody, and Anonymous Parties," **Harvard Civil Rights--Civil Liberties Law Review**, 19 (1984), 497-559.

Discusses the pleas of homicide defendants that they were the victims of homosexual rape; restrictions on parental rights of gays; and the ability of gay litigants to proceed anonymously. Courts are urged to be sensitive to the special burdens on gays caused by the loss of privacy.

4332. BLACKFORD, BARBARA. "Good Moral Character and Homosexuality," **Journal of the Legal Profession**, 5 (1980), 139-49.

Concludes that "at least under certain circumstances, homosexual acts may illustrate to the bar that an attorney is lacking good moral character." In an attorney honesty and trustworthiness are essential.

4333. DRESSLER, JOSHUA. "Judicial Homophobia: Gay Rights' Biggest Roadblock," **The Civil Liberties Review** (January-February 1979), 19-27.

Shows the persistence of myths and emotional thinking in the courts.

4334. FARRELL, RONALD A. "Class Linkages of Legal Treatment of Homosexuals," **Criminology**, 9 (1971), 49-68.

Sociological study of 108 offenders held for court supports the hypothesis that they show a disproportionately large number of offenders from the lower classes, and that these offenders received more severe treatment than comparable higher status persons.

4335. GOLDYN, LAWRENCE. "Gratuitous Language in Appellate Cases Involving Gay People: 'Queer Baiting' from the Bench," **Political Behavior**, 3 (1981), 31-48.

Although gay litigants are frequently the target of abuse, this practice varies depending on the type of case and the level of court involved. There is some indication that the abuse is declining.

4336. KNUTSON, DONALD. "Representing the Unpopular Client ... Gays," **Law Library Journal**, 72 (1979), 677-79.

Indicates three main problems confronting gay men: access to adequate legal representation; need for anonymity; and homophobia in the legal system.

4337. LUDWIG, FREDERICK J. "Case for Repeal of the Sex Corroboration Requirement in New York," **Brooklyn Law Review**, 36 (1970), 378-89.

Article by the Chief Assistant District Attorney, Queens County, who claims that the "corroboration requirement has nullified the prosecution of practically every sex offense in the current Penal Law."

4338. ROBERTS, LESLIE A. "Private Homosexual Activity and Fitness to Practice Law: Florida Board of Bar Examiners in re N.R.S.," **Nova Law Journal**, 6 (1981-

82), 519-34.

The Florida Supreme Court denied the Board authority to question an applicant regarding private homosexual conduct.

4339. SHAFFER, DAVID R., and THOMAS CASE. "On the Decision to Testify in One's Own Behalf: Effects of Withheld Evidence, Defendants' Sexual Preference, and Juror Dogmatism on Juridical Decisions, **Journal of Personality and Social Psychology**, 42 (1982), 335-46.

A study of 360 University of Georgia students simulating roles as jurors showed that while high dogmatic jurors were no more punitive to homosexual than heterosexual defendants, jurors low in dogmatism were actually more lenient toward homosexual than heterosexual defendants.

4340. SHERMAN, JEFFREY G. "Undue Influence and the Homosexual Testator," **University of Pittsburgh Law Review**, 42 (1981), 225-67.

Suggests that "a homosexual testator who bequeaths the bulk of his estate to his lover stands in greater risk of having his testamentary plans overturned than does a heterosexual testator who bequeaths the bulk of his estate to a spouse or a lover." The risk may be somewhat reduced through employing the device of adoption or the revocable inter vivos trust.

- 4340A. WILLIAMS, MARK A. "Homosexuality and the Good Moral Character Requirement," **University of Detroit Journal of Urban Law**, 56 (1978), 123-39.

With respect to the bar, the author argues that "[c]onsensual homosexual conduct practiced discretely in private no more jeopardizes the values protected by the good moral character requirement than does consensual heterosexual conduct practiced discretely in private." Unless this principle is followed, the bar will become the ultimate arbiter of the private morals of its members.

4341. WILLYCK, DANIEL H., GRETCHEN GEHLKER, and ANITA M. WATTS. "Social Class as a Factor Affecting Judicial Disposition: Defendants Charged with Criminal Homosexual Acts," **Criminology**, 13 (1975), 55-77.

Published data are reviewed, and it is concluded that evidence from cases involving felonious homosexual acts does not lend much support to the proposition that there is social class bias in judicial disposition of criminal cases.

#### J. US LAW: EMPLOYMENT

Recent efforts to protect the employment rights of

disadvantaged groups have suggested that similar strategies may be pursued with respect to homosexual employees. This problem arises in particular with teachers. See also "Teachers," XI.B.

4341A. BENEDICT, JAMES N. "Homosexuality and the Law--A Right to Be Different," **Albany Law Review**, 38 (1973), 84-104.

Primarily concerned with the status of homosexuals in positions of public employment, providing an analysis of some recent cases. Suggests possible grounds upon which future constitutional challenges to existing discrimination may be founded.

4342. "Burton v. Cascade School District Union High School," **Brigham Young University Law Review** (1976), 531-48.

On the discharge, in July 1970, of teacher Peggy Burton, who filed an action under Section 1983 leading to her reinstatement. This note argues that the reinstatement was a mistake.

4342A. CLARK, PENNY M. "Homosexual Public Employees: Utilizing Section 1983 to Remedy Discrimination," **Hastings Constitutional Law Quarterly**, 8 (1981), 255-311.

The increasing role of government agencies renders it imperative to use Section 1983 as a remedy for discrimination; other options should also be pursued.

4343. CRUMPLER, WILLIAM B. "Administrative Law--Constitutional Law--Is Government Policy Affecting the Employment of Homosexuals Rational?" **North Carolina Law Review**, 48 (1970), 912-214.

Hold that discharges should be considered on a case-by-case basis according to the overall character and performance of the individual.

4343A. DAVIS, ELAINE. "Homosexuals in Government Employment: The Boys in the Bureau," **Seton Hall Law Review**, 3 (1971), 89-107.

The Grimm, Gayer, and Ulrich decisions challenging the right of government agencies to withhold security clearance from homosexuals set a precedent: homosexuals should certainly also be allowed to hold jobs that do not involve national security as well. Court tests are needed.

4344. DECKER, PHILIP J. "Homosexuality and Employment: A Case Law Review," **Personnel Journal**, 59 (1980), 756-60.

Societal factors, including changing attitudes and lifestyles, appear to be influencing the direction of case law dealing with homosexual employees.

4344A. "Dismissal of Homosexuals from Government Employment: The Developing Role of Due Process in Admin-