

ington's Place in the Emerging Laws Concerning Homosexuals," **Gonzaga Law Review**, 14 (1978), 167-96.

Discusses two cases--one involving a teacher, the other a clerk typist in federal employment, related cases, and other areas of the law in relation to homosexuality.

4366. WEIN, STUART A., and CYNTHIA LARK REMMERS. "Employment Protection and Gender Dysphoria: Legal Definitions of Unequal Treatment on the Basis of Sex and Disability," **Hastings Law Journal**, 30 (1979), 1079-1130.

Argues that "gender dysphoria persons who have already borne the psychological and social stigma of their condition, should bear no special legal burden because of a sexual characteristic having no relation to their ability to perform and contribute."

4367. WISE, DONNA L. "Challenging Sexual Preference Discrimination in Private Employment," **Ohio State Law Journal**, 41 (1980), 501-31.

Argues that in addition to pursuing existing remedies, as provided by federal civil rights statutes, state statutes, and the common law, supporters of homosexual rights need to secure new protective legislation.

K. US LAW: IMMIGRATION

Although most legal sanctions against homosexual behavior are focused in the states, immigration is under federal jurisdiction. In this field the situation is complicated and difficult to resolve without remedial legislation to undo the discriminatory provisions that have been added to the law ever since homosexuality came to be recognized as a "mental illness" in the second decade of this century.

4368. BOGATIN, MARC. "Immigration and Nationality Act and the Exclusion of Homosexuals: *Boutelier v. INS* Revisited," 2 (1981), 359-96.

Analyzes the effects of the 1952 McCarran-Walter Act [section 212(a) (4)], esp. with regard to the interface of the medical profession and federal administrative agencies.

4369. FOWLER, PETER N., and LEONARD GRAFF. "Gay Aliens and Immigration: Resolving the Conflict between Hill and Longstaff," **University of Dayton Law Review**, 10 (1985), 621-44.

The Fifth and Ninth Circuits have reached contradictory conclusions regarding the requirement of a medical certificate in medical exclusion cases. The issue may be ultimately be resolved by Congressional enactment.

4370. "Homosexual Resident Alien Deportable as a Psychopathic Personality," **Catholic Lawyer**, 13 (1967), 82-90.
 Concludes that "[w]hile the choice of whom to admit is rightfully left to Congress, there is little doubt that changes are needed in the area of deportation." Present law and practice are contradictory and unpredictable.
4371. "Immigration and Naturalization: Good Moral Character Requirement is a Question of Federal Law," **Suffolk Transnational Law Journal**, 6 (1982), 383-94.
 On *Nemetz v. INS* (647 F. 2d 432). See also: "Immigration--Aliens--The Invalidation of a Homosexual Marriage for Immigration Purposes," *ibid.*, 7 (1983), 267-78 (on *Adams v. Howerton*, 673 F 2d 1036).
4372. LEGGETT, WALTER E. "Immigration and Naturalization--Petition for Naturalization," **Georgia Journal of International and Comparative Law**, 6 (1976), 333-38.
 On the Brodie case, concerning an alien who had served honorably in the United States Army for two years.
4373. POZNANSKI, ROBERT. "The Propriety of Denying Entry to Homosexual Aliens: Examining the Public Health Service's Authority over Medical Exclusions," **University of Michigan Journal of Law Reform**, 17 (1984), 331-59.
 The fate of homosexual aliens wishing to enter, reside in, or become citizens of the United States remains unsettled. The resolution of this conflict depends upon a determination of the Public Health Service's role in the exclusionary process. The writer holds that the INS should acknowledge the authority of the PHS by complying with the decision to not to exclude aliens on grounds of homosexuality.
4374. REYNOLDS, WILLIAM T. "The Immigration and Nationality Act and the Rights of Homosexual Aliens," **JH**, 5 (1979-80), 79-87.
 While prospects for naturalization of openly gay aliens have improved in recent years, the present statutory and administrative frameworks are still riddled with exceptions and outdated standards.
4375. ROBERTS, MAURICE A. "Sex and the Immigration Laws," **San Diego Law Review**, 14 (1976), 9-41.
 Surveying a range of sexual activities, including adultery, homosexuality, prostitution, and sham marriage, the writer concludes that changes are long overdue.
4376. SEDLAK, ERIC W. "*Nemetz v. INS*: The Rights of Gay Aliens under the Constitutional Requirement of Uniformity and Mutable Standards of Moral Turpitude," **New York University Journal of International**

Law and Politics, 16 (1984), 881-912.

Concerns a petition of naturalization and the issue of variation in the state laws on homosexuality.

4377. SILVERS, SAMUEL M. "The Exclusion and Expulsion of Homosexual Aliens," **Columbia Human Rights Law Review**, 15 (1984), 295-332.

Examines recent contradictory decisions against a background that begins in the 1952 McCarran-Walters Act. Concludes that our constitutional ideals require that we welcome aliens rather than exclude them on arbitrary bases such as homosexuality.

4378. WINDHAM, MELISSA QUINN. "Aliens--Immigration and Naturalization Service Policy of Excluding Homosexual Aliens without a Medical Certificate is Invalid. *Hill v. United States Immigration and Naturalization Service*. 714 F. 2d 1470," **Vanderbilt Journal of Transnational Law**, 16 (1983), 689-709.

On the case of an English visitor who was turned away at San Francisco. The district court opinion in this case was exceedingly far-reaching, invalidating the INS policy that excluded homosexuals without a medical certificate and, more significantly, broadening judicial review of exclusion policies. The Ninth Circuit, however, narrowed the district court's holding to the point that congressional power over exclusion will remain undaunted.

L. US LAW: MARRIAGE

While in practice the (nonlegal) definition of couples (see XIV.H) has been broadened to include homosexual and lesbian dyads, the question of whether unions between two persons of the same sex should receive official sanction remains uncertain. Even many prohomosexual persons would say that such a recognition would not be desirable, and it seems that this is an idea whose time has not yet come--if indeed it ever will. For problems related to the custody of children, see XVIII.D.

4379. BUCHANAN, G. SIDNEY. "Same-Sex Marriage: The Linchpin Issue," **University of Dayton Law Review**, 10 (1985), 541-73.

A modified version of a chapter in the author's book **Morality, Sex and the Constitution: A Christian Perspective on the Power of Government to Regulate Private Sexual Conduct between Consenting Adults** (1985). Argues that recognition of same-sex marriages poses a significant threat to the values traditionally promoted by opposite-sex marriage. Buchanan concedes that non-recognition impinges on the right of privacy.

4380. COBURN, VINCENT P. "Homosexuality and the Invalidation of Marriage," **Jurist**, 20 (1960), 441-59.
Examines heterosexual marriage in which one partner is homosexual from the point of view of canon law, esp. with respect to annulment.
4381. COLE, ROB. "Two Men Ask Minnesota License for First Legal U.S. Gay Marriage: Take Advantage of Vague Law, Expect Court Case to Follow," **Advocate**, no. 35 (June 10-23, 1970), pp. 1, 4.
First widely publicized effort (by Minnesotans James McConnell and Jack Baker) to obtain a valid marriage certificate; the effort ultimately failed.
4382. CULLEM, CATHERINE M. "Fundamental Interests and the Question of Same-Sex Marriage," **Tulsa Law Journal**, 15 (1979), 141-63.
Argues that the individual's fundamental right to enter the marital relationship is broad enough to encompass same-sex marriage.
4383. ELLISTON, FREDERICK. "Gay Marriage," in: R. Baker and F. Elliston (eds.), **Philosophy and Sex**. Buffalo: Prometheus Books, 1984, pp. 146-66.
Philosophical reflections tending to justify legal sanction for homosexual unions.
4384. HANSEN, TED L. "Domestic Relations--Minnesota Marriage Statute Does Not Permit Marriage between Persons of the Same Sex and Does Not Violate Constitutionally Protected Rights," **Drake Law Review**, 22 (1972), 206-12.
The negative decision in *Baker v. Nelson* (Minn. 1971), did not provide the answer to the question of whether there is sufficient moral or medical reason to restrict the right to same-sex marriage.
4385. "Homosexuals' Right to Marry: A Constitutional Test and a Legislative Solution," **University of Pennsylvania Law Review**, 128 (1979), 193-216.
In decisions beginning in the early 1970s, homosexual couples were repeatedly denied the possibility of marriage. The article explores the issue by a comparative analysis, arguing that the concept of equal protection means that marriage restrictions are unconstitutional: "the state must afford homosexuals the opportunity to make a marriage commitment."
4386. INGRAM, J. D. "A Constitutional Critique of Restrictions on the Right to Marry--Why Can't Fred Marry George--or Mary and Alice at the Same Time?" **Journal of Contemporary Law**, 10 (1984), 33-55.
Advances arguments supporting same-sex unions, while conceding that this is not yet an idea whose time has come.
4387. KENNY, WALTER F., REV. "Homosexuality and Nul-

lity--Developing Jurisprudence," **Catholic Lawyer**, 17 (1971), 110-22.

Concludes with respect to ecclesiastical tribunals: "We now have a basis in jurisprudence for annulling the marriage of homosexuals and other deviates."

4388. "The Legality of Homosexual Marriage," **Yale Law Review**, 82 (1973), 573-89.

Concludes that "[t]he stringent requirements of the proposed Equal Rights Amendment argue strongly for ... granting marriage licenses to homosexual couples who satisfy reasonable and non-discriminatory qualifications."

4389. RITTER, GEORGE P. "Property Rights of Same-Sex Couples: The Outlook after Marvin," **Loyola of Los Angeles Law Review**, 12 (1979), 409-23.

Arguments can be made that Marvin's [a heterosexual co-habitation case] contractual and equitable remedies should extend to couples of the same sex.

4390. SCHMIDT, JOHN R. "Homosexuality and Validity of Marriage--A Study of Homopsychosexual Inversion," **Catholic Lawyer**, 19 (1973), 84-101 and 169-99; and 21 (1975), 85-121.

Reprinted from **Jurist**, 32 (1972), 381-99 and 494-530. Extensively documented study seeking to combine psychiatric and canon-law perspectives. Homosexual persons may be so disturbed as to make their condition "fatally detrimental to the matrimonial consortium."

4391. SILVERSTEIN, ARTHUR J. "Constitutional Aspects of the Homosexual's Right to a Marriage License," **Journal of Family Law**, 12 (1973), 607-34.

Concludes that prospects for acceptance of homosexual marriage are uncertain for they turn upon future societal developments which are difficult to predict, inasmuch as the law of equal protection at present provides no clear guidance.

4392. THOMAS, PAUL K. "Marriage Annulments for Gay Men and Lesbian Women: New Canonical and Psychological Insights," **Jurist** 43 (1983), 318-42.

Seeks to go beyond Schmidt, above, and Tobin, below.

4393. TOBIN, WILLIAM J. **Homosexuality and Marriage: A Canonical Evaluation on the Relationship of Homosexuality to the Validity of Marriage in the Light of Recent Rotal Jurisprudence**. Rome: Catholic Book Agency, 1964.

Discusses two bases for annulling a marriage where one party suffers from "mental illness": (1) his consent is deficient; (2) he is unfit to undertake, fulfill, and receive marital rights (**contractus matrimonialis inexistens**).

4394. VEITCH, EDWARD. "Essence of Marriage--A Comment

on the Homosexual Challenge," **Anglo-American Law Review**, 5 (1976), 41-49.

Concludes, after reviewing several Canadian and US cases, that "there would appear to be a distinct state advantage in the recognition of same-sex marriage."

M. US MILITARY LAW

The attempt to extend homosexual rights to the military is difficult, owing to the fact that military justice does not recognize many of the civil rights protections that are enshrined in our general legal situation. In addition, the armed services have fought doggedly to retain their right to exclude male homosexuals and lesbians from service, despite the prevalence of the latter in women's branches of the military.

4395. CANEPA, THERESA J. "Aftermath of Saal v. Midden-dorf: Does Homosexuality Preclude Military Fit-ness?" **Santa Clara Law Review**, 22 (1982), 491-511. Navy servicewoman Mary Sal was honorably discharged, but assigned an enlistment code that made her ineligible for reenlistment. Although the district court found in her favor, this was reversed by the US Court of Appeals, Ninth Circuit.

4396. CARBETTA-SCANDY, KELLY. "The Armed Services Con-tinued Degradation and Expulsion of Their Homosex-ual Members: Dronenburg v. Zech," **University of Cincinnati Law Review**, 54 (1986), 1055-67. Criticizes the decision of the United States District Court for the District of Columbia in a Navy case for inconsistency and insufficiency of judicial reasoning.

4397. DEITER, LAWRENCE R. "Employment Discrimination in the Armed Services--An Analysis of Recent Decisions Affecting Sexual Preference Discrimination in the Military," **Villanova Law Review**, 27 (1981-82), 351-73. Discusses recent cases which "have left the law in a per-plexing state of uncertainty."

4398. DUBAN, PATRICIA DODGE. "Matlovich v. Secretary of the Air Force, 591 F. 2d 852 (D.C. Cir. 1978)," **Duquesne Law Review**, 18 (1979), 151-60. Reviews the denial of the action filed in the U.S. Dis-trict Court for the District of Columbia by Sergeant Leonard Matlovich to restrain the Air Force from discharg-ing him.

4399. EVERHARD, JOHN A. "Problems Involving the Disposi-tion of Homosexuals in the Service," **United States**

Air Force Judge Advocate General's Bulletin, 2
(1960), 20-23.

Traditional interpretation holding that a known homosexual is a liability to a military organization by lowering the "moral fiber" of the military community.

4400. HEILMAN, JOHN. "The Constitutionality of Discharging Homosexual Military Personnel," *Columbia Human Rights Law Review*, 12 (1980), 191-204.

After a review of some salient cases, concludes: "The military's [negative] policy toward homosexuality has led to extensive litigation. The policy is irrational to some extent, unnecessary to some extent, and unwise **in toto**."

4401. HIRSCHHORN, JAMES M. "Due Process in Undesirable Discharge Proceedings," *University of Chicago Law Review*, 41 (1973), 164-89.

Holds that the present regulations governing undesirable discharges are unsatisfactory inasmuch as they do not afford service personnel intelligent standards of behavior and the rights necessary to contest fully the basis for the discharge action.

4402. "Homosexuals in the Military," *Fordham Law Review*, 37 (1969), 465-76.

Discusses some of the problems and inequities of the military treatment of the homosexual, in the hope that a reevaluation will lead to a more rational approach.

4403. HOWARD, ROLAND (pseud.). "The Homosexual's Right to Serve," *Mattachine Review*, 8:12 (December 1962), 4-13.

Argument by a patriotic homophile for access to military service.

4404. JONES, WILLIAM K., CLIFFORD DOUGHERTY, and NORMAN LYNCH. "The Administrative Discharge--Military Justice?" *George Washington University Law Review*, 33 (1964), 498-528.

Documents the relatively harsh methods of military separation that became common towards the end of World War II.

4405. LERNER, HARRY V. "Effect of Character of Discharge and Length of Service on Eligibility to Veterans' Benefits," *Military Law Review*, 12 (1961), 121-42.

Discusses loss of benefits to those discharged under "conditions less than honorable," including Veterans Administration regulations.

4406. LODA, GIFFORD. "Homosexual Conduct in the Military: No Faggots in Military Woodpiles," *Arizona State Law Journal* (1983), 79-112.

Argues that decisions supporting blanket proscriptions

of homosexual behavior unfairly reject the key issue of procedural due process. "[W]here the conduct in question is private and consensual the only appropriate [procedure] is the individualized fitness hearing."

4407. LUNDING, CHRISTOPHER J. "Judicial Review of Military Discharges," **Yale Law Journal**, 83 (1973), 33-74.

General discussion of types of discharge, hearings, consequences, and remedial bases for judicial relief.

4408. LYNCH, NORMAN B. "The Administrative Discharge: Changes Needed?" **Maine Law Review**, 22 (1970), 141-69.

Points out changes in the military administrative discharge process which either do or may cause injustice. There is a need for adequate protections and due process of law for service personnel subjected to dismissal proceedings.

4409. SEIDENBERG, FAITH. "Military Justice is to Justice ..." **Criminal Law Bulletin**, 17 (1981), 45-59.

Personal account by a Syracuse NY attorney of a case involving an Air Force second lieutenant illustrating the arbitrary workings of the military justice system.

4410. WEST, LOUIS, and ALBERT GLASS. "Sexual Behavior and Military Law," in: Ralph Slovenko (ed.), **Sexual Behavior and the Law**. Springfield, IL: Charles C. Thomas, 1965, pp. 250-72.

Asserts that the primary objective of the military should be the prompt elimination of homosexuals, rather than harsh management or punitive discharge.

4411. WILLIAMS, COLIN J., and MARTIN S. WEINBERG. "The Military: Its Processing of Accused Homosexuals," **American Behavioral Scientist**, 14 (1970), 203-17.

Reviews the process whereby homosexuals are discharged from the armed forces, demonstrating how constitutional rights are infringed. See also their **Homosexuals and the Military: A Study of Less than Honorable Discharge**. (New York: Harper and Row, 1971; 221 pp.).