
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.


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."


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.


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.


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.
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.


On the Brodie case, concerning an alien who had served honorably in the United States Army for two years.

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.

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improved in recent years, the present statutory and administrative frameworks are still riddled with exceptions and outdated standards.

Surveying a range of sexual activities, including adultery, homosexuality, prostitution, and sham marriage, the writer concludes that changes are long overdue.

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

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.

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.

4380. COBURN, VINCENT P. "Homosexuality and the Invalida-
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
McCannell and Jack Baker) to obtain a valid marriage cer-
tificate; the effort ultimately failed.

4382. CULLEM, CATHERINE M. "Fundamental Interests and
the Question of Same-Sex Marriage," Tulsa Law
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.
Philosophical reflections tending to justify legal sanc-
tion 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 Pennsyl-
In decisions beginning in the early 1970s, homosexual
couples were repeatedly denied the possibility of mar-
rriage. 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
Marriage George--or Mary and Alice at the Same Time?"
Advances arguments supporting same-sex unions, while con-
ceding that this is not yet an idea whose time has come.

4387. KENNY, WALTER F., REV. "Homosexuality and Nu-
Concludes with respect to ecclesiastical tribunals: "We now have a basis in jurisprudence for annulling the marriage of homosexuals and other deviates."

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."

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

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 "fatal to the matrimonial consortium."

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.

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

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 inexistentes).

4394. VEITCH, EDWARD. "Essence of Marriage--A Comment
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. Middendorf: Does Homosexuality Preclude Military Fitness?" 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.


4399. EVERHARD, JOHN A. "Problems Involving the Disposition of Homosexuals in the Service," United States

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


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.


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.


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.


Argument by a patriotic homophile for access to military service.


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


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


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."


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.

