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


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.


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.


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.


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.

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.

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.

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

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

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.

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-
Legal background on advances in the courts in the 'sixties, including Norton v. Macy, in which a homosexual man was found to be unlawfully dismissed from his government job.

A substantial minority of principals favor loss of licence if the teacher is a gay activist in the classroom or outside it. But in practice the treatment of teachers has been more lenient, and retention of a teacher accused of being homosexual rarely causes long-term problems for the administrator.

Complications ensuing from the dismissal of a Pennsylvania teacher.

Examines employment practices that discriminate against homosexuals in the light of governmental obligations under the Constitution and the Civil Rights Acts of 1866 and 1964.

Challenges the legal rationale used to exclude homosexuals from federal civil service and from private employment. Suggests a program of "graduated liberalization."

Reviews recent cases (Morrison, Norton, and Schlegel), indicating that dismissal of homosexuals is counterproductive, inasmuch as it makes it more difficult for them to lead socially useful lives.

Details the operations of the Industrial Security Clearance Review Office, the agency that processes security clearances and continues to deny them to homosexuals, despite court victories in Ulrich and Gayer.


While considerable progress has been achieved in the struggle against employment discrimination against homosexuals, administrative and judicial protection has generally been sporadic and unreliable.


Concludes that the most common arguments used against homosexuals—the prevention of activity contrary to public mores, the prevention of emotional instability in employees, and the prevention of the spread of homosexuality—do not seem to stand up under close examination. "Neither the policy of refusing relief to discharged homosexuals should be abandoned or a firmer basis for its application should be found."


The arguments revisited.


The California Supreme Court found three distinct sources of law that bar a public utility from engaging in arbitrary employment discrimination: the equal protection clause in the California constitution; section 453(a) of the Public Utilities Code; and sections 1101 and 1102 of the Labor Code.


On the advice of Kameny, a gay activist and lay advocate, Gayer, a civil service employee successfully fought employment discrimination.

4352. KNUTSON, KIRKIE. "Constitutional Law—Due Process—Dismissal of a Transsexual from a Tenured Teaching Position in a Public School," *Wisconsin*
In the case of Paula Grossman, a dismissed tenured teacher, the New Jersey Superior Court, Appellate Division, upheld the dismissal on the grounds that her negative impact hindered her effectiveness as a teacher.

Examines reported decisions dealing with hiring, contract renewal or dismissal, and revocation of teaching certificates. Perceives an emerging pattern that it is incumbent on the employer to demonstrate that a dismissed teacher's homosexuality interferes with his or her actual performance (the nexus test).

Examines the extent to which the First Amendment protects teachers who discuss the subject of homosexuality in class.

Innovative use of the existing statutory framework, focusing on the disease itself, should provide significant protection for many who suffer discrimination because of the AIDS crisis.

Analyzes the leading cases in the fields of teaching and federal government service, showing use of the nexus test and First Amendment claims.

Local ordinances are most effective in filling the void that is currently left by state statutes and the common law. It remains questionable, however, whether the protection afforded is of any substance or is primarily a symbolic gesture.

Singer was dismissed as a clerk typist in federal employment for "immoral and notoriously disgraceful conduct." The dismissal was upheld by the Ninth Circuit Court of Appeals. The article explores the relevant legal principles, claiming that "the Singer opinion marks a major
reversal in the current trend of cases."


In addition to pursuing existing remedies for the double discrimination that lesbians may be subjected to, electoral and legislative initiatives are needed.


Problems of teachers' rights are highlighted by a recent decision of the Ninth Circuit, Burton v. Cascade School District Union High School No. 5.


Also in: *Texas Southern University Law Review*, 6 (1981), 183-275. Reflections based on the disturbing ramifications of the Gaylord case, where a highly competent teacher was removed because of his homosexual orientation.


Presents the legal-conceptual background and a review of leading cases. Argues that "any morally based disqualification of teachers for conduct which is private and consensual, or which is otherwise protectible under the First Amendment, offends due process because it is patently arbitrary."


Focuses on issues raised by a church's discharge of a homosexual employee under the Free Exercise clause, the Establishment Clause, and general constitutional theory. Concludes that providing certain conditions are met, a church's dismissal of a homosexual employee may be upheld.


Analyzes recent legal developments, esp. as regards the law governing private employment. Studies of adverse impact in the private sector may elicit beneficial government prodding.

4365. TEWKSBURY, MICHAEL D. "Gaylord and Singer: Wash-
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.