

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. WILLICK, 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-

istration Adjudications," **Georgetown Law Journal**, 58 (1970), 632-45.

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.

4345. DRESSLER, JOSHUA. "Survey of School Principals Regarding Alleged Homosexual Teachers in the Classroom: How Likely (Really) Is Discharge?" **University of Dayton Law Review**, 10 (1985), 599-620.

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.

4345A. FREIMANN, ARLENE. "Acanfora v. Board of Education: New Interpretations on Standing; Section 1983 and Judicial Review of Administrative Determination," **Temple Law Quarterly**, 48 (1975), 384-96.

Complications ensuing from the dismissal of a Pennsylvania teacher.

4346. FRIEDMAN, JOEL. "Constitutional and Statutory Challenges to Discrimination in Employment Based on Sexual Orientation," **Iowa Law Review**, 64 (1978-79), 527-72.

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.

4346A. "Government-created Employment Disabilities of the Homosexual," **Harvard Law Review**, 82 (1969), 1738-51.

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

4347. "Government Employment and the Homosexual," **St. Johns Law Review**, 45 (1970-71), 303-23.

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.

4347A. GRAHAM, KATHLEEN M. "Security Clearances for Homosexuals," **Stanford Law Review**, 25 (1972-73), 403-29.

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*.

4348. HANSEN, KENT A. "Gaylord v. Tacoma School District No. 10: Homosexual Held Immoral for Purposes of Teacher Discharge," **Willamette Law Journal**, 14 (1977), 101-14.

Reviews the case, including legal background and the rationale for the decision. See also John H. Lowe, "Homosexual Teacher Dismissal: A Deviant Dismissal," **Washington Law Review**, 53 (1977), 499-510 (critical of the court's findings).

- 4348A. HEDGPETH, JUDITH M. "Employment Discrimination Law and the Rights of Gay Persons," **JH**, 5 (1979-80), 67-78.

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

4349. HOFFMAN, STEPHEN CLARE. "Analysis of Rationales in Homosexual Public Employment Cases," **South Dakota Law Review**, 23 (1978), 338-57.

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. "[E]ither the policy of refusing relief to discharged homosexuals should be abandoned or a firmer basis for its application should be found."

- 4349A. "Homosexual Public Employees and the Right to Privacy," **Harvard Law Review**, 97 (1984), 1753-56. The arguments revisited.

4350. JOHNSON, LEE ANN. "Gay Law Students Ass'n v. Pac'c Tel' & Tel' Co.: Constitutional and Statutory Restraints on Employment Discrimination against Homosexuals by Public Utilities," **California Law Review**, 68 (1980), 680-715.

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.

4351. KAMENY, FRANK. "Government Grants Richard Gayer Security Clearance," **Vector**, 7:10 (October 1971), 32-33, 53.

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

4352. KNUTSON, KIRBIE. "Constitutional Law--Due Process--Dismissal of a Transsexual from a Tenured Teaching Position in a Public School," **Wisconsin**

Law Review (1976), 670-89.

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.

4353. LAMORTE, MICHAEL W. "Legal Rights and Responsibilities of Homosexuals in Public Education," **Journal of Law and Education**, 4 (1975), 449-67.
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).
4354. LAVINE, KAREN S. "Free Speech Rights of Homosexual Teachers," **Columbia Law Review**, 80 (1980), 1513-34.
Examines the extent to which the First Amendment protects teachers who discuss the subject of homosexuality in class.
4355. LEONARD, ARTHUR S. "Employment Discrimination against Persons with AIDS," **University of Dayton Law Review**, 10 (1985), 681-703.
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.
4356. LEVINE, ELLEN. "Legal Rights of Homosexuals in Public Employment," **Annual Survey of American Law** (1978), 455-91.
Analyzes the leading cases in the fields of teaching and federal government service, showing use of the nexus test and First Amendment claims.
4357. MEEKER, JAMES W., et al. "State Law and Local Ordinances in California Barring Discrimination on the Basis of Sexual Orientation," **University of Dayton Law Review**, 10 (1985), 745-65.
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.
4358. MYERS, JOHN E. B. "Singer v. U.S. Civil Service Commission: Dismissal of Government Employee for Advocacy of Homosexuality," **Utah Law Review** (1976), 172-85.
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."

4359. PEARLDAUGHTER, ANDRA. "Employment Discrimination against Lesbians: Municipal Ordinances and Other Remedies," **Golden Gate University Law Review**, 8 (1979), 537-58.

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

4360. "Remedial Balancing Decisions and the Rights of Homosexual Teachers: A Pyrrhic Victory," **Iowa Law Review**, 61 (1976), 1080-98.

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

4361. RUBINSTEIN, RONALD A., and PATRICIA B. FRY. **Of a Homosexual Teacher: Beneath the Mainstream of Constitutional Equalities**. Frederick, MD: Associated Faculty Press, 1981. 92 pp.

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.

4362. SCHOLZ, JEANNE L. "Out of the Closet, Out of a Job: Due Process in Teacher Disqualification," **Hastings Constitutional Law Quarterly**, 6 (1978-79), 663-717.

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."

4363. SHAFFER, JOHN SCOTT, JR. "The Boundaries of a Church's First Amendment Rights as an Employer," **Case Western Reserve Law Review**, 31 (1981), 363-85.

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.

4364. SINISCALCO, GARY R. "Homosexual Discrimination in Employment," **Santa Clara Law Review**, 16 (1976), 495-512.

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-

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 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**