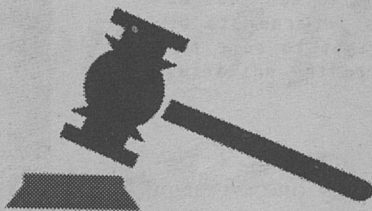


LEGAL BRIEFS

by Susan Murray and Beth Robinson



Update on the Law and Our Bedrooms

Many conservatives decry big government and argue that the state should stay out of our lives. If only they applied that view when it comes to the most personal aspect of citizens' lives—what we do in the bedrooms. Fortunately, the march toward privacy for intimate relationships continues, slowly but steadily.

Recent Decisions

Buried in all the civil union coverage in recent months were two significant state court decisions concerning sodomy laws. The good news is that a Texas appeals court struck down Texas' sodomy law in the case of *Lawrence v. Texas*. In that case, a roommate of John Lawrence made a false report to the police that there was an armed intruder in their Houston apartment. The police broke into the apartment, where they found Lawrence and Tyrone Garner having sex. The two men were prosecuted, convicted, and fined. The appeals court reversed the conviction. The court concluded that Texas' sodomy law unconstitutionally discriminated on the basis of sex by prohibiting oral and anal intercourse between two men or two women, but allowing oral and anal intercourse between a man and a woman. The Texas court recognized that such a law discriminates on the basis of sex because the distinction between illegal and legal conduct turns not on the act itself, but on the sex of one of the participants. The case isn't over, and we'll see further appeals,

but the Texas court's decision is a step in the right direction.

The bad news is that the Louisiana Supreme Court voted 5-2 to reject a challenge to that state's sodomy law. In that case, Louisiana prosecuted a man for an act of consensual oral sex with a woman. The Louisiana Supreme Court upheld the conviction, asserting that the Legislature is free to prohibit what it deems to be immoral acts, even if consensual and private.

Why We Care

Considering that sodomy laws are rarely actually enforced to punish non-commercial consensual adult sexual behavior, they have a dramatic effect on all of us. Even though sodomy laws have historically applied to gay and heterosexual conduct alike, they have been used to stigmatize and target gay and lesbian citizens. Courts and others have relied on the continuing existence of sodomy laws to justify the military's anti-gay policy, employment discrimination against gays and lesbians, child custody decisions dramatically undercutting the parental rights of gay and lesbian parents, and even limitations on rights of association through gay-straight alliance student groups. Indeed, in the case of *Baker v. State*, the Vermont Attorney General pointed to Vermont's 18th-century Levitical prohibition of gay male sexual relations to justify the modern discrimination against families formed by same-sex couples reflected in

the marriage laws.

Prevalence Of Sodomy Laws

Fortunately, Vermont repealed its "fellation" statute in the early 1970s. (That law prohibited heterosexual and same-sex conduct alike.) However, in addition to Texas, 15 other states have laws criminalizing certain forms of adult consensual sexual activity. Three states—Arkansas, Kansas, and Oklahoma—have laws that specifically target gay sex, while 12 others continue to criminalize all non-vaginal intercourse regardless of the sex of the participants.

We still have some way to go, but eventually the state will be out of citizens' bedrooms.

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general commercial and civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356. ▼

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