Hardwick vs. State of Georgia

by David Curtis

Four years ago, in August 1982, Michael Hardwick was charged with having committed the criminal act of sodomy in Georgia. The "offense" was a mutually consensual act with another adult male. It appears that when the police entered Hardwick's home pursuant to a search warrant (they were looking for marijuana) they discovered Hardwick and his partner in flagrant delicto.

Hardwick brought suit in the U.S. District Court challenging the constitutionality of the Georgia statue under which he was charged. The District Court dismissed his complaint but the Court of Appeals reversed that decision, finding that the statute was unconstitutional. The state of Georgia appealed to the U.S. Supreme Court. On June 30, 1986, the Supreme Court were constitutional. Four of the nine justices of the Supreme Court dissented.

The majority opinion, written by Justice White and concurred with by Justices Burger, Rehnquist, Powell and O'Conner, seems to be based upon the legal theory that because sodomy was a crime in 1791 when the Bill of Rights was adopted and in 1868 when the Fourteenth Amendment was ratified, there is no historical basis to find that the framers intended to include a right to commit sodomy as part of the right of privacy that the Court has enunciated in other cases. Chief Justice Burger, in his concurring opinion, clearly sets forth his position that it would be inappropriate to "cast aside millennia of moral teaching." His opinion also refers to the idea that condemnation of homosexual practices is "firmly rooted in Judeo-Christian moral and ethical standards."

The dissenting opinion by Justice Blackmun is a repudiation of the willingness of the majority to ignore the constitutional right to privacy and give deference to the moral values presumably articulated by the statute. Blackmun's argument can best be summarized by his statement that "...the right of an individual to conduct intimate relationships in the intimacy of his or her own home seems to me to be the heart of the Constitution's protection of privacy." His dissent is a classic and one which I commend to your attention. Space does not permit me to give it the attention that it so richly deserves.

Two comments by Blackmun are of particular note. In a footnote to his opinion, he points out that the arguments in support of the Georgia statute are strikingly similar to those put forward in 1967 in support of a Virginia statute forbidding interracial marriages. He notes that the trial court in that case found that "the fact that (Almighty God) separated the races shows that he did not intend for the races to mix." He also pointed out that the arguments in that case relied upon references to the Old and New Testament and the writings of St. Thomas Aquinas to show that traditional Judeo-Christian values proscribe such conduct.

Second, Blackmun concludes his dissent with a call for review of this issue. He calls on the Court to reconsider its analysis and to conclude that "depriving individuals of the right to choose for themselves how TO conduct their intimate relationships poses a far greater threat to the values most deeply rooted in our nation's history than tolerance of nonconformity could ever do."

As Vermonters, this decision will have no direct, immediate effect upon lesbians and gay men. Vermont law does not criminalize consenting sexual conduct between adults in the privacy of their own home(s). However, we must be alert to attempts in the future to change the law and legislate in this very private area.

Vermont delegation supports D.C. AIDS insurance bill

Attempts have been made recently by the U.S. House of Representatives and U.S. Senate to overturn the District of Columbia's recently passed legislation that prohibits discrimination by insurance companies against those who are at risk for AIDS.

On July 23, the U.S. House of Representatives rejected an attempt by Representative Dannenmeyer (R-CA) to overturn the D.C. ordinance by a vote of 241 to 173. Representative Jeffords voted with the majority (against overturning the anti-discrimination ordinance).

In the U.S. Senate, an amendment offered by Senator Helms to overturn the D.C. ordinance was passed by voice vote when it was attached as a rider to the debt ceiling bill. A motion to table the rider had failed by a vote of 53 to 41. Both Senators Leahy and Stafford had voted to table the rider, thus supporting the gay community's position.

When the Senate completes action on the debt ceiling bill, it will go to a House-Senate conference, where most of the amendments added by the Senate are expected to die.

Gay community members are encouraged to write to Jeffords, Leahy and Stafford in support of their votes and to encourage them to work harder along those lines.