

LEGAL BRIEFS

The Law and Our Bedrooms

BY BETH ROBINSON

Since Ken Starr, with more than a little help from Bill and Monica, has already dragged our collective mind to the gutter, this is probably a pretty good time to write about sodomy laws. Nineteen states and the military criminalize sodomy, with dramatic ramifications for all of us.

What is sodomy? Although folks tend to throw the word "sodomy" around as if everyone must know what they mean, legal definitions of sodomy are actually quite varied. Historically, many sodomy statutes were vague, simply referring to the "crime against nature." Nowadays, some sodomy laws prohibit anal intercourse; broader laws prohibit a variety of consensual sexual acts other than heterosexual vaginal intercourse, including oral sex.

Do sodomy laws just apply to gay people? Historically, most sodomy laws were not focused on the sexes of the participants, but on the conduct in which they engaged. Anal, and in some cases oral, sex were considered abominable, and unlawful, whether enjoyed by two men, a man and a woman, or, in the case of oral sex, two women. Of the nineteen state sodomy statutes remaining today, six specifically focus only on gay sexual conduct, while the remaining thirteen apply to gay and heterosexual conduct alike. Indeed, our Commander-in-Chief has apparently engaged in criminal acts under the military laws.

Are sodomy laws constitutional? Striking a critical blow to the civil rights of gay and lesbian Americans, the United States Supreme Court upheld Georgia's sodomy law in its infamous 1986 decision in *Bowers v. Hardwick*. Interestingly, even though the law in question applied to gay and heterosexual conduct alike, the US Supreme Court limited its consideration to the statute's application to "homosexual conduct," expressly leaving open the possibility that such laws might not be constitutional as applied to the same conduct between heterosexuals.

The continuing vitality of *Bowers v. Hardwick* is questionable. Many people believe that the United States Supreme Court's recent decision in *Romer v. Evans* (striking down Colorado's anti-gay initiative) implicitly undercut its *Bowers v. Hardwick* decision. Indeed, the late Justice Powell, who cast the deciding vote in *Bowers v. Hardwick*, later acknowledged that he was wrong. Nonetheless, the

United States Supreme Court has not explicitly overruled the decision.

In the meantime, state supreme courts in Kentucky, Tennessee and Montana have concluded that their states' sodomy laws violated their state constitutions, and cases are pending in several other states. Moreover, international tribunals have recognized that sodomy laws violate certain human rights treaties.

Does Vermont have a sodomy law? Fortunately, Vermont repealed its "fellation" statute in the early 1970s. That law prohibited heterosexual and same-sex sexual conduct alike.

Do sodomy laws matter? Considering that sodomy laws are very 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 gay and lesbian citizens. Courts and others have relied on the continuing existence (and constitutionality) of sodomy laws to justify the military's anti-gay policy, employment discrimi-

nation 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, our own Attorney General has pointed to Vermont's 18th century Levitician prohibition of gay male sexual relations to justify the modern discrimination against families formed by same-sex couples reflected in the marriage laws.

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 workers' 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.

VCLGR COALITION NOTES

HRC Political Director to Speak at Conference

BY VIRGINIA RENFREW

This past month the VCLGR board has been busy planning and organizing the sixth annual conference and Town meeting. We hope that you all will be pleased with the brochures that you have received in the mail. If you did not receive a brochure please check out our ad in this paper. It lists the day's agenda with all the workshops.

This year our conference will be CO-sponsored by UVM's Student group. Free to be: GLBT Alliance, A Room of Our Own and the UVM's 1998 National Coming Out Committee. We are pleased to announce that our guest speaker is Winnie Stachelberg from the Washington based Human Rights Campaign. Winnie is the Political Director and she will talk about political activities on the federal level. The conference and Town meeting will be an all day event. That same evening VT PRIDE and the VT Gay Social Alternatives will be hosting a fundraising dance at Contois Auditorium starting at 7pm. So plan on making a full day and evening with our community.

We are also sending out surveys for all candidates who are running for the legislature and statewide offices. This survey will be asking candidates about their support for issues that effect our community. We will publish the results in the November issues, just before the election. Last week, I was on the Vermont Rainbow Connection TV Program. Sharon Randall interviewed me about VCLGR and the conference. This was the first time that I had seen the show because my local cable does not carry it. For those of you who do receive it check it out. I was very impressed and we as a community need to support this show.

Hope to see you all on October 10, 1998 at the VCLGR Conference and Town meeting. IF YOU WOULD LIKE TO VOLUNTEER THE DAY OF THE CONFERENCE PLEASE CALL VIRGINIA RENFREW AT 802-496-4333 OR EMAIL renfrew@sover.net

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