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JUNE 1962

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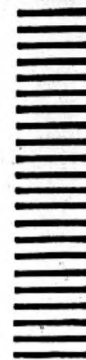
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WHY THIS ISSUE IS LATE

For the first time in many months, *Mattachine REVIEW* appears late in a curtailed edition for subscribers only. Newsstand circulation has been omitted this month.

During the entire month of May, the facilities of Pan-Graphic Press, printers of the *REVIEW*, have been utilized to the utmost on a special project of significance to the homophile world: the printing of a mammoth legal brief for a court action in California.

This action, the case of Sol Stoumen v. Russell Munro and the Department of Alcoholic Beverage Control of the State of California, was filed in the District Court of Appeal, first appellate district, San Francisco, on June 8 by Morris Lowenthal and Juliet Lowenthal, attorneys for petitioner and appellant.

Preparation of the brief—a volume of 440 pages—required many weeks of work around the clock for Mr. Lowenthal. When originally submitted it was estimated that it would run 250 pages (the main body of the brief finally ran 308 pages). This project at the original estimate would tax Pan-Graphic's production facilities to the utmost in the time allotted. But with more than 50 pages of the brief proper and the additional 106 pages of appendices and 26 pages of index and tables of cases cited, the 440-page total was something the production department was unprepared for.

But it was printed and bound—almost 300 copies of it. Extra composer-typists were hired, and another printing shop with two presses was utilized, so that when the actual printing was under way in the final week of the production period, three presses were rolling, and a total of nine persons were at work full time in page makeup, proofreading, correcting, photography, masking negatives, making and developing plates, printing, collating, and binding books.

Completed, the brief weighs 2¼ lbs. (compared to 1½ lbs. for a 12-issue bound volume of the *REVIEW*). Represented in the brief was almost as much production work as a year of publishing the magazine.

Significance of the project lies in the fact that this action seeks to halt a California state administrative agency from selecting a particular "moral sphere" and dictating policy toward it through means of alleged bias, deception and harassment. If a favorable decision is handed down by the court, then the issue will be cleared once and for all that homosexuals may be permitted to patronize restaurants and bars of their own choosing and held to no higher standard of conduct than anyone else.

This is another chapter in a court battle began in 1949 involving the now famous "Black Cat" of San Francisco. *REVIEW* readers in almost every state are by now familiar with it, so that this restaurant-bar with its unique "Bohemian" atmosphere is a tourist landmark equal to the Top of the Mark which overlooks it a short seven blocks away on Nob Hill.



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Cop Spying Illegal

John Logan

The widespread California practice of using police in concealed positions for surveillance of public toilets as a means to catch persons using such facilities in unlawful sex acts was declared illegal on May 10 in the California Supreme Court.

The practice is by no means limited to California. But it does constitute an unlawful search — "a general exploratory search conducted solely to find evidence of guilt, a practice condemned both by federal law and by law of this state," as it was stated in the opinion written by Justice Schauer and concurred in unanimously by Chief Justice Gibson and the remaining five justices.

Mac C. Wood, Jr., Los Angeles attorney located at 8726 Sunset Blvd., handled the case for petitioners.

This decision is regarded as so important that it is printed here in full together with case citations (many of them federal):

No. LA26693

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

ROBERT JOHN BIELICKI and FREDERICK EUGENE WELCH

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN
AND FOR THE COUNTY OF LOS ANGELES,

Respondent.

Petitioners seek prohibition to restrain respondent superior court from proceeding to trial on an information charging them with violation of section 286 of the Penal Code (the infamous crime against nature).

Timely motion was made at the preliminary examination to exclude all of the evidence offered by the state on the ground that it had been obtained by an illegal search and seizure in violation of the constitutional guarantees (U.S. Const., 4th and 14th Amendments; Cal. Const., art. I, sec. 19). The motion was denied and petitioners were held to answer. Petitioners then moved in the superior court to set aside the information for lack of reasonable and/or probable cause (Pen. Code, sec 995) in that their commitment was based entirely upon inadmissible evidence. The motion was denied. We have concluded that on the particular facts of this case the challenged evidence was inadmissible and hence that the peremptory writ should issue.

The sole witness at the preliminary examination was Officer Hetzel of the Long Beach Police Department's vice squad. Officer Hetzel testified in substance to the following facts: The Pike Corporation, owner of an amusement park in the City of Long Beach, had authorized the police to go on the roof of a building in the park housing a group of pay toilets in order to "do something in regard to the homosexual activity going on inside of the toilets." A pipe about 13 inches long and 1-1/2 to 1-3/4 inches in diameter, capped when not in use, had been installed through the roof of the building over two of the toilet booths (referred to hereinafter as numbers 4 and 5). Officer Hetzel did not know who had installed the pipe. He testified, however, that the purpose of the pipe was "To look through," and that a person so doing would observe an area of the two toilet booths below approximately three feet in total diameter (i. e., 18 inches on either side of a thin partition between the booths). If the toilets were in use the observer would therefore see part of the body of each person using them, depending upon the position of the occupant. The officer further testified that "a lot of times" each week he went on the roof of the restroom, uncapped the pipe, and watched the occupants of the toilet below. On each occasion he remained on the roof "Until we make an arrest, or until we see that we can't make an arrest."

At 11 p. m. on the night in question the officer uncapped the surveillance pipe and observed petitioners — who were then unknown to him — sitting on the respective stools of toilets 4 and 5. Petitioners passed several notes back and forth through a hole in the partition between their booths, and subsequently were seen by the officer to commit, by means of the hole in the partition, an act in violation of section 286 of the Penal Code. Officer Hetzel then called through a ventilator to two fellow officers in the street below, who entered the booths and placed petitioners under arrest. No warrant had been issued for either the search of the premises or for the arrest of the petitioners.

The choice of remedy is appropriate. (Pen. Code, sec. 999a; People v. Valenti (1957) 49 Cal. 2d 199, 203 (4); Badillo v. Superior Court (1956) 46 Cal. 2d 269, 271 (1).)

There would appear to be no doubt — and the People do not contend to the contrary — that the acts of Officer Hetzel constituted a "search" as that term is used in the Fourth Amendment to the federal Constitution and section 19, article I, of our Constitution. "(T)he term implies some exploratory investigation or an invasion and quest, a looking for and seeking out. . . . A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way" The constitutional guarantees, of course, prohibit not all searches but only those that are unreasonable. (United States v. Rabinowitz (1950) 339 U.S. 56, 60; People v. Maddox (1956) 46 Cal. 2d 301, 306 (6).) And there is no formula for the determination of unreasonableness. Each case is to be decided on its own facts and circumstances." (Go-Bart Co. v. United States (1931) 282 U.S. 344, 357; accord, United States v. Rabinowitz (1950), supra, 339 U.S. 56, 63; Harris v. United States (1946) 331 U.S. 145, 150; People v. Denne (1956) 141 Cal. App. 2d 499, 506, (2).)

In the case at bench it would appear that the officer's clandestine observation of the then unknown occupants of the toilet booths by means of a pipe installed in the ceiling constituted an unreasonable search. Prior to uncapping the pipe on the night of the incidents at issue Officer Hetzel had no reasonable cause to arrest these petitioners. He had no grounds for believing or even suspecting that they had committed or were then committing a crime, or that they were occupying the booths for anything other than a lawful purpose. Indeed, the officer testified that he had no prior knowledge of petitioners and had never seen them before looking through the pipe. According to the officer it was his practice "a lot of times" each week to climb up on the roof of the restroom, uncapped the spy-pipe, and observe the occupants of the toilets below — i. e., whoever they might be. On each occasion, it will be remembered, the officer would remain on the roof "Until we make an arrest, or until we see that we can't make an arrest." In so doing he spied on innocent and guilty alike. Such a practice amounts to a general exploratory search conducted solely to find evidence of guilt, a practice condemned both by federal law (United States v. Lefkowitz (1932) 285 U.S. 452, 465; United States v. Guido (1958, 7th Cir.)

251 F. 2d 1, 4 (4), cert. den. 356 U.S. 1950; United States v. Joseph (1959, E.D. Pa.) 174 F. Supp. 539, 544 (6, 7), aff'd 278 F. 2d 504 cert. den. 364 U.S. 823) and by law of this state (People v. Schaumloffel (1959) 53 Cal. 2d 96, 100 - 101 (1); People v. Mills (1957) 148 Cal. App. 2d 392, 399-401 (2); see People v. Roberts (1956) 47 Cal. 2d 374 378 (7) - 379 (8)).

While a search is not unreasonable if made with the defendant's consent (People v. Burke (1956) 47 Cal. 2d 45, 49 (1); People v. Michael (1955) 45 Cal. 2d 751, 753 (1)), here petitioners obviously gave no actual consent to being spied upon through the pipe in the ceiling. Nor can it be said that because the restroom was open to use by the general public (1) petitioners "impliedly" gave their consent to such observation, or (2) consent was unnecessary because there was no search (cf. People v. Rayson (1961) 197 A. C. A. 32, 38 (8) (shoeshine parlor); People v. Stone (1961) 195 A. C. A. 325, 330 (4, 5) (photocopying shop); People v. Roberts (1960) 182 Cal. App. 2d 431, 437 (5) (gift shop); Thorp v. Dept. of Alcoholic Bev. Control (1959) 175 Cal. App. 2d 489, 492 (3) (barroom)). In each of the just cited cases the police officers entered upon premises open to the general public and while there saw, as any member of the public could also have seen, illegal objects or activities justifying further search or arrest. But in the case at bench Officer Hetzel climbed upon the roof of the restroom — which was certainly not a portion of the premises that was open to the general public — and from that vantage point secretly observed activities of petitioners which no member of the public could have seen, as they were carried on within the confines of toilet booths each enclosed by three walls and a door.

For similar reasons the present case is not governed by the settled rule that "looking through a window does not constitute an unreasonable search" (People v. Martin (1955) 45 Cal. 2d 755, 762 (13), and cases there cited). In a recent decision applying this rule it was stated more broadly that a police officer may look through "an open aperture in a persons home" without violating that person's constitutional rights (People v. White (1960) 180 Cal. App. 2d 99, 102 (2)); and in two cases relied on by the People it was held that an officer may properly look through a tiny hole drilled in the door of a hotel room (People v. Regalado (1961) 193 Cal. App. 2d 437, 442 (4)) or an apartment (People v. Ruiz (1956) 146 Cal. App. 2d 630, 633 (1)), provided that the officer himself has not drilled the hole. We need not undertake at this time to either approve or disapprove the last mentioned decisions, or to define the origin, location, or minimum diameter of the apertures through which police officers may look without making a search in violation of constitutional rights. On the facts before us it is undisputed that the activities of petitioners witnessed by Officer Hetzel were not "in plain sight" or "readily visible and accessible" (People v. Roberts (1956), supra, 47 Cal. 2d 374, 379 (8)), but rather were hidden from all but the type of exploratory search here conducted.

The People stress the fact that Officer Hetzel was on the roof pursuant to a request by and with the consent of an agent of the owner of the amusement park. On this basis it is argued that the search was not unreasonable because the officer relied upon the apparent authority of that agent to consent to a search of the premises. The rule invoked is that laid down in People v. Gorg (1955) 45 Cal. 2d 776, 783(16-17), to the effect that a search is not unreasonable if made with the permission of one who, by virtue of his relationship to the defendant or other circumstances, the officers reasonably and in good faith believed had authority to consent to their entry.

The rule of the Gorg case has been applied in a variety of contexts.* But an analysis of the cases demonstrates that in each instance the officers had either (1) reasonable cause to believe that the defendant (or someone else on the premises) had committed a felony, or (2) information justifying their questioning the defendant (or someone else on the premises) with respect to his part in recently observed or reported criminal activity. Thus, in a case where police officers had received information that two or three persons in a described car were stopping at gas stations in a certain area to take narcotics, it was held that the officers were entitled to believe that the attendant of a gas station in that area had authority to consent to their forcibly entering a restroom occupied by three men whose car, fitting the above mentioned de-

scription, was seen by the officers to be parked outside of the station. (People v. Rodriguez (1960) 180 Cal. App. 2d 534, 536 (1)). Here, however, no such facts appear. There is no showing that Officer Hetzel could reasonably have believed that the agent of the Pike Corporation had authority to consent to his spying, regularly and as a matter of course, upon each and every occupant of the toilet booths involved in the hope of eventually obtaining evidence of the commission of some crime. (Cf. People v. Roberts (1956), supra, 47 Cal. 2d 374, 377 (2-3); People v. Carswell (1957) 149 Cal. App. 2d 395, 401 (7-8); People v. Jennings (1956) 142 Cal. App. 2d 160, 169 (6)).

Certainly the premises of an amusement park held out to public use are subject to reasonable inspection. But license to make such an inspection of a toilet stall is not the equivalent of authority to invade the personal right of privacy of the person occupying the stall. Authority of police officers to spy on occupants of toilet booths — whether in an amusement park or a private home — will not be sustained on the theory that if they watch enough people long enough some malum prohibitum acts will eventually be discovered.

Let the peremptory writ of prohibition issue as prayed.

SCHAUER, J.

WE CONCUR: GIBSON, C. J., TRAYNOR, J., MC COMB, J., PETERS, J., WHITE, J., DOOLING, J.

* E. G., where consent was given by the defendant's wife (People v. Ingle (1960) 53 Cal. 2d 407, 416 (LL), and cases there cited; People v. Meglioni (1961) 192 Cal. App. 2d 525, 527 (1); People v. Hughes (1960) 183 Cal. App. 2d 107, 114 - 115 (9), by the defendant's father (People v. Salcido (1957) 154 Cal. App. 2d 520, 522 - 523 (4) (disapproved on another point in Priestly v. Superior Court (1958) 50 Cal. 2d 812, 819 (6)), by the defendant's mother (People v. Galle (1957) 153 Cal. App. 2d 88, 89 - 90 (1); People v. Cahan (1957) 150 Cal. App. 2d 786, 787 - 788 (1), by the defendant's mistress (People v. Smith (1960) 183 Cal. App. 2d 670, 671 (1), People v. Howard (1958) 166 Cal. App. 2d 638, 651 (11-13); cf. People v. Triche (1957) 148 Cal. App. 2d 203 (4) - 204 (5), or by some other person in apparent joint control of the premises (People v. Kelly (1961) 195 A. D. A. 724, 732 (2) - 734 (3) (housemaster of campus dormitory); People v. Ransome (1960) 180 Cal. App. 2d 140, 145 (1) - 146 (5) (defendant's sister-in-law, cotenant of his apartment); People v. Herman (1958) 163 Cal. App. 2d 821, 826 (4) (co-occupant of defendant's house); People v. Misquez (1957) 152 Cal. App. 2d 471, 479 - 480 (8) (baby-sitter, furnished with key to defendant's apartment); People v. Silva (1956) 140 Cal. App. 2d 791, 794 - 795 (2) (brother of defendant's mistress, co-occupant of defendant's house)).

Without doubt this decision, in upholding the 4th and 14th amendments, is regarded as a blow by district attorneys and law enforcement officers over the state.

But is it? Not at all, providing good law enforcement practices are substituted for what has now been condemned.

First of all, prevention of crime is a police function almost ranking in importance with the catching and prosecution of persons who have committed a crime.

But with crime having become the industry that it is, and with arrests and convictions used as the gauges for the "successful" production each year in this industry, crime prevention often takes a back seat since catching criminals — even if they are at times induced to commit a crime — is more demonstrable of success in statistical reports.

The preceding decision does mean that crime prevention methods will have to be utilized now in place of the system of waiting until someone has committed an act in violation of law. Now it seems that toilet trouble spots (and such places will probably always exist) will have to be policed differently: If a law enforcement officer's presence is required, he will have to be stationed in the facility openly and in the view of all who enter. Never fear that this will have the effect of crime prevention, and this, we emphasize, is the real meaning of law enforcement.

Finally it should be remembered that such a court decision is not intended to grant unlimited license to persons who follow compulsive behavior patterns that are offensive. The complaints of citizens who would be exposed to sexual activity in a toilet will continue to have the same weight in causing police to justifiably make an arrest when those who are exponents of bad taste insist on attempting acts in public which should never be performed in public anywhere at any time. Is this not clear?

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MODEL PENAL CODE FAVORS ANY SEXUAL BEHAVIOR BETWEEN CONSENTING ADULTS.

American Law Institute Completes Ten-Year Study Of Criminal Law In U.S.

Reprinted from JUSTICE WEEKLY, Toronto

One of the arguments of the late Judge Learned Hand that the criminal law should not punish any kind of sexual relations, normal or abnormal, between consenting adults in private is embodied in the shaping of a penal code by the American Law Institute that has been under preparation for ten years. This is along the same lines as the recommendation in the Wolfenden Report in England. Final approval to the model penal code has been given by the law body at Washington, D.C. The code is regarded by many authorities as one of the most important recent projects in legal scholarship, and even before its completion it had begun to influence the criminal law of the states and the Federal Government.

The late Judge Hand was one of a number of eminent legal figures who took part in shaping the code, which is intended to take a fresh look at all U.S. criminal laws — its philosophical underpinnings, its definitions of crimes, its provisions for sentencing and correction of offenders.

However, the principal work on the code was done by two law professors, Herbert Wechsler, of Columbia University, and Louis B. Sch-

wartz, of the University of Pennsylvania. They received a standing ovation from institute members after the final vote on the code in the U.S. capital.

The Law Institute is an association of the country's most distinguished judges, law professors, and practitioners. It works to codify and modernize the law. It has completed such other projects as a uniform commercial code that has been adopted by many states, including New York.

Under the institute's procedure, sections of a work such as the model penal code are prepared by the principal draftsmen, then debated in various committees and before the full membership at the annual meeting in Washington. After which further drafts are written and re-written until the language is finally approved.

More important probably than any single provision of the new code is its over-all approach. It tries to bring a unified approach to criminal law, which has grown up in the United States by scattered and often inconsistent laws over the years.

Thus, for example, maximum sentences for various felonies in New York are two years, three, four, five, seven, ten, fifteen, twenty, twenty-five, thirty, forty and life — with no particular logic in the distinctions. The model code substitutes three degrees of felony for sentencing purposes.

Before defining specific crimes the code devotes more than 100 pages to such general questions as when a former conviction should bar a new prosecution for the same offence, when it is permissible to use force in defence of person or property, and when a man is mentally responsible for commission of a crime.

The code's definition of what the layman calls legal insanity has won widespread approval. It says a person is not responsible for a crime if, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct or

conform it to the law.

In addition to suggesting its own solutions to many controversial problems of criminal law, the code gives detailed reasons for its views and considers the advantages and disadvantages of other solutions.

The idea here — and one of the main purposes of the code — is to provide ideas and material for the re-examination of criminal law now going on in many states. New York, for one, has a commission to revise the state's entire criminal law.

In undertaking the large project of the code ten years ago, the institute believed that most lawyers paid too little attention to criminal law, an important facet of a society. The code is an effort to meet the profession's responsibility.

The code's general thrust is to try to be more civilized and organized about invoking the state against the individual.

The definitions of particular crimes tend, therefore, to be more carefully drawn. Disorderly conduct, for example, which now can constitute almost anything the police dislike, is narrowly defined.

The code takes no position on the great question of capital punishment. But it does suggest a new procedure for imposing sentence in the states that retain the death penalty.

The jury, when there is one, would first bring in a verdict as to guilt and then, in a separate proceeding, decide whether there should be a death sentence. Unless the jury unanimously agreed that there should be, the judge could not impose the death penalty.

A Time of SHADOWS

JERRY KNIGHT

Dawn crept up as quietly as their whispers, which had chased the night away. The light grew faintly but certainly like their love had; and like their love, they wished they could have reached out to the dawn, begging it to approach slower, giving them more shadowy time to accept its coming, before they had to stand in the blinding light of truth.

Mark got up to close the drapes but Don caught him by the wrist. "Don't close them, Mickey. Let's see the day come together."

"All right," whispered Mark, outlined by tiny bits of sunlight playing about on his smooth skin. Don sat up and pulled Mark down beside him, stirred by the sight of Mark's body, remembering the game he had played years ago. Was it possible that even then....? He wondered, yawning.

"Tired?" asked Mark, nestling his head in Don's lap.

"I've never felt better," murmured Don with a laugh. "You'd better move your head, though, pal."

Mark playfully pushed him back on the pillow then slipped his arm beneath Don's neck and lay beside him. "Don...." Mark's question trailed off into the air.

"Yes?"

"Oh, nothing," said Mark, snuggling closer to him.

"What is it?" asked Don.

"Well...I was wondering...." He paused again, uncertain as to how he should phrase his question.

"What were you wondering?"

"Have you ever done anything like this before?"

"Why do you ask that?"

"You seem to know so much about...everything." Don laughed, putting his arms around Mark.

"I'm just a natural born lover, I guess."

"Be serious."

"I am serious. I didn't think you'd have to ask me. This is my first time with anybody."

"Not even with Barbara?"

"No, not even with Barbara."

Mark blew into Don's ear causing goosepimples to pop up on his flesh like wind ripples on a calm lake. "I guess I'm a seducer then. I've never known a virgin before," he said jokingly.

"Boys can't be virgins," replied Don; then he questioned, "...can they?"

"What would you call them then?"

Don raised up on his elbows thoughtfully. "What do you mean, you've never known a virgin... before?"

Mark laughed and pulled Don down again, rolling over on top of him. "I mean it was always with somebody who had done it before."

Mark's weight seemed to be suffocating Don. A hint of nausea stirred in his stomach as he inched himself from beneath the pressure and threw his legs over the edge of the bed.

"What's the matter?" asked Mark.

Don didn't answer but sat staring at the floor, caught up in a dizzying whirlpool of fearful thoughts that twisted around in his mind in a tangled maze of doubt. Mark ran his hand down Don's spine, arousing the prickly sensation again.

"Don't," said Don jerking away.

"What's the matter with you all of a sudden?" asked Mark. Don walked to the windows and fiercely pulled on the traverse cord, obliterating the morning from their senses. Finally he said, "I suppose it was silly of me to think that it was the first time for you too."

"Oh god, Don, please don't act like this. I'm sorry you're disappointed but..."

"Disappointed?" said Don incredulously. "That's an understatement."

Mark jumped up from the bed and went to him, wrapping his arms around Don's waist and spoke into the hollow between his prominent shoulder blades. "In a way, it was the first time for me too. I never felt like this before... there was never any love attached to it... never any tenderness. It was always just a game; an exciting world-defying game. It was as unimportant as smoking behind your parents' backs. But now it's not unimportant anymore. Now it's the only thing that's really important at all... Because... well, I think I love you."

It would be all right, thought Don, if he hadn't said, 'I think I love you.'

Why hadn't he just said, 'I love you'? Then I could have turned around and kissed him, blotting out all the doubt and hurt.

"Please say something, Don. Don't just stand there not hearing me."

"What can I say, Mickey?"

"You can say many things, Don. Do you think the world begins and ends with you? Have you never loved anyone before? Don't you think you'll ever anyone after me? You said you loved Barbara. Well, I don't mind because that's over. It should be the same with you. I have never loved anyone... ever... but now I have you. I do, don't I, Don? Please tell me that I do."

Don turned to face him, hearing Mark's words 'don't you think you'll ever love anyone after me', echoing over and over in his mind. "Of course you have me, Mickey-Mouse. For as long as you want."

The tension rushed out of Mark as he drew Don back to the bed. He had been close to losing and he was frightened, but now he knew he would never again have that fear. He had won and he was in command now. Just a few more times together like last night and Don wouldn't be able to threaten him again. It would be just as Don had said, for as long as he wanted and Mark hoped, as Don did, that his want would last forever.

Afterwards, they slept, soundly and easily with the innocence of youth. They awoke shortly after noon, still heavy with fatigue from their sleepless night. After a lingering shower and a lazy brunch, they decided a walk through the park close by might revive them. The cloudless sky permitted the sun to tease a little pinkness into their winter-paled faces.

They walked past the tennis courts, around the closed pavillion by the artificial lake which served double-duty as an ice-skating rink in the winter and glorified duck pond in the summer, and further into the park where a tangle of trees suddenly sprang up providing the city with a pseudo-forest. Their path was marked by scattered hedge leaves that Don had idly picked from a bush they were passing. He trailed the leaves behind them like Hansel; but the wind dispersed them as readily as the birds had eaten Hansel's bread crumbs. The sunlight inching through the trees made soft, leafy patterns on the boys. The hushed light and quiet tinkling of the little stream they walked beside bathed them with intimacy. It was a tired time of peaceful happiness for both of them.

They selected a patch of sunlight and sat on the bank of the stream, removing their shoes and socks to dangle their feet in the icy water. Don turned over to lie on his stomach and occupied his restless hands with the task of pulling up blades of grass, which he divided and sub-divided into tiny segments.

"Mickey..." broached Don thoughtfully, "...how did it first happen with you?"

"I don't want to talk about it if it's going to upset you anymore," he answered.

"No, it won't upset me. I think perhaps I was just jealous before. Now I realize it probably wouldn't have happened at all if you hadn't known."

"You make it sound like the whole thing was my fault. I didn't force you, you know," replied Mark defensively.

"I don't mean it like that. I'm glad now that you did know." An anxious silence separated them until Don slid his hand toward Mark's leg and squeezed this thigh. Again he was overcome by an indescribable sensation; the exciting awareness that the flesh beneath his hand was warm and alive. *Alive* was something he had merely accepted before, without ever realizing what life was in his own body or in the body of another person. He wondered if everyone felt this sensual pleasure derived from even the smallest physical contact or if it were an experience unique for himself. He loved this new dimension in his life, but he was curious to know if it was only Mark that could arouse this pleasure in him.

"Don't Don, someone might see," said Mark teasingly moving Don's hand from his thigh to between his legs, then tossing it back to Don as if it were a limp glove.

"Bastard," said Don, pressing his stomach against the damp ground and feeling a warm shiver slipping over his body. Then he sat up and spoke seriously. "Mickey, I wish you wouldn't talk about what happened as being someone's fault. Fault makes it sound like something bad that we shouldn't have done. I don't think I could feel like I do if it was wrong. How can loving so much that your heart feels ten times bigger than it is, be wrong?"

"I can't give you the answers to this thing, Don. I don't think anyone can. You have to figure it out for yourself. It's funny, you make jokes about things like this and when it happens to you, it isn't a joke anymore. I guess we always laugh at things we're really afraid of and don't understand. Can you imagine what your father would say if you told him you had just spent the night making love to another boy? Do you think he'd understand no matter how you explained your feelings of love? No. You know damn well he wouldn't understand because he's never felt it...and because whoever set up the rules for living didn't include this one. In fact, it's strictly against the rules and if anyone finds out, they try to put you out of the game."

"But why should it be that way?" asked Don, feeling the first real twinge of apprehension.

"I told you I can't explain it, Don. Oh, anyway, it's probably just a phase we'll grow out of. We may as well enjoy it while it lasts."

Don almost hit him. "What do you mean, just a phase? You sound like a... like some doddering child psychologist. This is probably the most beautiful

thing that's ever happened to me and you toss it off like a silly school-girl crush or something."

"Take it easy, baby. Don't fight me about it. There will be plenty of other people to fight if it isn't just a phase."

"Don't call me *baby*. I don't like it."

"Why not?"

"It sounds ridiculous...one boy calling another boy..." He had trapped himself.

"See, Don, you've just admitted how ridiculous it is," said Mark with a sigh, unhappy because he had won a point which somehow he had hoped he might lose.

"Well, maybe some things about it are ridiculous," conceded Don, "but what I feel...my love...isn't."

"Not to you, but think of how it would seem to other people."

"I don't give a damn about other people. Do I look any different to you than I did yesterday? Outwardly, I mean. Do I act any different? I'm just as I've always been except that I've discovered a happiness in life I didn't think was possible. So why should I try to destroy that? Loving you isn't going to affect my relationship with other people."

"But doesn't it bother you that we have to keep it a secret? We can't go around holding hands in public, you know."

"Why should it bother me? It's something that we have all to ourselves. It doesn't have to be shared with the world."

"Then you don't feel...well...like you're sneaking off to play dirty games behind the garage?"

"Oh my god, Mickey, why do you talk like that? It seems like you're trying to instill something guilty in me that just isn't there. I don't feel the least bit guilty about anything because nothing we did was...dirty, as you put it. I think it was the loveliest night I'll ever experience." Then he added, "Why do you feel so guilty and ashamed about it, Mark?"

"I don't," answered Mark almost too quickly. "I...I just want to be certain we both felt the same way."

Don pulled up a fistful of grass and scattered the blades into the stream. They floated easily with the current out of his view. Finally, he had the courage to say, "You know that isn't true. You do feel guilty about what happened and you may as well admit it."

Mark looked at him until their eyes met; then he had to blink back the tears which promised to fall. "Yes, I do," he whispered, "only because it frightens me to see how serious you are about it. You want to defy everything and everybody. You want to change your entire life because of me. Frankly, I don't think I'm worth it and..."

Don interrupted, "Let me be the judge of that."

"Let me finish," said Mark quietly. "You see, I do feel a certain responsibility. I wouldn't have if we had discovered this thing for the first time together. But... whether you know it or not, I made it happen. I hoped it would because I wanted you to love me and I wanted to love you. But if it means that maybe someday you'll hate me because of it..."

"I could never hate you, Mickey-Mouse, no matter what you did. Look, let's try to be realistic. If it hadn't been you, it would probably have been someone else later on. There had to be something inside of me to let it happen."

"Yes, but I didn't have to go after whatever that something is and pull at it until it finally gave way. I know how I felt after the first time... I wanted to die."

"I asked you to tell me about it. I think it would be good for both of us," said Don, like a father asking his son to tell him what mischief it was he had been punished for.

Mark flattened himself on his stomach, cradled his head on his arms and spoke into the ground beneath him. "It was last year, before we moved here. A friend of my father's, Jerry Neuman, who works for an ad agency in New York, was in town on a business trip. He was arranging commercials for one of the local TV stations. My father invited him to stay with us. He's married... he's got two children. I had met Jerry once or twice before when he had come to dinner... and I was fascinated by his talk of New York and the theatre and his work in television. He's about 27, quite good looking and he always treated me like... well, like I was an adult. You know how some people always seem to talk down to you and give you that 'my how you've grown' routine everytime they see you, well, he wasn't like that.

"Anyway, we didn't have a guest room so I offered to share my room with him since I had twin beds. The second night Jerry was there, he took us all out to dinner. Then my parents went home and he and I went to the movies. Afterwards, we came back to the apartment, made sandwiches, and he mixed us both a drink. Actually, he put about a thimble-full of liquor in mine, but it made me feel like quite a man.

"We sat and talked for hours and he drank more than he should have. In fact, he was pretty high by the time we decided to turn in. When we got to the bedroom, he just stretched out on the bed with his clothes on and lay there. I thought he'd passed out, so I put on my pajamas then started to take off his shoes. He mumbled something or other and I told him he'd better get undressed. He sat up and fumbled with his shirt for a minute then asked me to help him. We made a big joke out of the whole thing and he kept apologizing for drinking so much.

"I finally got him undressed and brought his pajamas but when he went to

step into them, he lost his balance and both of us fell over the bed. We started laughing and playing around and then... well... it happened." Mark sat up and began to put his socks back on. "The next morning we didn't mention it and he acted like nothing at all had happened. I didn't really understand exactly what had taken place myself, but it was exciting and I could hardly wait for night to come when we could be together again.

"Jerry was out late that evening but I stayed awake waiting for him to come in. I lay there in the dark listening and praying for the door to my room to open. When he did come, I pretended I was asleep so that I could watch him undress. His body was beautiful, like yours, Don, and I wanted to be next to it again. Finally, to let him know I was awake, I gave a wolf-whistle. He laughed, said he was sorry if he had awakened me, turned off the lights and got into his bed. I didn't know what to do. He seemed so casual about everything, just like nothing had ever happened between us. I lay there until I couldn't stand it any longer, then I went over to him and rubbed his back. He asked me to stop. He said that he was tired and had a long day ahead of him.

"Well, I didn't stop. Finally, he sighed and turned over to face me and said, 'all right, go ahead if it will make you feel better...' and still I didn't stop." Mark finished tying his shoes and walked to the stream, looking down at his rippling reflection. "Later, all he said was, 'now maybe I can get some sleep, you silly little queer.' That's when I wanted to die."

Mark bent over to pick up a handful of pebbles from the bank and dropped them into the center of his reflection, obliterating the face he stared at, into unrecognizability. He watched the concentric circles grow, spread apart, and then vanish. Slowly, the water stilled and the reflection took shape again, bit by bit, like pieces of a jigsaw puzzle fitting together. What he had destroyed had been re-created, naturally and easily, like aspects of his life. He wondered if it would always be that way. Would he destroy only to have the object of his destruction built up again like a regenerative creature that was difficult to kill?

Don's face, with traces of a sad smile, floated in the water next to Mark's. The warm blue of his eyes shone in contrast to the cool blue of the stream. A rippling hand reached for another rippling hand.

"I'm sorry it was like that. I'm sorry the first time wasn't as wonderful for you as last night was for me," said Don huskily.

"It would have made a big difference, I think, if I'd have learned through love, rather than hurt," replied Mark, still gazing at their images. "Anyway, it was the last time I had anything to do with him."

"There were others after him, weren't there?" Don stated more than he than he questioned.

"Yes. About two weeks later I asked a boy from school to spend the weekend with me. I felt certain that he...well, that he knew about these things. I was right. Through him I met others at school and at parties. I never dreamed some of the things I learned existed. I don't know if it means anything to you, but I never was with anyone more than a few times. It was only a game of competition so we could compare notes and scorecards to see who had been to bed the most."

"It wasn't very nice and many of the people weren't very nice either. I was glad when we moved here. I decided it wasn't going to be like it had been anymore. I guess that's the reason why I didn't make any friends. I just wanted to be alone until I could get myself straightened out...then I met you."

"Did you ask me over so often because you knew this would happen?"

"I asked you over, Don, because I didn't think it would. Even though I wanted you more than I ever wanted anyone before, I didn't think there was any chance of it. Then after I got to know you better, I recognized a familiar searching...an emptiness that I'd seen before...I guess that's when I started hoping for, and being so afraid of...last night."

"Why were you so afraid of it with me?" asked Don, swatting at the first fly he'd seen that Spring.

Mark's dark brows furrowed together. "You were different from the others. I don't know how but it was something I could sense. Maybe it's because you take life so seriously. No one else I know does. I don't even think I do." His voice died away with a slight whimper.

"Life is serious," answered Don. "Everything I do, I do seriously."

"That's what makes me so goddam afraid," exploded Mark, jabbing his fist at the ground. "It isn't a game with you."

"Love isn't a game, Mickey."

"That's where you're wrong. Life's simply a game and love's a part of life so everything we do is just a stupid goddam game."

Don knew Mark didn't actually believe this but he had to have some excuse for living. He hoped that he might become that excuse in time. Don spoke softly, "In a game, there always has to be a winner and a loser."

"That's just what I mean," said Mark bitterly.

"Then in your philosophy, there's always a winner and a loser in love too?" questioned Don, already knowing what Mark's answer would be.

"Yes...there always is." He stood up brushing his trousers, feeling their dampness against his skin. Mark offered his arms to Don and pulled him to his feet. Before releasing his hands, Mark said, "For the first time in my life, I hope I'm a loser."

Don didn't understand then.

DON'T JUST SIT THERE!



EVER SEE A MAN GET TO FIRST BASE in his job, his ambitions, his life goal and then "die"?

He camps there, waiting for something or someone else to advance him. And all too often, he just waits...and waits...and waits.

Actually in this little simile we might say that Mattachine has come to the ninth inning of the game that it has been winning so far. However, the support that is needed to keep the game going and assure Mattachine of victory has just gotten to first base—and there it sits.

Many who are reading these words now will say to themselves—Here's another pitch for money coming up. And they will be right! However, Mattachine has never before so badly needed financial support as it does right now. In fact, as you read the figures outlined below, you will see that this may well be the last such plea for funds that Mattachine will ever make. For, in plain English, if the financial support needed is not forthcoming in the next three months before August 31, 1962, Mattachine positively will not be able to continue! It will have gotten to the ninth inning and lost the game for lack of sufficient support from those who have gotten to first base and sat there waiting for someone else or something else to carry them and their team on to victory.

Just what amount of financial support does Mattachine NEED in these next three months? It is quite a bit. It is an additional \$7,252.51 to be exact.

How can this amount be raised? It will have to be raised through pledges, donations, trust fund grants, etc.

Now we are well aware that approximately one out of fifty who will read this have been doing their part in keeping Mattachine going through their very helpful pledges and donations. We are therefore appealing to the other forty-nine to do their part now. It must also be remembered that everyone must do all they can to seek the needed supported from others of their acquaintance also.

Here is the picture in plain black and white figures. Here presented in the period from September 1, 1961 through May 31, 1962 are figures for actual income and expenses. They are self-explanatory:

INCOME		EXPENSES	
1961 Conference Income	211.50	Balance of Unpaid Bills, 1960-1961	2595.00
Advertising Income	76.98	1961 Conference	669.13
Membership Dues	1497.50	Composition and Printing	
REVIEW Subscriptions	2091.20	Mattachine REVIEW	4395.10
Newsstands Sales	1726.41	Newsletters	77.55
Single Copy Sales	192.10	INTERIM	86.00
Misc. Donations	2057.71	Misc.	6.00
Monthly Pledges	1123.40	Postage	682.08
Misc. (Bound Volumes, Pamphlets, Pins, etc.)	120.69	Office Supplies	668.34
		Equipment	218.30
TOTAL	9097.49	Advertising	45.12
		Rent	945.00
		Telephone	131.51
		Salaries	3890.00
		Travel Expense	160.27
		Tax	70.50
		Misc.	31.90
		TOTAL	14671.80

Amount of Unpaid Bills as of May 31, 1962	\$5574.31
Minimum Expenses till August 31, 1962	4228.20
Total Income Needed June, July & August	9802.51
Expected Normal Income	2550.00
Amount of ADDITIONAL INCOME which has to be raised through additional monthly pledges and contributions, etc.	\$7252.51

There it is. There is nothing more Mattachine can say about it. It is now up to YOU! So don't just sit there. Let's see you get up off first base and run into home so that Mattachine can continue to be and can win!

READERS *write*

Letters from readers are solicited for publication in this regular monthly department. They should be short and all must be signed by the writer. Only initials of the writer and the state or country of residence will be published. Opinion expressed in published letters need not necessarily reflect that of the REVIEW or the Mattachine Society. No names of individuals will be exchanged for correspondence purposes.

'FAT CHANCE' RE-REVISITED

REVIEW EDITOR: The *Treatise on Homosexuality* which I wrote and sent to Mattachine a year ago last January probably falls short of being a writing suitable for the REVIEW, but when I read "Fat Chance" in the March '62 issue, I found myself indignant.

Perhaps I'm wrong, but even when I admit the possible benefit and merit of such a piece of fiction, I still question its real validity in the REVIEW! I hardly think we should try to give the general public the false impression that the homosexual person is "a dependable, decent and honorable individual" as Mr. J.F. of Calif. writes in "Readers Write," April '62 issue. Certainly many are, but too, many homosexuals are such "freaks" as those depicted in "Fat Chance." However, I do agree with Mr. J.F. when he questions the use of such fiction in a magazine intended for general "factual dissemination." I further agree that we should leave such material for *One* to publish.

I reiterate: it may have its place, but I hardly think the Mattachine REVIEW is its place!—John M. Eccles, Los Angeles.

REVIEW EDITOR: Maybe I am wrong, but I thought the purpose of the Mattachine Society and its REVIEW was to convert people to a more tolerant and even benevolent attitude toward variant approaches to sex. But that story in the March issue called "Fat Chance" seems to me the kind of behind-the-scenes expose that would alienate nine-tenths of the reading public of the Western World. You may be sure that if a sexually-biased story shocks the author of *The Circle of Sex* it is more than likely to shock the average reader.

Even if this story had been written about a fat lady, it would have been just as disgusting. Don't you realize that what convicted Oscar Wilde was not his love-poems to Alfred Douglas but the landlady's evidence about the bed-sheets? Walt Whitman made no bones about his passionate love for men, but he passionately denied any desire for anal connection.

No one knows better than I that in the heat of passion one does things one would regard as disgusting if thought about in the solid light of reason. So one does not brag about them in cold conversation. It would be regarding everyone as a voyeur if one imagined that everyone wanted to read about what lovers did to each other in the delirium of love. The two states of being—ecstasy and normality—are mutually unexplainable. This is a simple question of good taste.

Why try to win friends for homogeneity by presenting it in its most unattractive guise? Such revolting pictures as this story evokes!—"Slick silk over sticky ham-thighs."—"This drag is for hotel-rooms only. Shall I go to the door as Princess Turandot or the mountain of flesh?"—"I haven't been laid since that degenerate bell-hop in Salt Lake City."—"This place looks like *Theatre Guild meets Fagot U. for olives at 20 paces.*"—"Won't that be fun, fun, fun?"

It gets more sickening as one reads on. The Fat Man says, refusing an invitation, "Every time I go to one of your parties, Miss Moustache, you get me drunk enough to entertain your friends and then, just as the shirts are coming off you hustle me out the door like I was the vice squad. I warm them up and you do all the scoring. Phooey! That's not this fat lady's idea of fun. I don't need a warm-up to go home and jack ---. (No ordinary male would miss the point of this blankety-blank-blank.)

The word QUEAN is mis-spelled in the next charming quotation, (Incidentally, how can anyone shove anything up a toilet bowl? Seems to me this is a Freudian Slip.) How delightful the picture evoked by the following remark: "If that toe queen (?) thinks I'm going to share my mystery guest with her she's much mistaken." (Why guest? Grant did the inviting.)

The distasteful jargon goes on and on. "Good Grief, he's GORGEOUS!"—"Those pants aren't as tight as a fagotts, but it shows anyhow."—"Well, well, Miss Fat, don't you feel beautiful now? Some one

DOB CONVENTION

June 23, 1962

"Come one and all to the Daughters of Bilitis convention at the Hollywood Inn, 6724 Hollywood Blvd., Hollywood, California. An exciting day of reviewing the lesbian pro and con by psychologists, ministers, a producer, and a writer will be had by all.

"Lunch and the banquet both will prove to be equally exciting to the palate and to the mind."

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will have to change those sheets" (shades of the Oscar Wilde Trial!) "That's one of the *biggest* little peccadillos I've ever seen!" (Reminds one of that tawdry sign over the main street of Reno—"Biggest Little City in the World").—I guess I kind of wore him out. I'm a little limp myself; although... oh no you don't, Miss Greedy. You're going to wear that thing out, and then where will you be?"—"I have been laid!"—"I should get up and go to the john, but I'm not sure I can move,"—"I think our thighs are still stuck together for life."

And then the conversation gets hopelessly confused. Grant asks: "Was I as good as the others?" and the fat man asks: "What others?" Grant says cryptically: "In the Society." and the fat man asks again, "What Society?" Then Grant says: "Is this a gag? You mean I lured you here to My spider's web..." By this time I was completely bewildered. I had thought the fat man had lured Grant to *his* spider-web. So you see, it isn't even comprehensibly written.

I had intended to send this issue of the REVIEW, with Carl Richter's thoughtful criticism of my book, to many friends who might be interested in helping Mattachine financially, but I could not send them any-

thing so vulgar as this "Fat Chance" story. If it nauseates me, what do you think it would do to them—especially the kindly not-too-sophisticated mothers? My own mother was extremely sympathetic to men who loved men, but she would have been irreparably disgusted by this. Are you only writing your REVIEW for the already converted? Sincerely, Gavin Arthur.

MISCELLANEOUS

REVIEW EDITOR: I have an old copy of your magazine, and in going through it I have seen for myself the wonderful work you are doing. I am very interested in knowing more and perhaps becoming a member of your group. I myself am a confirmed homosexual, and would duly appreciate any information that is available on your organization.—Mr. R.C., Illinois.

REVIEW EDITOR: In response to your solicitation for contributions I have decided to change my magazine subscription to supporting membership...—Mr. E. N., Illinois.

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9th Annual Conference

NINTH ANNUAL CONFERENCE of the MATTACHINE SOCIETY will be held in San Francisco at the Jack Tar Hotel, Van Ness & Geary Streets, on Saturday, August 25th, 1962.

The day-long program will include morning and afternoon sessions, a luncheon, and dinner, with at least six featured speakers who will discuss progress made in the past decade of the homophile movement in the fields of research, law, education, religion, and public relations.

Tentative speakers on the program include Rev. ROBERT W. WOOD, author of *Christ and the Homosexual*, Spring Valley, New York; EVELYN HOOKER, Ph.D., research psychologist, University of California at Los Angeles, and RICHARD SCHLEGEL, sociological researcher, Washington, D.C. Others will be named to the program in future announcements.

As in the past, the conference day will begin with registration starting at 9:30 a.m. There will be a pre-conference reception on Friday evening, August 24.

Fees for the sessions will be as follows:

Sessions and Luncheon	\$7.00
Sessions and Dinner	9.00
Luncheon Only	5.00
Dinner Only	7.50
Sessions Only	5.00
Full Day's Activities	13.00

Mattachine annual conferences have long marked a high point in the Society's educational program and have presented to the public a wide representation of prominent personalities whose work and attitudes call for enlightenment and understanding of the realities of human sex behavior. The 1962 conference will be no exception. Advance registrations are requested. Please send to:

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JULY 1962

FIFTY CENTS

Art and Sex

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