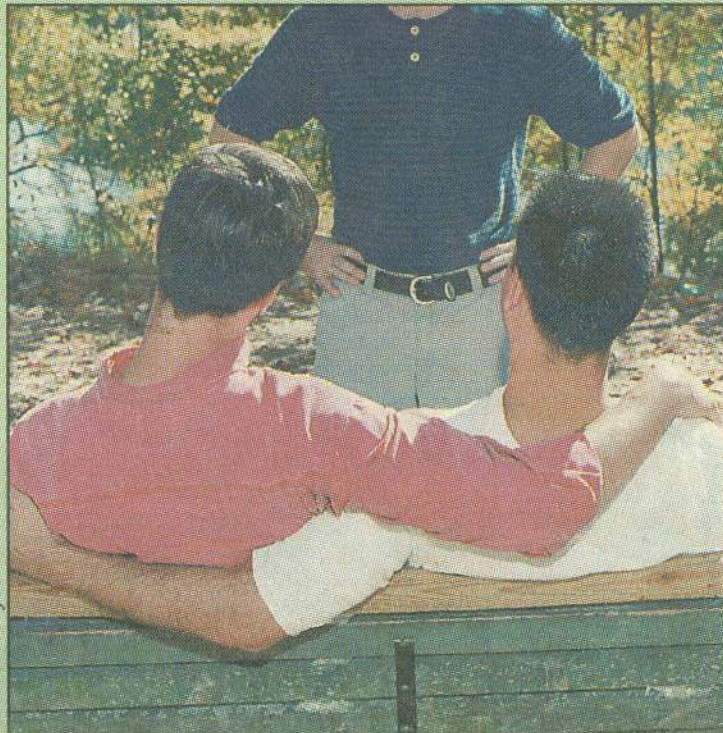




OPEN RELATIONSHIPS: The Men

With no cultural rules to follow, gay couples are asking important questions about whether having an 'open relationship' sacrifices trust, fidelity, God and faithfulness, or whether non-monogamy introduces a new level of love

Photo by Tim Wilkerson



by MICHAEL ALVEAR

Bill never broke his commitment to Hillary by sleeping with Monica.

The Clintons, deeply in love, understand they cannot satisfy all of each other's sexual needs so they've agreed to have sex outside their marriage.

That's probably the one

believe it because their relationships are living proof of its possibility. Deeply in love with their mates, these couples agree — explicitly or implicitly — to have sex with others as a routine part of their relationship.

This week the *Houston Voice* examines gay male couples and the choices they

shifts to lesbian relationships.

Can a couple be content and for rent? Are they trashing monogamy, God, faithfulness and fidelity or introducing a new level of love, beyond the proscribed and expected?

That's a question every gay couple decides on its

Two men arrested for consensual sex

Activists want to challenge state sodomy law if case moves to court

by MATTHEW A. HENNIE

Two men arrested for having consensual sex in a northeast Harris County apartment may contest the charge, possibly providing gay activists a test case to again challenge the state's 119-year-old sodomy law.



Lawrence: Faces Nov. 20 court date on sodomy charge

Sheriff's deputies charged John Geddes Lawrence, 55, and Tyrone Garner, 31, with homosexual conduct after responding to a false report of an armed intruder inside an apartment on Sept. 17. A deputy found the two men engaged in sex, prohibited

under a law modified by the 1993 Legislature, which makes gay oral and anal sex a misdemeanor punishable by a fine of up to \$500.

"It is a terrible experience for any of us to be arrested for what we do in the privacy of our own home with a consenting adult," said Mitchell Katine, an attorney in the case. He declined to discuss specifics of the arrests.

"This is just unbelievable that in 1998, this sort of arrest could happen," he said.

One of the men lived in the apartment.

Authorities said they entered through an open door and found the men having sex.

Garner and Lawrence spent a few hours in jail before being released on \$200 bail. They are scheduled for arraignment before a justice of the peace Nov. 20.

See **SODOMY/** page 3A



Garner: Jailed for homosexual conduct

More Inside:

by MICHAEL ALVEAR

Bill never broke his commitment to Hillary by sleeping with Monica.

The Clintons, deeply in love, understand they cannot satisfy all of each other's sexual needs so they've agreed to have sex outside their marriage.

That's probably the one theory you won't hear in the mainstream press. But many gay couples, and more than a few heterosexuals,

believe it because their relationships are living proof of its possibility. Deeply in love with their mates, these couples agree — explicitly or implicitly — to have sex with others as a routine part of their relationship.

This week the *Houston Voice* examines gay male couples and the choices they make about whether to maintain a sexually exclusive, monogamous relationship. Next week, the focus

shifts to lesbian relationships.

Can a couple be content and for rent? Are they trashing monogamy, God, faithfulness and fidelity or introducing a new level of love, beyond the proscribed and expected?

That's a question every gay couple decides on its own. In the absence of rules, gays create their own. And a lot of the rules don't look

See **OPEN/** page 20A

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Some gays advance, but community takes drubbing on ballot measures

by RICHARD SHUMATE

On the same night that lesbian candidate Tammy Baldwin was breaking the glass ceiling on her way into Congress, voters in Hawaii were perhaps slamming the door shut for good on gay marriage.

As 19 openly gay and lesbian candidates backed by the Victory Fund were winning in 11 states and the District of Columbia, voters in Fort Collins, Colo. — the city where beaten gay college student Matthew Shepard died — were rejecting with a vengeance a ballot



Baldwin:
Provided big win for gays in Nov. 3 election

measure that would have protected gays from discrimination.

Such was the dichotomy of the 1998 mid-term election. Gay candidates continued to make slow, but steady strides in their communities. At least 175 gay-friendly candidates endorsed by the Human Rights Campaign won election to federal offices, and several stalwarts of the conservative right-wing took it on the chin. But issues pertaining to gay and lesbian equality went down in flames in five of the six jurisdictions where they were put on the ballot.

The only bright spot was South Portland, Maine, where 54 percent of the voters approved an anti-discrimination ordinance, albeit one modeled



ELECTION '98

February referendum.

Voters cast anti-gay ballots

In Hawaii, 69 percent voters said 'yes' to a ballot measure that changes the state constitution to allow the legislature to outlaw gay marriage. The lopsided vote came despite a \$1.4 million campaign by the HRC and a local group, Protect Our Constitution, to defeat the measure.

The irony is that in Alaska, where no comparable effort was made, a similar percentage of voters (68 percent) said 'yes' to a constitutional amendment outlawing gay marriage there.

on Maine's statewide gay rights law that was repealed by that states voters in a

"The fact that fear and prejudice triumphed over protections guaranteed by the state constitution should make every American take pause," said HRC Communications Director David Smith, who helped lead the campaign in Hawaii.

Protect Our Constitution and the HRC had framed the debate not on an outright defense of gay marriage but by arguing that it would be dangerous for Hawaii voters to tinker with constitutional privacy guarantees. See **VOTE/** page 15A



Catania: Gay Republican took seat on Washington, D.C. City Council

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Grassroots Action

Parker to join campaign against anti-gay proposal.

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Military Thorne

Navy aviator hopes for return despite discharges.

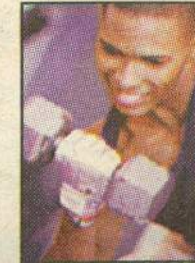
Page 9A



Learning Balance

Sluggishness can be avoided even during holidays.

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NEWS

Activists want to challenge state sodomy law if case moves to court

from page 1A

The man who called police, Robert Royce Eubanks, 40, pleaded no contest to filing a false report and served 15 days in jail.

As for why the phony call about an armed intruder was made to police, attorney David Jones said there was probably a "personality conflict between the caller and the people in the apartment."

The case has brought new attention to a law that gay and lesbian activists have said is rarely enforced. Activists and attorneys could cite no Texas case in which consenting adults were prosecuted for engaging in private sexual conduct.

Before the statute was changed in 1973, the same act was a felony in Texas, whether performed by people of the same or opposite sex.

"(This case) is proof positive that sodomy arrests are made in the state of Texas," said City Councilwoman Annise Parker, who has urged Garner and Lawrence to challenge the law.

Gay civil rights groups have pledged to introduce proposals to strike the law from the books when the Legislature convenes Jan. 12.

"The sodomy law is so blatantly discriminatory," said Dianne Hardy-Garcia, executive director of the Lesbian Gay Rights Lobby of Texas. "My hope is that people will follow this case closely and see how gays and lesbians are treated in court."

Details of the case were made public on Nov. 6, though many local gay activists have known about the arrests for weeks. Opponents of the state's sodomy law didn't want pretrial publicity to intimidate the two men or a judge who would hear the case.

Gay activists have tried for years to have the sodomy law struck from the books, arguing that it is often used to justify anti-gay discrimination. But with no defendant in a criminal case, efforts to remove the law have met with mixed success.

In 1994, the Texas Supreme Court

civil challenge to the sodomy law because the plaintiffs never had been prosecuted under it. But in a separate civil case, a lower court had ruled the statute was unconstitutional.

Garner and Lawrence could plead guilty and pay a fine to avoid their Nov. 20 court appearance, which would dash the hopes of activists who see the case as a strong legal challenge.

For the constitutionality of the case to be tested, it must first make it to county court and then into the state's criminal court system.

Katine declined to discuss defense strategy, but hinted that the two men will appear in court.

When they step before Justice of the Peace Mike Parrott, Garner and Lawrence will be among a few hundred other criminal suspects to register initial pleas in cases, Parrott said in an interview this week. No testimony or evidence will be presented during the brief court appearance.

Parrott said increasing interest in the case by the media and gay activists won't affect court proceedings.

"It doesn't really matter what our opinion is," Parrott said. "It is the law and we have to hear both sides of the case and make our decision on that."

District Attorney John B. Holmes, whose office will prosecute the case, has questioned the fairness of the law. But he insists that a law is a law, no matter how rarely enforced.

"Wouldn't it be presumptuous if the district attorney said 'I'm only going to prosecute the crimes I come with?'"



Eubanks: Served 15 days in jail for filing false report in case

the best way to get rid of a bad law is to enforce it."

Even if the case moves forward, activists warn that the conservative tilt of the county's and state's judicial system could mean more hurdles to face during a challenge to the law.

"I don't think by any way, shape or form that this is a slam dunk issue. I wouldn't have everybody jumping up and down right now," Hardy-Garcia said.

If the case becomes a rallying point for gays, they should be prepared to support the two defendants, Parker said, who could face intense media coverage and pressure.

"If they go forward, we as a community need to make sure the legal bills get picked up and support them," she said.

Texas is one of six states that make consensual oral and anal sex between homosexual couples a crime, even if the sex takes place behind closed doors in a

home. Thirteen other states have sodomy laws banning such sex between heterosexual or homosexual couples.

The U.S. Supreme Court in 1986 upheld Georgia's sodomy law as applied to its ban on consenting adults engaging in homosexual conduct. (Story, Page 4A)

The decision prompted gay rights advocates to file lawsuits in state courts arguing the laws violate state constitutions. Many constitutions provide greater protection of privacy than the U.S. Constitution.

Neil McCabe, a professor at South Texas College of Law, said the Texas law is unconstitutional.

"In these essentially private activities people are protected as part of a constitutional right of privacy," McCabe said. "Our Texas courts have held there is a constitutional right to privacy."

The Associated Press contributed to this report.

Gays await decision in Louisiana sodomy case

NEW ORLEANS — Gays who must break a state law to have sex went to court in late October to overturn Louisiana's sodomy law, saying it is unconstitutional and legitimizes hatred of gays. Civil District Court Judge Carolyn Gill-Jefferson is expected to make a decision by year's end.

About 2,000 heterosexuals and homosexuals were arrested for violating the law between 1988 and 1994, said John Rawls, the attorney who filed the lawsuit on behalf of seven other petitioners and the Louisiana Electorate of Gays and Lesbians. But he said homosexuals risk being targeted more because legal intercourse is not one of their sexual options.

"It works as a convenient justification for people who want to beat up gays and lesbians on the streets."

The law has not been enforced since the lawsuit was filed in 1994, when a judge halted prosecution of sodomy cases. Lawyers for the state argued that Louisiana has the right to deter immoral conduct and impose penalties, but they gave no opening argument. Assistant Attorney General



Rawls: Gays risk being targeted because legal sex is not an option

gay discrimination. But with no defendant in a criminal case, efforts to remove the law have met with mixed success.

In 1994, the Texas Supreme Court ruled it did not have jurisdiction over a

"Wouldn't it be presumptuous if the district attorney said 'I'm only going to prosecute the crimes I agree with,'?" Holmes said. "But I've always said that

ed more because legal intercourse is not one of their sexual options.

"This law is government's way of saying we're second-class citizens," he said.

penalties, but they gave no opening argument. Assistant Attorney General Thomas Halligan, the lead attorney, declined comment.

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Sodomy statute in Texas

A chronology of events in the development of the 119-year-old sodomy statute in Texas, which states gay sex is "deviate sexual intercourse" and classifies oral or anal sex between same-sex couples as a misdemeanor:

- **Nov. 19, 1979:** Donald F. Baker, 32, a former Dallas elementary school teacher and president of the Dallas Gay Alliance (now called the Dallas Gay and Lesbian Alliance), files suit in U.S. District Court of the Northern District of Texas challenging the constitutionality of Section 21.06 of the Texas Penal Code. The suit, known as Baker v. Wade, names as defendants all district, county and city attorneys in Texas. The case is assigned to U.S. District Judge Jerry Buchmeyer of Dallas.

- **June 1981:** Buchmeyer presides over a three-day trial during which Baker's lawyers contend the statute violates constitutional guarantees of privacy and equal protection.

- **Aug. 17, 1982:** Buchmeyer issues a 53-page opinion declaring that the state law violates the right of privacy and the right of equal protection guaranteed in the Fifth and Fourteenth amendments. He issues an injunction prohibiting the statute's enforcement. Texas Attorney General Mark White announces plans to appeal the ruling, but fails to do so before leaving office and being elected governor in Nov. 1982. His successor, Attorney General Jim Mattox, declines to appeal. Henry Wade, the Dallas County District Attorney named in the suit, also declines to appeal.

- **April 1984:** Potter County (Amarillo) District Attorney Danny Hill files an appeal to the Fifth Circuit Court of Appeals on behalf of all district, county and city attorneys in Texas.

- **Sept. 1984:** A three-judge panel of the Fifth Circuit dismisses the appeal, ruling that Hill has no standing to pursue the

case. Hill requests a re-hearing before all 16 judges on the appeals court.

- **Aug. 26, 1985:** The full appeals court, on a 9-7 decision, rules that Hill has standing to appeal, and reverses Buchmeyer's decision. In a three-page majority opinion, the court ruled that "engaging in homosexual conduct is not a constitutionally-protected liberty." Baker announces plans to appeal to the U.S. Supreme Court.

- **June 30, 1986:** The Supreme Court issues its landmark decision in Bowers v. Hardwick, a Georgia case, declaring, "The Constitution does not confer a fundamental right upon homosexuals to engage in sodomy." The decision is the Court's standing precedent on the right of states to maintain laws against sodomy.

- **July 1986:** The Supreme Court declines to rule on the Baker appeal, citing its decision in the Bowers case. The Fifth Circuit decision in Baker is allowed to stand.

- **April 12, 1989:** Five gay men and lesbians — Linda Morales of Houston, Patricia Cramer and Tom Doyal of Austin and Charlotte Taft and John Thomas of Dallas — file a lawsuit in Travis County District Court in Austin, claiming that Sec. 21.06 violates the right to privacy, equal protection and due process guaranteed by the Texas Constitution. The case is known as Morales et. al. v. State of Texas.

- **Dec. 10, 1990:** Ruling from the bench at the completion of a one-day trial, state District Judge Paul Davis finds for the plaintiffs in Morales. After five minutes of deliberations, Davis issues an oral opinion declaring that Sec. 21.06 violates provisions of the Texas Constitution.

- **March 15, 1991:** Davis issues a permanent injunction blocking the state "from arresting, prosecuting or otherwise enforcing" the statute.

- **April 5, 1991:** Texas Attorney General Dan Morales appeals the case to the

Court of Appeals, Third District of Texas, in Austin.

- **Jan. 29, 1992:** The Court of Appeals hears oral arguments on the state's appeal.

- **March 11, 1992:** The Court of Appeals, ruling 3-0, upholds Davis' decision that Sec. 21.06 violates the right to privacy. Appeals Judge Jimmy Carroll writes for the court: "We can think of nothing more fundamentally private and deserving of protection than sexual behavior between consenting adults in private." The court declines to determine whether the statute violates state constitutional guarantees of due process or equal protection.

- **May 6, 1992:** Attorney General Dan Morales, in an unusual move, appeals to both of Texas' highest courts — the Court of Criminal Appeals and the Texas Supreme Court.

- **May 14, 1992:** The two high courts say the appeal will be accepted and heard by one panel. The courts agree to schedule a joint conference to determine which court will hear the appeal. The Court of Criminal Appeals later rejects the appeal, saying it has no jurisdiction since the case does not involve an actual criminal prosecution.

- **Jan. 5, 1993:** The Texas Supreme Court hears oral arguments in the state's appeal. Assistant Attorney General Harry Potter argues that the case involves "public morality, a decision by the body politic of the State of Texas" that homosexual conduct is unacceptable. Plaintiffs' attorney Patrick Wiseman contends that the state has no compelling interest in regulating homosexual behavior.

- **Jan. 12, 1994:** The Texas Supreme Court dismisses the Morales appeal. The justices ruled, 5-4, that the state Supreme Court has no jurisdiction over the constitutionality of a criminal statute.

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NEWS

Campaign on Saturday to oppose anti-gay proposal

Opponents of an expected proposal to ban gays from adopting children or serving as foster parents will attempt to build grassroots support during a letter-writing campaign Saturday.

A coalition of civil rights groups and gay activists — including City Councilwoman Annise Parker — will fan out across six locations beginning at 10 a.m. Saturday in the hopes of drafting hundreds of letters during a campaign against the measure, which has been pledged by state Rep. Warren Chisum (R-Pampa).

Chisum's proposal would prohibit the adoption of children or their placement in foster care in a home if the state Department of Protective and Regulatory Services determines that any offense under the Texas Penal Code or drug offense under the Texas Health and Safety Code is occurring or reasonably likely to occur. Sodomy is a third-class misdemeanor under state law, though the statute has been ruled unconstitutional, and Chisum has said homosexual activity violates state law.

The letter-writing campaign will encourage gays and lesbians to either sign a brief letter opposing the adoption ban crafted by activists, or urge them to write their own, officials said. Activists will station at Toohee's, 1830 W. Alabama; Crossroads, 1111 Westheimer; Cafe Artiste, 1501 W. Main; LOBO, 3939 Montrose; Baby Barnaby's, 604 Fairview; and



Parker: Scheduled to take part in Saturday letter-writing campaign

protective services supervisor in Dallas was reassigned for violating department policies when she removed the 3-month-old son of a crack addict from the foster care of a lesbian couple. The case drew national attention.

Sodomy law topic of discussion Wednesday

Hate crime and the state's sodomy law will be the focus of a discussion at the University of Houston Law Center on Nov. 18. Representatives from the law school, Anti-Defamation League and the Montrose Counseling Center are scheduled to speak at the event, sponsored by Mandamus, a group of gay and lesbian law students.

"Many states, including Texas, have adopted hate crime legislation that protects homosexuals and others while at the same time outlawing acts like sodomy, which in effect makes homosexual sex illegal," said Professor Irene Rosenberg, who will take part in the discussion. "This statutory schizophrenia, if you will, is the sort of thing that will be discussed at the event."

The event begins at 1 p.m. at Krost Hall auditorium at the University of Houston Law Center on Calhoun Road. For more information, call 713-743-2184.

Food drive continues for Hurricane survivors

Gays and lesbians are working with the Honduran Consulate in Houston in a drive to bring food, clothing and supplies to the survivors of Hurricane Mitch in Honduras. The storm recently ravaged Central America, destroying entire villages and leaving more than 10,000 dead.

Organizers of the drive say food and supplies are scarce in the region. Non-perishable food, water, health and living supplies are being accepted at the

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to write their own, officials said. Activists will station at Toopee's, 1830 W. Alabama; Crossroads, 1111 Westheimer; Cafe Artiste, 1501 W. Main; LOBO, 3939 Montrose; Baby Barnaby's, 604 Fairview; and Charlie's, 1102 Westheimer.

The idea for the anti-gay adoption ban came last year after a children's

Central America, destroying entire villages and leaving more than 10,000 dead.

Organizers of the drive say food and supplies are scarce in the region. Non-perishable food, water, health and living supplies are being accepted at the offices of Jacqueline Doval, 404 Westheimer. Donations will be collected from 10 a.m. to 5 p.m. until Nov. 18.

High court set precedent with Georgia case

From staff reports

A split ruling by the U.S. Supreme Court in 1986 has allowed states such as Georgia and Texas to keep laws outlawing sodomy on the books. How the case unfolded:

At the age of 28, Michael Hardwick was a bartender at a gay bar in Atlanta, Ga. One hot August night, he left work and headed home on foot, sipping a cold can of beer. A police officer, Keith Torrick, arrested him for drinking in public, and a court later fined him for the offense.

Hardwick paid the \$50 fine and even got a receipt, but a computer snafu failed to reflect the payment, and Torrick later decided to hunt Hardwick down and arrest him for failing to appear on the charges. When Torrick arrived at Hardwick's home, a friend had been sleeping on the couch and let the officer in, pointing him to the bedroom.

The bedroom door was ajar, and Torrick saw Hardwick engaged in oral sex with another man and arrested them both for violating Georgia's law that makes private, consensual sodomy between two adults — gay or straight — a criminal felony.

The charges were later dropped, but Hardwick took his case to the courts, where he squared off against Georgia Attorney General Michael Bowers, who later became a party to another famous gay civil rights case when he fired lawyer Robin Shahr from his staff after learning that she was a lesbian.

Hardwick won his case before a federal appeals court, but in 1986, the U.S. Supreme Court ruled in Bowers' favor, concluding that the

federal right to privacy — which had struck down laws prohibiting condom sales and abortions — did not extend to protecting the right of homosexuals to engage in sodomy.

The 5-4 ruling is a story in itself. Immediately after oral argument in the case, the vote was 5-4 in Hardwick's favor. But conservative Justice William Rehnquist put pressure on swing vote Lewis Powell, asking whether he wanted to be remembered as the justice who saved gay sex. Powell relented and the Court upheld Georgia's sodomy law. Later in his life, Powell said that out of the thousands of cases he ruled on, the Hardwick vote was the single decision he regretted.

After losing his case, Hardwick faded back into private life. He moved to Miami in the late 1980s, working as a bartender. By 1989, he was working in Miami Beach as an artist, creating large paper-mache designs for the interiors of local nightclubs.

He reportedly died of AIDS in 1989 or 1990, but no newspaper ran an obituary and local authorities have no official record of his death. Bowers, who vigorously defended Georgia's sodomy law, failed earlier this year in his bid to win the state's Republican nomination for Governor. Most attributed his election loss to his admission that, during the time he defended Georgia's sodomy law and fired Shahr, he had been engaged in a decade-long affair with a woman not his wife. In an interview with *George* magazine, his mistress said that, as far as Georgia's sodomy law is concerned, "Michael Bowers is a hypocrite."