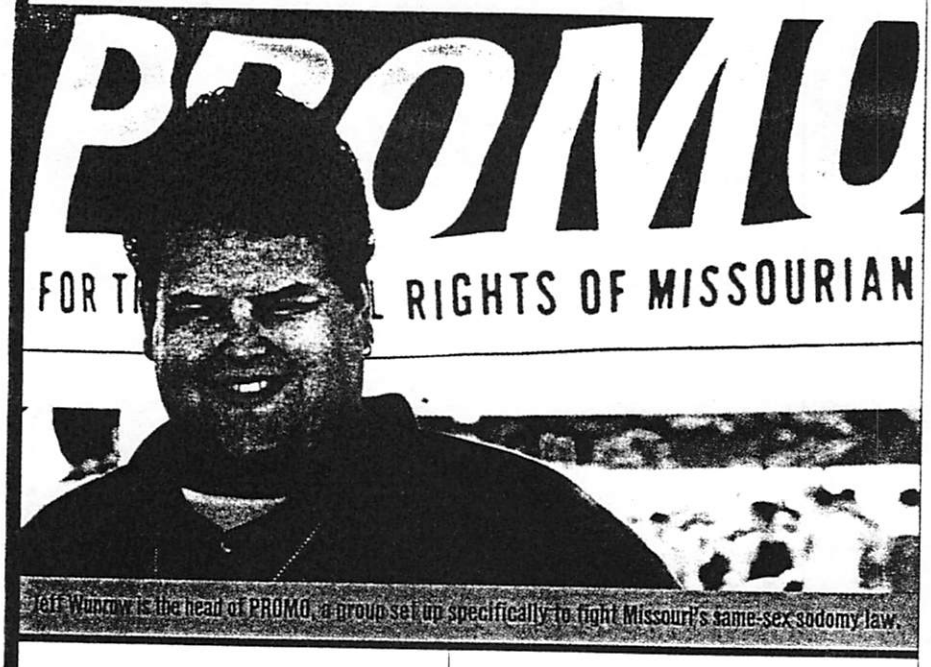
Full assault on sodomy laws

The repeal of Arkansas's sodomy law and the arrest of six men at a Missouri video store are just the latest examples of turmoil over these archaic antigay laws BY CHRIS BULL



Jeff Wunrow is the head of PROMO, a group set up specifically to fight Missouri's same-sex sodomy law.

It was a story that seemed more likely to come out of the Middle East than the American Midwest: Uniformed police officers brandishing semiautomatic weapons busted through the back door of an adult video store in Jefferson County, Mo. Six men were handcuffed, taken to the local jail, and 12 days later charged with violating the state's ban on same-sex sodomy. Throughout their night in jail the men were subjected to a barrage of antigay epithets from police officers.

When the charges were filed in March, the men found that their names and photographs were being featured on local TV news, which erroneously reported that they had been charged with prostitution. (*The Advocate* is withholding the men's names out of respect for their privacy.)

"The defendants in this case were traumatized," says Denise Lieberman, legal director of the American Civil Liberties Union of Eastern Missouri, which is providing legal representation to at least three of the men arrested that night. "The police were so intense that [the defendants] thought they were being robbed, not arrested." One defendant's wife learned about her husband's same-sex attraction through the TV news report. Another defendant is in the middle of a custody battle in which the arrest is being used against him. None of the men involved in the case responded to interview requests by *The Advocate* made through Lieberman.

The men were charged with violating the state's "sexual misconduct law" in the police raid at Award Video, which has long been targeted by local church and antipornography groups. Released from jail the day after they were arrested, they now face a fine of $1,000 and up to one year in prison if found guilty of the charges. No trial date has been set.

Seven additional store patrons, who police said were having heterosexual sex when they were arrested, were released when the Jefferson County prosecutor said he could find no state law under which to charge them.

The raid is a dramatic example of the ways in which sodomy laws, which ban a variety of sexual acts among consenting adults other than vaginal intercourse, are wielded against gay people. With the July 5 overturning of the Arkansas sodomy law by that state's supreme court, four states—Kansas, Missouri, Oklahoma, and Texas—ban only same-sex sodomy. Eleven other states ban anal and/or oral intercourse, whether between heterosexual or homosexual adults. Although actual enforcement of these laws is rare, the statutes are often cited to the detriment of gay men and lesbians in legal cases on issues that include employment, custody, and marriage.

"The label of 'criminal' is used to justify additional restrictions on jobs, housing, public accommodations, adoption, and all the rights and responsibilities the rest of community takes for granted," Lieberman says. "The argument is always, 'How can we sanction same-sex relationships if the conduct is criminal? How can we justify including sexual orientation in civil rights laws when it violates state law?' "

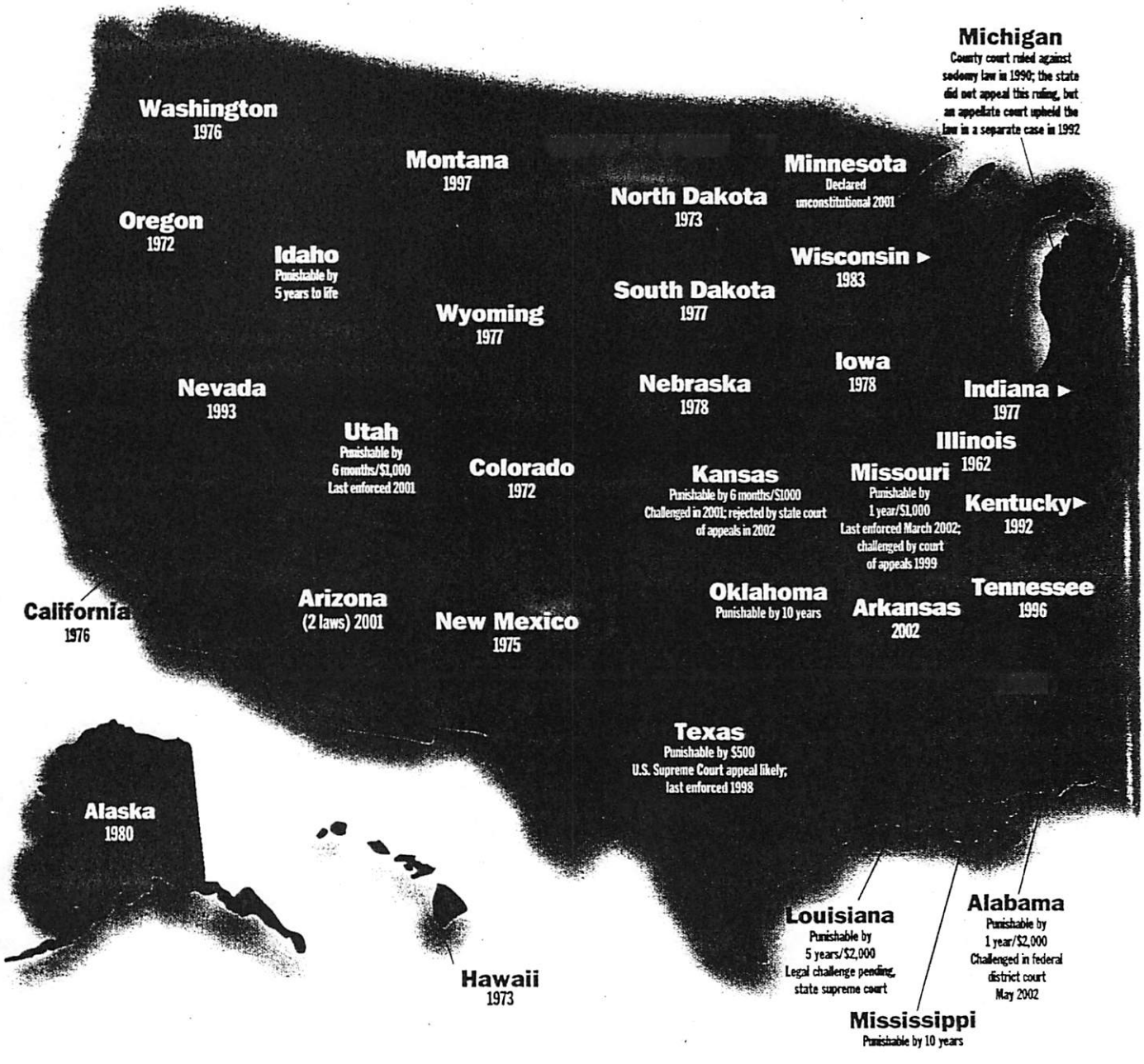
The movement to rid the nation of the archaic laws has made major inroads since 1986, when the U.S. Supreme Court upheld the constitutionality of Georgia's measure in *Bowers* v. *Hardwick*. At the time 25 states had sodomy statutes on the books. Since then laws in 10 states and the District of Columbia have been repealed or invalidated.

The U.S. Supreme Court may have an opportunity to revisit the much-reviled *Bowers* case. Lambda Legal Defense and Education Fund, a national gay rights legal group, is considering an appeal of a 2001 Texas court decision upholding the constitutionality of the state's same-sex sodomy law. The case, which involved two men arrested in ▶

EMMETT MORRIS

Are you breaking the law?

Where does your state stand on sodomy laws? **BY JEREMY QUITTNER**



Most gay men and lesbians consider sodomy laws relics from an era long gone—and for the most part they are. Although laws are still on the books in 15 states, officials in most of those states can't say when the laws were last enforced. That doesn't mean they won't be enforced, however, as gay legal experts are quick to point out. In fact, six men were arrested in March on charges of violating Missouri's same-sex sodomy law. Presented here is a map of the nation's sodomy laws, including the penalties you can face if you are caught breaking those laws.

1998 while having consensual sex in a private home, is the perfect test case for federal Supreme Court review, says Susan Sommer, supervising attorney at Lambda. If the court grants review and overturns the Texas law, it could knock out every remaining sodomy law in the nation. Sommer says that trying to read the leanings of the nation's highest court is "guesswork" but insists, "We wouldn't be considering [the appeal] if we didn't think we had a good shot at winning this one."

If the current political climate is any indication, Sommer may well be right. Existing sodomy laws are often dismissed as relics of the jurisprudential past. Even antigay conservatives have denounced the laws as affronts to individual liberty.

And the prosecutor in the Jefferson County case, Bob Wilkins, came close to apologizing for invoking the statute. However, he told the *St. Louis Post-Dispatch* that the action was needed to stop the "open and notorious activities at Award Video."

Despite the growing discomfort with the laws, they are proving extraordinarily difficult to overturn. "My sense is that the real frontal confrontations of these laws have come to a virtual standstill in the remaining states," says David J. Garrow, author of *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade*. "As is the case with abortion-funding litigation, the states where advocates of reform have a good chance have been pretty much worked over. What's left are states with the most hesitant judiciaries and legislatures."

Missouri is a case in point. The statewide gay rights group PROMO was founded in 1986 specifically to fight the same-sex sodomy law. Jeff Wunrow, PROMO's executive director, says his group has until recently received little help from the legislature. "It got to the point where we stopped filing repeal legislation because it was not going anywhere," he says. "It's a hard case, partly because the other side always points out that it's rarely enforced.

"We were also losing the battle of sound bites," Wunrow adds. "We keep talking about getting police out of the bedroom, but then legislators who support that argument get phone calls asking how they can support anal sex. These are issues they don't want to talk about."

Even so, Wunrow remains optimistic. Term limits will force a major realignment of the state legislature in November, and the influence of conservatives is on the wane.

And in February openly gay state representative Tim Van Zandt circulated a letter to legislators enumerating the states that have repealed similar laws in the past few years and calling on his colleagues to do the same. Thirty-three of the state's 162 representatives signed the letter. "Time will tell if this strategy will be effective or not, but given the amount of turnover this year, it seems worth the effort to try," Wunrow says.

Paradoxically, the adult-theater arrests may come to represent the demise of the law in the courts. Should the men be found guilty and their appeal reach the Missouri supreme court, four of the seven state supreme court judges seem sympathetic to a challenge based on the state constitution, Lieberman says. "Of course, you can never say for sure how judges will rule on any case, but the facts of this case show how unfair the law is—how it targets one group of people over another," she says. "We couldn't have invented a more striking example of why this law is so wrong." ■