

**NORTHWEST news**

# TRAIL BLAZERS

**In 1971 Oregon became just the fourth state to repeal its sodomy law**

by Pat Young

It took long enough, but with the U.S. Supreme Court ruling June 26 in *Lawrence vs. Texas*, it seems sodomy laws are finally on their way out.

Oregon repealed its sodomy law in 1971 as part of a revision of the entire criminal code. While that was clear, the early history of the statute is a bit fuzzy.

It was common practice for new territories to adopt the laws of existing territories. So in 1843, when Oregon's white settlers created a Blue Book, they pretty much adopted the laws of Iowa. And Iowa had adopted the laws of Wisconsin, which had adopted the laws of Michigan, which had a sodomy law on the books.

Therefore, it would seem Oregon outlawed sodomy in 1843. Not quite, says George Painter, who has done extensive research on the state's sodomy statutes.

"Some people think this so-called Blue Book was a legitimate government act, while others don't," he explains. "Even those who think it was actual law, they are not sure which Iowa code was adopted."

One version of the Iowa code made sodomy illegal. The other didn't. That's because in 1840 Iowa abolished all Wisconsin laws and created an Iowa code, which didn't mention sodomy. If that's the case, then it's possible that Oregon adopted the 1840 code and that sodomy was legal.

"When the Oregon territory was created by Congress in 1848, all existing laws were recognized, but we don't know the legal status of sodomy prior to that," Painter says.

The issue remained in limbo until Oregon's territorial Legislature issued its first official criminal code in 1850. The code did not mention sodomy, so it was clearly legal. But that didn't last long.



The fuzzy origin of Oregon's sodomy statute dates back to 1843, when white settlers created a Blue Book based on Iowa laws

Three years later, the Legislature passed another criminal code. This time sodomy was mentioned along with its common-law definition. People who violated the law faced a penalty of one to five years in the penitentiary.

The common-law definition of sodomy remained on the books until 1913, when it was revised. The common-law definition limited sodomy to anal sex between any two persons, or sex between a human and an animal of the opposite sex.

"The opposite-sex clause is in there because of the medical ignorance of the time," Painter says. "It was believed that conception could take place between a human

and an animal that would create some half-human monster. The anal sex provision is because in medieval times in witchcraft, it was believed that the devil engaged in anal sex."

In 1873, the Oregon Supreme Court ruled that there were no common-law crimes in Oregon. That's different than a common-law definition, according to Painter. "If you are in a jurisdiction that recognizes common-law crimes, that means something can be against the law even though there is no law against it because common law is unwritten law."

The "no common law" ruling meant that when the sodomy law was repealed in 1971, it

was gone for good. A common law against sodomy did not exist to replace the repealed law.

"I don't know why some 30 years went by before anyone was prosecuted under the law," Painter states. "But it goes with that high Victorian morality of the late 1880s as being a time for very increased agitation for so-called moral laws. Back in those days most people just meekly went to jail."

However, in 1913, sodomy definitely made the news when several men were arrested as part of a vice scandal. Their lives were ruined as they appealed their arrests. One was a doctor who lost his license. Another was an attorney who kept his license, but no one would practice law with him. A third man left the country.

As a result of this scandal, the sodomy law was revised to have a broad definition so that practically any erotic act was covered by it, Painter notes. It also raised the maximum penalty from five years to 15 years. Meanwhile, an "attempt" to commit sodomy was considered a crime under Oregon's general "attempts statute."

"In 1971, Oregon became just the fourth state to repeal its sodomy law, so it was a very early repeal," Painter says. "And it was done as part of the comprehensive criminal code revision. That way it attracted far less attention."

Painter gives several reasons for the repeal. For one, it was virtually impossible to enforce a law against private consensual behavior. People could be blackmailed under the law. And finally, "there was just this feeling that this was not an appropriate role for government to play." □

PAT YOUNG is a Portland free-lance writer and gay and lesbian historian.



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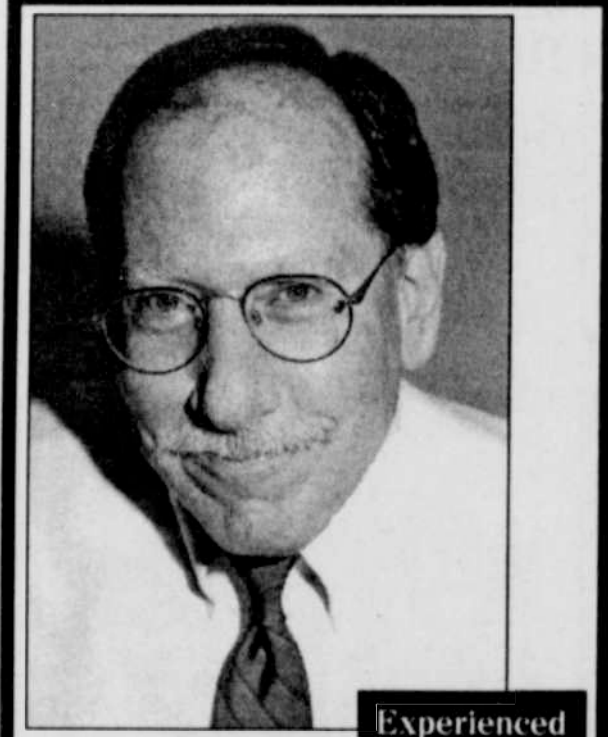


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