

April 14, 1965

Joseph R. Risdell, Esquire  
42 East Main Street  
East Islip, New York

Dear Mr. Risdell:

Thank you for your letter of April 13, 1965, in response to my letter of April 5th.

Without rehashing the issues and contentions relating to the sex crime legislation in question, let me correct a misapprehension contained in the last paragraph of your letter to the effect that the Legislature is being asked to swallow our whole package without reservation or nothing at all. Several "amendments" to the Proposed Penal Law will be offered to the Legislature along with the main bill. These relate to some of the more controversial sections and areas, including the ones at hand. In short, the Legislature will, if it decides to pass the bill, have a choice of accepting it in its present form or, inter alia, with the presently omitted sodomy and adultery provisions inserted therein.

We are following this procedure out of practical as well as equitable considerations. We have no desire of either "forcing through" controversial legislation with a "shotgun" approach or of jeopardizing our whole project by permitting it to be defeated solely through rejection of narrow, individual provisions or concepts forming a small part of the total enterprise.

Sincerely,

Richard G. Denzer  
Counsel

rgd:b  
cc: Senator Elisha Barrett  
rjb

JOSEPH R. RISDELL  
COUNSELLOR AT LAW  
42 EAST MAIN STREET  
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JUNIPER 1-4320

April 13, 1965

Richard G. Denzer, Esquire  
Counsel Temporary Commission, etc.  
155 Leonard Street  
New York, New York      Room 654

Dear Mr. Denzer:

I have your letter of April 5, which is in response to my letter of March 22 to Senator Elisha Barrett. I am familiar with the proposed changes in the Penal Law now affecting homosexual activities and adultery, and realize that some of the changes are good. What I object to is the abolition of the ban on "consensual" cases, which you say "is of no practical utility". It most certainly is of practical utility if publicity is given, as it should be, to the fact that you are abolishing the prohibition. The practical affect of the widespread publicity this will get will be to inform adolescents and young adults that what was formerly prohibited is now perfectly legal. I don't want to repeat the arguments set forth in my letter to Senator Barrett, which you have no doubt read, but certainly we might expect the changes I mentioned in theatrical and movie productions, as well as literature and picture magazines on the newsstands. On the other hand it may be that you, as so many do nowadays, do not believe in any kind of censorship either, and that therefore, in the words of the last sentence of your letter, such exhibitions "should not be prevented by a possibility that this action might temporarily be misconstrued by some members of the community". The "some members of the community" are the young, who will be the adults of future years, and I do not think that you should shrug them off in this fashion.

I note that you express the belief that consensual homosexuality between adults is "widely regarded as an illness rather than as a crime". I can assure you that it is also widely regarded as a crime rather than as an illness. The reading of the histories of the Greek and Roman civilizations will indicate to you that as those civilizations reached their peak, such activities became more and more widespread, until they were regarded as "normal". Is it the contention of the "modern sociological and psychiatric" experts you refer to that such widespread evil was based on illness rather than a slackening of the moral standards and moral tone of those communities? It seems to me, and I am not alone in this, that the mask of "illness" is used very largely to cloak activities indulged in by people who are not really ill, but who have sought and found new and different means of gratification.

Cont.

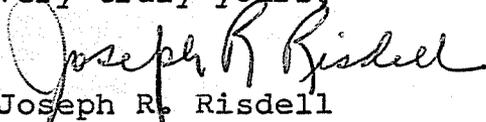
Cont. Richard G. Denzer, Esquire

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In any event, it seems that for some reason your Commission is intent upon making this change rather than leaving these prohibitions on the books, where, by your own admission, they do not harm any of the people who indulge in such activities. There is a strange contradiction in your letter. On the one hand you say that the "policeman is supposed to wink" at these crimes now on the books, and on the other hand you say that such violations cannot be prosecuted to conviction. Perhaps if the policeman didn't "wink", there would be more violations prosecuted to conviction. In any event, leaving the bans on the books will not nearly as much harm as the removal of them will do, and when you are dealing with social matters, which may have great and far reaching ramifications, it is better to do nothing than to do something that is of doubtful value.

I am informed that this bill is so arranged that it is impossible for our legislators to limit their vote to any portion or portions of it, and that it is an "all or nothing" affair. This is certainly a "shotgun" or "meat cleaver" approach to a bill which has so many provisions. This is one means of forcing through provisions which may be undesirable to some sections of the public, or even to all the public, because the alternative is to forego for the time being the benefits that may accrue from other provisions. This is a very unsatisfactory legislative means in a democracy.

Very truly yours,

  
Joseph R. Risdell

JRR:mr

cc - Senator Elisha Barrett  
Senate Office Building  
Albany, New York

Assemblyman Prescott B. Huntington  
The Assembly  
Albany, New York