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First and Last Chance: Looking for Lesbians in California's Fifties Bar Cases

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FIRST AND LAST CHANCE: LOOKING FOR LESBIANS IN FIFTIES BAR CASES

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Do all of us who choose members of our own sex as objects of desire and as sexual partners share some meaningful common identity, such as "homosexual," "gay" or perhaps "queer"? The classifications "homosexual" and "gay" claim for themselves just that kind of inclusiveness; that is, that the gay world includes people of all races, all classes and any possible gender identity. You, me, James Baldwin, Gertrude Stein, J. Edgar Hoover: we are all gay together. In this way "homosexual" or "gay" is a generic term, like, for example, "human being." But we know that the alleged inclusiveness masks just the opposite: the classification "homosexual" or "gay" highlights sexual orientation related to object choice and simultaneously submerges race, class and gender. By common understanding, the classification "lesbian" reveals gender, but race and class remain erased, hidden.

This essay explores a specific site in gay legal history, as reflected in four appellate cases from California's efforts during the fifties to shut down gay bars by revoking liquor licenses.[1] My goal is to peel back the generic "gay" in those cases to reveal the omnipresent sexual orientation, gender, class and racial identities that determined what it meant to be "homosexual" in California during the fifties, and that intersect within each of us today.

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1. For discussions of lesbian bars in the fifties, see LILLIAN FADERMAN, ODD GIRLS AND TWILIGHT LOVERS 159-75 (1991); ELIZABETH LAPOVSKY KENNEDY & MADELINE D. DAVIS, BOOTS OF LEATHER, SLIPPERS OF GOLD: THE HISTORY OF A LESBIAN COMMUNITY 29-112 (1993); AUDRE LORDE, ZAMI: A NEW SPELLING OF MY NAME 176-84 (1982); JOAN NESTLE, A RESTRICTED COUNTRY 74-77, 100-09 (1987). *See generally* JOHN D'EMILIO, SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940-1970 (1983).

My focus on the bars is in part a choice to highlight lesbian sexuality: dancing, flirtation and desire. This is a sober story, however, because it reminds us of the agony of a culture of resistance built on alcoholism and repression, and exploited by entrepreneurs, the bar owners — the plaintiffs in these cases.

The story is also sobering because it tracks legal repression becoming worse, not better, over time. In many ways, the fifties were a terrible time for gay men and lesbians. The relative freedom of the World War II years was followed by crackdowns on subversion and perversion, intertwined in the rhetoric of American leaders. Homosexuals, including lesbians, start out in 1951, in *Stoumen v. Reilly*[2] as "human beings," albeit generic, unsexed, unraced and unclassed human beings, with civil rights recognized by the California Supreme Court. By the end of the decade, in *Vallerga v. Department of Alcoholic Beverage Control*,[3] the same court particularized its representation of homosexuals by including indicia of sexual orientation, gender, class and sometimes race, but also reduced these "human beings" to "sexual perverts." "Sexual perverts," of course, have fewer rights than "human beings."

This transformation in the law from human being to sexual pervert is a sober journey with stops at four bars. The first is the once-famous Black Cat, located in San Francisco's North Beach, the bar at issue in *Stoumen*. At the license revocation hearing, its owner, Sol Stoumen, described the Black Cat as "one of the few remaining colorful Bohemian traditions in the City of San Francisco."[4] Stoumen offered proof that the real reason the Department of Alcoholic Beverage Control ("ABC") shut down the Black Cat was his ongoing dispute with the bartenders' union.[5] However, the official ground for the

2. Stoumen v. Reilly, 234 P.2d 969 (Cal. 1951).

3. Vallerga v. Dep't of Alcoholic Beverage Control, 347 P.2d 909 (Cal. 1959).

4. Clerk's Transcript at 6, *Stoumen* (No. S.F. 18310); *see also* John D'Emilio, *Gay Politics and Community in San Francisco Since World War II*, *in* HIDDEN FROM HISTORY: RECLAIMING THE GAY & LESBIAN PAST 456, 463-64 (Martin Duberman et al. eds., 1989) (describing the influence of the Black Cat and its prominent drag entertainer, José Sarria, subsequently the first openly gay mayoral candidate in San Francisco).

5. Appellant's Petition for a Hearing by the Supreme Court at 11-13, *Stoumen* (No. S.F. 18310). Until the California Supreme Court opinion, the vast majority of the litigation was taken up by Stoumen's outrage at having been deceived by the ABC. Stoumen had arranged to settle the matter with the ABC Director, and had been assured that the hearing was pro forma. Stoumen showed up and lost his license after an actual hearing took place on whether the Black Cat was, in fact, a meeting place for homosexuals. *Id.* In other words, Stoumen's main arguments were estoppel or procedural due process theories based on the unfairness of a "fix" not holding. *Id.*; *see also* HERB CAIN, BAGHDAD BY THE BAY: A COLORFUL, ENTERTAINING, PROFILE OF

loss of license was that the Black Cat offended public morals. This was based on San Francisco Police Inspector Frank Murphy's testimony that it was "50 percent homos going in there, and 50 percent tourist . . . ."[6] Sol Stoumen's adamant defense was that he ejected all the "homos."[7]

In spite of their client's rampant homophobia, Stoumen's attorneys presented human rights arguments, backed up by three volumes of the Kinsey report[8] filed as exhibits. Their important victory at the California Supreme Court has been identified by Professor Patricia Cain as the probable "first successful American 'gay rights' case."[9]

The California Supreme Court announced in *Stoumen* that although the State had authority to revoke a liquor license to protect "public welfare and morals," the fact that a bar was a meeting place for homosexuals was not sufficient grounds for license revocation. After all, preached the court, homosexuals "are human beings" too.[10] The California Supreme Court cited an Oklahoma decision finding prostitutes to be human beings: "The [Oklahoma] court pointed out that such women are human beings entitled to shelter and that it is not a crime to give them lodging unless it is done for immoral purposes. The same reasoning applies to the patronage of a public restaurant and bar by homosexuals."[11]

How, then, does *Stoumen*, the landmark gay rights victory, represent or describe homosexuals? Homosexuals are human beings —

LIFE, PEOPLE, AND PLACES IN MODERN SAN FRANCISCO 169, 177-78 (1949) (describing the Black Cat as an intellectual/artist hangout picketed daily because the bartenders doubled as waiters).

6. Respondent's Brief at 19, *Stoumen* (No. S.F. 18310); *see also*, Terry Hansen, *Don't Call Us "Queer City"*, MEN, Apr. 1955, *reprinted in* MARTIN DUBERMAN, ABOUT TIME: EXPLORING THE GAY PAST 184-86 (1986) (recounting events "told to" Terry Hansen, a journalist, by Lt. Eldon Beardon, then Chief of the Sex Crimes Squad of the San Francisco Police Department, and describing arrests of gay men, including arrests by Officer Frank Murphy).

7. Appellant's Reply Brief at 14, *Stoumen* (No. SF 18310).

8. ALFRED C. KINSEY, ET AL., SEXUAL BEHAVIOR IN THE HUMAN MALE (1948). The famous Kinsey reports had been recently published. They purported to separately describe the "human male" and "human female," although the chapter on male homosexuality claimed that lesbian activities "are quite the equivalent of sexual relations between males." Furthermore, the studies regarding homosexuality in the "human male" were based entirely on white subjects. *See id.* at 611.

9. Patricia A. Cain, *Litigating for Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551, 1567 (1993).

10. *Stoumen*, 234 P.2d at 971 (quoting Patterson v. State, 132 P. 693, 695 (Okla. Crim. App. 1913)).

11. *Id.*

human beings who are entitled to engage in "[e]ven habitual or regular meetings . . . for purely social and harmless purposes, such as the consumption of food and drink."[12] How does this most important gay rights case represent lesbians? Sex is simultaneously missing and very present. Sex is missing in that no distinction is made by the courts, the lawyers or the police, between gay men and lesbians.

In this false conflation of lesbians and gay men, *Stoumen* is not very different from gay rights decisions of our day. That the false and misleading erasure of differences between gay men and lesbians is so well-entrenched suggests something even deeper than the general tendency of men[13] to notice men. Similarly, the invisibility of sex and gender differences, even within the modern category of "gay men and lesbians," suggests a deep-seated, false, heterosexist notion that lesbians are not real women and gay men are not real men, and therefore both groups can be lumped somewhere in the middle between the perceived polar opposites of male and female.[14]

On the other hand, in a complex, weird way, sex is everything in *Stoumen*, as in all gay rights cases. Sex — and sexual attraction to the wrong one, the same one — is *the* defining characteristic of the category.

Sex is not the only identifier missing from the hopeful, but empty, representation of homosexuals as human beings provided by the *Stoumen* court. What race a lesbian might be, or really anything else about lesbians or gay men, is also missing. As is typical in liberal thought, the *Stoumen* court stripped lesbians of all particularity, all uniqueness and all diversity, and reduced them to their core: human beings with the right to gather, eat and drink. Thus marks one way to begin the problematic status/conduct dichotomy. The liberal notion of rights is that everyone has them, even prostitutes and lesbians, as long as they

12. *Id.*

13. The police officers, lawyers, bartenders, ABC agents, commissioners and hearing officer, as well as the judges deciding the case at the superior court, court of appeal and supreme court levels, were all men. *See Stoumen*, 234 P.2d at 969.

14. With the possible exception of family law cases, where the category "gay" bumps into gendered categories of "mother" and "father," gay and lesbian rights are litigated by gays and lesbians as if gender differences do not matter. From the briefs before the Supreme Court in *Bowers v. Hardwick*, to the military decisions, to the fifties bar cases, any differences between the lives of women who love other women and men who love other men disappear. I spent hours reading the records of these cases before I realized that the "First and Last Chance" was a lesbian bar. In this error, these cases from the fifties are not very different from the litigation on behalf of gay men and lesbians today, in which we continue to overuse the category of "gay men and lesbians."

are understood to be human beings. When conduct is added, or identifying characteristics are added, however, those rights can erode, sometimes very quickly. In the fifties bar cases, as soon as lesbians became anything more distinguishable than "human beings," they lost their inalienable rights to eat, drink and be gay.

It happened quickly. The California legislature was unhappy with the California Supreme Court's characterization of homosexuals as human beings, preferring the alternative (but still gender-neutral) category "sexual perverts." Under the leadership of then-Assemblyman Casper Weinberger, the legislature responded to *Stoumen* with a unanimously-passed amendment to the operative Business and Professions Code section, effective September 7, 1955, that provided for revocation of a liquor license for anyone operating a "resort for . . . sexual perverts."[15]

So much for the inalienable rights of human beings.

Kershaw v. Department of Alcoholic Beverage Control,[16] the first appellate case to test this new statute, concerned Pearl's, a bar in downtown Oakland. Searching for lesbians in Pearl's, or in *Kershaw*, proves more successful than in *Stoumen*, because the court in *Kershaw* provided detailed descriptions of the patrons. Unfortunately, the descriptions served to define sexual perversion.

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15. CAL. BUS. & PROF. CODE § 24200(e) (West 1955) (subsequently amended in 1963). This version of the statute provided for revocation of the liquor license:

> Where the portion of the premises of the licensee upon which the activities permitted by the license are conducted are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers, or sexual perverts. In addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort of illegal possessors or users of narcotics, prostitutes, pimps, panderers, or sexual perverts.

Id. *See* Nickola v. Munro, 328 P.2d 271, 271 n.† (Cal. Ct. App. 1958); Kershaw v. Dep't of Alcoholic Beverage Control, 318 P.2d 494, 495 n.1 (Cal. Ct. App. 1957).

The operative category in the legislation is gender-neutral: sexual perverts. Although the category of "sexual perverts" could include others as well, e.g., pedophiles, the legislative concern about liquor being served at "resorts for sexual perverts" apparently limited the class to gay men and lesbians who seemed to be the only ones who gathered in sufficient numbers to invoke the prohibition. This section was unanimously repealed in 1963, at the ABC's request, which (erroneously) claimed that the repeal was required by the *Vallerga* decision. *See* Letter from Philip J. Hanley, Area Administrator, Department of Alcoholic Beverage Control, to Governor Edmund G. (Pat) Brown (June 18, 1963) (California Legislative Archives, Sacramento, California); *see also* Memorandum from Paul Ward, Legislative Aide, to Governor Edmund G. (Pat) Brown (June 21, 1963) (describing the bill as making "technical non-substantive corrections") (California Legislative Archives, Sacramento, California).

16. *Kershaw*, 318 P.2d 494.

The first distinction added in *Kershaw* was sex. Men who danced, kissed and otherwise paired up with other men were noted,[17] as were women who danced and otherwise paired up with other women.[18] This marks the beginning of the move away from "human being." Although much of the explicit descriptions concerned men,[19] lesbians emerged. The specifically lesbian activity reported in *Kershaw* consisted of two occasions, six months apart, in which a woman (different each time) sat on another woman's lap and thighs were rubbed.[20]

Lesbians emerged; sex was noted. Lesbians are human beings, or sexual perverts, who are women. Lesbians, as represented in *Kershaw*, sit on one another's laps and rub thighs for sexual pleasure. We might also infer that they drink alcohol and hang out in bars, specifically a bar in downtown Oakland. Hanging out at Pearl's suggests some class definition; lesbians in *Kershaw* were working-class women.

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17. Although the appellate opinion includes few specifics, evidence in the record of perversion at Pearl's included that two men "kiss[ed] continuously without any break for 80 seconds." Reporter's Transcript at 111-12, *quoted in* Appellant's Opening Brief at 20, *Kershaw* (No. 17693).

18. *Kershaw*, 318 P.2d at 496.

19. For example, although men danced with men and women danced with women, only male couples were described as dancing "cheek to cheek in close embrace." *Id.*

> There were numerous incidents of male couples kissing one another. Some danced with their legs intertwined. In many instances both arms were wrapped around the partner's buttocks with loins pressed tightly against each other. Occasionaly [sic], a couple would stop dancing and engage in gyrations of the body with each partner's loins rubbing against the other partner's loins.

Id.

Much of the evidence at the hearing level concerned generic, ungendered, "homosexuals." For example, the evidence included an affidavit from Oakland Police Department Deputy Chief Thomas J. Rogers stating that officers had been checking Pearl's for at least two years and that "Pearl's has been known to be a place frequented by homosexuals" who had been "observed embracing each other, kissing one another, fondling each other's private parts, and deporting themselves as sexual degenerates." Affidavit of Thomas J. Rogers, dated Jan. 8, 1957, attached to Petition for Writ of Mandamus, *Kershaw* (No. 17693). Deputy Chief Rogers also reported that he "had received several complaints from parents regarding their minor children conversing about visiting said Pearl's." *Id.*

20. On May 28 or 29 one woman was observed sitting on another woman's lap. The latter had her hand on the other's thigh near her privates and was rubbing her hand up and down. On November 19 a similar incident occurred with two other women.

Kershaw, 318 P.2d at 496.

The lower court files also disclose more about one of the lap-sitting incidents involving lesbians. "One female, Orinda E. Pereira [sic], was seated on the lap of Dorothy Gardner. Dorothy worked her hand up Lorinda's leg and rested it in the vicinity of Lorinda's privates (both subjects were arrested by the [Oakland Police Department], charging violation of section 657.5, P.C. — Lewd Vag.)." Accusation, Count I(b), *Kershaw* (No. 17693). The evidence amassed against Pearl's included barely legible Municipal Court Docket Sheets that showed that Pereira and Gardner were each arrested pursuant to California Penal Code section 647.5, pleaded not guilty to that, subsequently pleaded guilty to California Penal Code § 650, and on November 3, 1955, received suspended 30 day sentences. Accusation, *Kershaw* (No. 278,421).

Race, however, was erased in both *Stoumen* and *Kershaw*. Nobody's race was mentioned, neither the whiteness of the attorneys, judges, hearing officer and other officials enforcing the morals of the state, nor the race of any of the patrons.

In spite of the ambiguities and general uselessness of the definition of lesbians in *Kershaw*, the California Court of Appeal made the task of learning how to identify lesbians quite important with its ultimate holding, namely, that gay men and lesbians are sex perverts within its "core of meaning to the average person."[21] The *Kershaw* court described homosexuals or sex perverts as:

> persons who are prone to and do engage in aberrant sexual conduct . . . and . . . use this public place as a haunt or gathering place for mutual stimulation of their sexually aberrant urges and a place of assignation for the renewal of old and the making of new associations looking toward the consummation of those urges.[22]

With that analysis, the court affirmed the decision to shut down Pearl's.

What about *Stoumen* — the binding authority about homosexuals as human beings (like prostitutes)? The *Kershaw* court distinguished *Stoumen* as dealing merely with conduct that was "harmless and not inimical to public welfare or morals. . . . [T]hat is a hypothetical situation not presented by the facts of this case."[23] The dancing, lap sitting and thigh rubbing patrons of Pearl's no longer were generic human beings with their sturdy bundles of rights. *Kershaw* was about sex perverts, men dancing with men, women dancing with women, so *Stoumen* did not control.[24]

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21. *Kershaw*, 318 P.2d at 498.

22. *Id.* at 497.

23. *Id.* at 498.

24. The *Kershaw* court purported to uphold *Stoumen*, as it suggested the legislature did, in enacting the (apparently contradictory) new California Business & Professions Code, section 24200(e):

> It would seem a fair inference to conclude that in making that amendment the Legislature acted in the light of and consistently with the rule of the Stoumen case, by inference excluding from the coverage of subdivision (e) the type of conduct which the Supreme Court had declared harmless and not inimical to public welfare or morals. The court having so recently and with such clarity said it, why should the Legislature say it again? However, as we have indicated, that is a hypothetical situation not presented by the facts of this case.

Id. at 498.

The appellate decision in *Kershaw* erased race and culture, attempting to isolate sexual perversion,[25] but the files in the case provide a little more information. Pearl's featured live organ music Thursday through Sunday, largely Latin American style. The entertainment also included burlesque female impersonators and comics, and perhaps male impersonators.[26]

For whatever reason, perhaps because it constituted *Stoumen*-type "harmless behavior," the California Appellate Court also ignored the extensive evidence offered at the hearing regarding what was said to be women dressing like men. The files tell us that on May 28, 1955, a "[f]emale employee, one Natalie Correa, worked on the premises attired in complete male attire,"[27] for which she was arrested pursuant to an Oakland ordinance that prohibited immoral dress.[28] Furthermore, on November 18, 1955, between 9:15 and 11:15 p.m., "three females dressed in male attire were present on the premises."[29] Later, between 11:35 and 1:45, "[s]ix females were seated at a table dressed in male clothing" and "female couples danced together."[30] The next night, November 19th, "24 male couples" danced, "two females danced together," and "[e]ight females present in male clothing held hands, goosed."[31]

What was this male clothing? ABC agent Laurence Strong testified that "Pereira had on slacks, as I remember, a cotton sport shirt and a jacket similar to a loafer jacket. Mrs. Gardner had on slacks also, some sort of a blouse — I don't know what kind — and a regular

25. For example, the appellate court noted that "the licensee [Pearl Kershaw] goosed one of the entertainers and the entertainer said to the licensee 'Are you inclined toward Lesbianism?' " *Id.* at 496.

26. For an account of male impersonators, see Lisa E. Davis, *The Butch As Drag Artiste: Greenwich Village in the Roaring Forties*, *in* THE PERSISTENT DESIRE: A FEMME-BUTCH READER 45, 45-53 (Joan Nestle ed., 1992).

27. Affidavit of Oakland Police Department Patrolman Jilion Wesley, attached to Accusation, *Kershaw* (No. 278,421).

28. Oakland, Cal., Ordinance 816 (May 8, 1879), *adopted in* CITY OF OAKLAND, CAL., CHARTER (Jan. 1892). Ordinance 816, prohibiting immoral dress provided, "It [is] unlawful for any person [in the City of Oakland] to appear in any public place naked or in a dress not belonging to his or her sex, or in an indecent or lewd dress." *Id.*

29. Accusation, Count II, *Kershaw* (No. 278,421). In addition to the three women in the premises, "approximately 24 male couples danced together" and "one male kissed the other male's neck during the entire dance." *Id.*

30. *Id.*

31. *Id.* The police officers reported that one week later, "two males seated in a booth held each other's hands. Each wore an identical wedding ring and conversed about their marital status." *Id.*

woman's coat, knee length."[32] Oakland Police Officer Russell B. Mills testified that the women wore "pedal-pushers or some kind of levi's."[33] Much of the evidence against the women patrons came from Oakland Policewoman Margery F. Gwinn.[34] Officer Gwinn made several undercover visits to Pearl's and was there when it was raided and patrons were arrested.[35]

Now we can add a few names, and even sketchy criminal records, to lesbians as represented in these cases. Lesbians were human beings, or perhaps sex perverts, who were women, drank in bars, sat on each other's laps, danced with other women, dressed like men — or perhaps sometimes wore pedal-pushers — and were arrested and jailed. Based on the records in *Kershaw*, most of those arrested were Latina, or at least, had Spanish surnames. The files in *Kershaw* also help us to identify and describe women who were *not* lesbians. They were dressed in slacks, drank in bars (at least one had several scotch and waters, by the record), and did *not* get arrested and jailed. In fact, they were some of the pioneer policewomen in Oakland, including Marge Gwinn.

Across the Bay, around the same time, some of the same ABC agents involved in *Kershaw* were conducting a surveillance of Hazel's, which Hazel Nickola had owned and operated in San Mateo County for seventeen years. Hazel's amenities included a forty foot bar and a shuffleboard court between the bar area and the dance floor in the back.[36] Using a legal analysis virtually identical to that in *Kershaw*,

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32. Hearing Transcript, Testimony of Laurence E. Strong, *Kershaw* (No. 278,421).

33. Hearing Transcript, Testimony of Officer Russell Mills, *Kershaw* (No. 278,421). Pedal-pushers are identified in some lesbian accounts as the preferred dress of femme lesbians in the fifties. *See* NESTLE, *supra* note 1 at 100-09. One irony here is that the infamous and extremely different butch-femme clothing styles of fifties lesbians apparently were not distinguishable to undercover officers who described all the women as "mannishly dressed." *See* Appellant's Opening Brief at 10-30, *Kershaw* (No. 17693).

34. Appellant's Opening Brief at 10-30, *Kershaw* (No. 17693). Undercover policewomen were a known hazard of lesbian bars. *See, e.g.*, Marge McDonald, *From the Diary of Marge McDonald (1931-1986), in* THE PERSISTENT DESIRE, *supra* note 26, at 124, 125 (a kindly stranger informed Marge McDonald or her friend that no women would talk to them on their first trip to the gay bar because "they think you are a policewoman.").

35. Appellant's Opening Brief at 13-15, *Kershaw* (No. 17693). Officer Gwinn testified that she was at Pearl's until the raid, between 1:30 and 2:00 a.m. She testified that Lorinda Pereira was on Dorothy Gardner's lap "rubbing her up and down," and then "Nora" (a male waiter) sat down in Pereira's lap. Hearing Transcript, Testimony of Officer Margery F. Gwinn, *Kershaw* (No. 278,421).

36. Reporter's Transcript at 2-3, *Nickola v. Munro*, 328 P.2d 271 (Cal. Ct. App. 1958) (No. 1 Civ. 18014). Shuffleboard was featured in at least one other lesbian bar at that time. *See* McDonald, *supra* note 34, at 125 (describing going to a lesbian bar in Columbus, Ohio, on March

the California Court of Appeal upheld Hazel's license revocation in *Nickola v. Munro*.[37] The *Nickola* court accepted the Deputy Attorney General's invitation to circumvent *Stoumen*: "By reason of their peculiar physical and psychological make up and personality they have no right to insist upon equal privileges with normal law abiding, healthy citizens."[38]

Although the legal analysis repeats that of *Kershaw*, *Nickola* adds a bit to our search for lesbians. Most of the appellate court's descriptions concerned the male patrons, who constituted over ninety percent of the customers.[39] Two men of color were mentioned particularly: a white man kissed a Filipino man, and another man briefly fondled a Negro man.[40] The court in *Nickola* placed so little focus on the lesbians that they were nominally excluded from the court's definition of "sex pervert," which referred to a "male" seeking sexual gratification from another male in a public tavern.[41]

However, the court did mention women: "The few female patrons were dressed in mannish attire, and most of them danced with each other."[42] We also learn that women were arrested; the Sheriff

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31, 1955, where "there was a long bar running down the left side of the room, a jukebox at the back, and shuffleboard up front . . . .").

37. *Nickola*, 328 P.2d 271.

38. Respondent's Brief at 48, *Nickola* (No. 1 Civ. 18014).

39. The appellate court gave us a report on Hazel's, garnered from ABC agents and Sheriff's deputies who visited the bar "on at least seven occasions" between January 7, 1956 and February 18th of the same year. *Nickola*, 328 P.2d at 272. ABC Agent Strong testified that on February 10, 1956, there were 100 to 150 patrons in Hazel's, only 12 to 15 of whom were women. (Evidence of too many males in the bars was proof of sexual perversion, but just normal operating procedure in, for example, the California legislature.) The appellate court provided fairly detailed descriptions of the activities of the men at Hazel's:

> There was almost continuous dancing taking place during these visits. The vast majority of dancers were men dancing with other men in close and affectionate embrace. Many of the men had their arms wrapped around each other's waists, or shoulders, or buttocks. Many men were observed kissing or fondling or biting each other, or holding hands, and other men were seen sitting on the laps of their male companions and kissing and fondling each other. . . . Some of the male dancers, while dancing, wrapped their arms around the buttocks of their companions and vigorously rotated their pelvic areas, to the evident enjoyment of other patrons. Men were seen powdering their faces, talking in effeminate voices, and generally acting like over-affectionate females.

Id.

40. *Id.* at 273.

41. "[W]hen one male, by acts of the type here involved, seeks sexual gratification from another in a public tavern, he has committed acts of sex perversion and demonstrated that he is a sex pervert." *Id.* at 276.

42. *Id.* at 272. The testimony at the license revocation hearing was more detailed. According to Agent Strong, "A majority of the female patrons were dressed in mannish attire with slacks, sport coats, men's tight sport shirts, and low heeled oxfords, men's type shoes, or loafers.

conducted a raid on February 19, 1956, and "[o]f the 225 patrons then present, 78 men, 10 women and 2 juveniles were arrested."[43]

"Lesbian" again included mannish attire, dancing with other women and being arrested. Among the women, race was once again erased from the opinion. Class was erased, except to the extent that it can be inferred from the fact of being in a bar. Of course, class and race were present, but hidden.

Class differences were embedded in the *Nickola* court's distinction between "things" done in private and the same things when "done in a public tavern," which, according to the court, distinguish a

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These women danced together, and occasionally they would dance with male patrons." Respondent's Brief at 5, *Nickola* (No. 1 Civ. 18014). According to the agent, the women wore "male attire — slacks or sport jackets." Reporter's Transcript at 9, *Nickola* (No. 1 Civ. 18014).

The bar owner's attorney asked the question we want to ask: "Were their slacks different from any slacks that a woman wears?" The agent explained, "Some of them were pleated and were identical with a man's type of slack, and some of them wore zipper jackets, a man's suede zipper jacket or leather jacket. Some wore regular sport coats." Reporter's Transcript at 30, *Nickola* (No. 1 Civ. 18014). He further stated, "The females all wore slacks. Some who arrived at one point there with a crowd of about 20 from a motorcycle group wore leather jackets and jeans and men's shirts and boots, about ten-inch motorcycle boots. They all had short haircuts." Reporter's Transcript at 14, *Nickola* (No. 1 Civ. 18014). However, on cross-examination, the agent described these women as wearing "mannish attire" but conceded that they were attired like "any other women you might have seen in other places, [in] similar [motorcycle] groups." Reporter's Transcript at 31, *Nickola* (No. 1 Civ. 18014).

The agent also testified that females were dancing with females, and were "dressed in some male attire — sport coat, sport shirt. I recall one with a sweatshirt and slacks, denim trousers." Reporter's Transcript at 18, *Nickola* (No. 1 Civ. 18014). Upon cross-examination, the agent admitted that dancing was all he saw. *Id.* at 20. The ABC agent had had about six drinks (whiskey and water) during this visit to Hazel's. Reporter's Transcript at 24, *Nickola* (No. 1 Civ. 18014).

The growing literature on lesbian bar dress during the fifties includes Davis, *supra* note 26, at 49 (discussing fifties police raids on women dressing as men; three articles of female clothing were required) and Leslie Feinberg, *Butch to Butch: A Love Song*, *in* THE PERSISTENT DESIRE, *supra* note 26, at 80, 81 ("I wore a blue-and-red-striped dress shirt, navy blue jacket to hide my breasts, black pressed chinos, and sneakers, because I had no dress shoes.").

43. *Nickola*, 328 P.2d at 273. On cross-examination the agent conceded that there were approximately 250 people in the bar at the time of the raid, only three of whom turned out to be underage. Reporter's Transcript at 33, *Nickola* (No. 1 Civ. 18014). In addition to losing its license for operating a resort for sexual perverts, the license also was revoked because an underage patron had been served a cognac. The patron, four months shy of his twenty-first birthday, testified that he had ordered a "Calso" (mineral water) but had been given a cognac. *Id.* at 45. When the agent tried to get him to say that he had come all the way from Santa Rosa because Hazel's had a reputation as a homosexual bar, the young man demurred. Instead, he characterized the bar as "exceedingly unusual," "a certain type," "exceedingly informal," and finally, as attracting "a certain type of intellectual." *Id.*

sex pervert.[44] Those who can buy privacy are not sex perverts; the people in the bar ostensibly are.

The court also hid both race and class in the arrest figures. Assuming that the court was correct that ten percent of the patrons were women,[45] twenty-two to twenty-five women were in the bar at the time of the raid. "Only" ten were arrested. The police and the court tell us that *all* the female patrons were dressed "in mannish attire" and most danced with other women. Why were they not arrested? *Kershaw* gives us a hint: perhaps the women who were dressed mannishly, paired together and not arrested were not lesbians, but police officers. But all of the twelve to fifteen female bar patrons who were not arrested could not have been police officers, because female agents were not operating in those numbers at the time. We know that near that time, San Francisco police officers claimed they did not arrest married men caught in the raids on gay bars.[46] Could most of the women who were dressed mannishly and dancing with each other in Hazel's have flashed marriage licenses to invoke comparable marital immunity?

Of course, other kinds of status routinely created immunity from arrest. We know from accounts of New York police raids on lesbian bars in the fifties that middle class, especially white, Anglo-Saxon Protestant women were not arrested, even as others from the bars were led off to often-brutal treatment by the jailers.[47] That is, women perceived by (white) authorities to have neither racial nor ethnic identity were not assigned the additional identity of criminal sex pervert. Thus, to the extent that a lesbian was a woman dressed in mannish attire, dancing with other women, drinking in a bar, arrested and

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44. Seeking sexual satisfaction in the manner here described in a public tavern offends the moral sense of the general public. There are many things that can be done in the privacy of the home which may not be illegal, but if done in a public tavern are directly offensive to public morals and decency, and demonstrate that the participants are sex perverts.

Nickola, 328 P.2d at 276.

45. *Id.* at 272.

46. Hansen, *supra* note 6, at 185.

47. *See, e.g.*, Feinberg, *supra* note 42, at 91.

The cops dragged in Al. . . . She was in pretty bad shape. Her shirt was partly open, and her pants zipper was down. Her binder was gone, leaving her large breasts free. Her hair was wet. There was blood on her mouth and nose. She looked dazed. . . . The cops pushed her into the cell. Then they approached me. I backed up until I was up against the bars. They stopped and smiled. One cop rubbed his crotch. The other put his hands under my armpits and lifted me up three inches off the floor and slammed me against the bars. He put his thumbs deep into my breasts and his knee between my legs. Everywhere he found my young womanhood and hurt it.

Id.

carted off to jail, that lesbian was also poor or working class, and she probably did not have white skin and expensive clothes. The threat of police raids made being in the bars at least a "twitchy experience"[48] for all lesbians; but the actual risk of arrest was defined in large part by race and class.

A lesbian or gay identity is formed, at least in part, in response to, or in resistance of, oppression. After all, standing by itself, one's object choice of sexual attraction is not necessarily a defining aspect of identity. What makes it so is the repression it engenders. The difference between being hauled off to jail and watching others being hauled off is significant and is based more on class and racial categories than on the category "lesbian." As to that repression, especially legal enforcement of societal homophobia, lesbians are not all similarly situated.[49]

Perhaps the point can be made stronger by comparing anti-gay repression directed at two homosexuals: one male, one female; one professionally powerful, one working class; one white and privileged, one Latina. At around the time that Natalie Correa was being arrested and jailed in Oakland for wearing slacks and sturdy shoes, homosexual J. Edgar Hoover[50] was partying in a private suite in the Plaza Hotel in Manhattan with Roy Cohn and others. Hoover was "wearing a fluffy black dress, very fluffy, with flounces, and lace stockings and high heels, and a black curly wig. He had makeup on, and false eyelashes. It was a very short skirt."[51] My point is not to ridicule or condemn Hoover's taste in clothing; instead, we should notice that a category of "gay" that purports to include both Hoover and Correa ignores crucial, determinant differences. Why is same-sex sexual desire so defining, so magical, that we can place Hoover and Correa in the same category and imagine that they had anything meaningful in common? Indeed, some of the patrons of Hazel's and Pearl's were

48. DEL MARTIN & PHYLLIS LYON, LESBIAN/WOMAN 11 (1991).

49. *See* KENNEDY & DAVIS, *supra* note 1, at 29-149; LORDE, *supra* note 1. Both of these books explore the tradition, during the forties and fifties, of house parties by and for African-American lesbians, perhaps reflecting a great need to stay away from the bars.

50. ANTHONY SUMMERS, OFFICIAL AND CONFIDENTIAL: THE SECRET LIFE OF J.EDGAR HOOVER (1993). The top law enforcement official wore perfume, but everyone had to pretend he did not. *Id.* at 88. Truman Capote threatened to write a magazine article about Hoover and Clyde Tolson, but finished only the title, *Johnny and Clyde. Id.* at 81.

51. *Id.* at 254. The same witness reported attending a party a year later, also at the Plaza, also with Cohn, where Hoover was again dressed as a woman. This time, "He had a red dress on . . . and a black feather boa around his neck. He was dressed like an old flapper." *Id.* at 255. Hoover then reportedly had sex with young men, this time dressed in leather while wearing rubber gloves and reading from his Bible. *Id.* at 255.

treated like the "human beings" that the *Stoumen* court said they were. Most, however, not protected by the privileges of class, race, or a badge, became "sex perverts."

Finally we arrive at the last stop, the First and Last Chance, a lesbian bar on Telegraph Avenue in Oakland.[52] This was the bar at issue in *Vallerga v. Department of Alcoholic Beverage Control*,[53] the 1959 California Supreme Court case that closed out the fifties. The First and Last Chance gives us the most complete representation of lesbians, provides the most powerful critique of the false conduct/status dichotomy, and tells us the most about the racing and classing of lesbians.

Wiley Manuel, the California Deputy Attorney General[54] who litigated on behalf of the ABC, chose a tone of ironic condescension for his description of the goings-on at the First and Last Chance:

> Helen Davis, a policewoman, was on the premises in May of 1956 with another policewoman, Marge Gwinn. Buddy, a female waitress, greeted the policewomen who were later joined by the lesbian, Shirleen. Shirleen told Marge "you're a cute little butch." Shirleen later grabbed Marge and kissed her. Buddy the waitress just said to watch it and if they continued to do that they should go to the restroom. The next night nothing apparently happened. The following night Buddy joined the group again with a trio of sexual perverts. Shirleen was not the only girl who took a liking to Marge for Buddy had grown quite fond of Marge too.
> . . . . On May 11, 1956 two females this time were observed by Agent Sockyer holding hands affectionately. The only thing normal about this pair was that one of the couple used the women [sic] restroom.

52. Oakland has a rich lesbian tradition, including associations with lesbian writers Gertrude Stein, Pat Parker and Judy Grahn.

53. Vallerga v. Dep't of Alcoholic Beverage Control, 347 P.2d 909 (1959).

54. The California Bar Association annually recognizes public interest achievement with its Wiley Manuel Award, named for this important pioneer in California legal history. Wiley Manuel graduated at the top of his class from Hastings and was Editor-in-Chief of the *Hastings Law Review*. He then spent 26 years in the Attorney General's Civil Division, where his work included the *Vallerga* case. In 1976, Governor Jerry Brown appointed Manuel to a judgeship in the Alameda County Superior Court. The following year, Governor Brown named Manual to become Associate Justice of the California Supreme Court, on the same day that the Governor appointed former Chief Justice Rose Bird. Wiley Manuel thus became the first African-American (and still only one of three) to serve on the California Supreme Court. *See Wiley Manuel, 53, Dead in California*, N.Y. TIMES, Jan. 6, 1981, at 17.

> Shirleen was rather fickle. Before she discovered policewoman Marge Gwinn she had kissed another female patron.[55]

The Deputy Attorney General went on to argue that the Business and Professions Code section was constitutional, "[n]o matter how orderly the perverts are . . . ."[56] He argued that the "evil to be prevented is clearly shown in the evidence" and that the statute was necessary to "protect[ ] innocent persons from being the object of unnatural advances, e.g., the policewoman who was kissed by the lesbian in this case."[57] (That policewoman had gone undercover, in the words of the bar owner's attorneys, "disguised as a lesbian."[58])

The court of appeal issued a remarkable opinion that was staunchly skeptical of the Deputy Attorney General's impassioned arguments. The court found the pairing off and mannish attire relatively inconsequential:

> If entitled to any legal significance, [it] merely emphasized the fact that the patrons were homosexuals or lesbians. Of themselves, these acts did not amount to immoral, indecent, disgusting or improper acts. They merely tended to prove that the patrons were homosexuals, a fact the licensee admitted. That fact alone, for reasons already stated, did not justify revoking the license.[59]

The court of appeal further emphasized that the paucity of evidence of wrongdoing was especially noteworthy given that "some officers [namely Helen Davis and Marge Gwinn] visited the First and Last Chance almost daily for nine months."[60]

That court of appeal opinion was a high point in judicial recognition and representation of lesbians in that era, or even today. The *Vallerga* court of appeal panel declared that lesbians — working-class women, in a bar, paired with other women, dressed mannishly — were *not* "immoral, indecent, disgusting, or improper."[61] In other

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55. Respondents' Memorandum of Application of Kershaw v. Department of Alcoholic Beverage Control at 2-3, *Vallerga v. Dep't of Alcoholic Beverage Control*, No. 282,411 (Cal. Super. Ct. 1957).

56. "It is respondents' position that section 24200(e) is constitutional. No matter how orderly the perverts are, still the *Kershaw* case would leave no doubt as to the validity of the section where the perverts make the establishment a haunt, as here, for the purpose of stimulating and gratifying erratic sexual desires and drives." *Id.* at 4-5.

57. *Id.* at 5.

58. Petition for Modification of Opinion Without Change in the Judgment, and Petition for Rehearing at 57m, *Vallerga* (No. SF 20285).

59. *Vallerga* (No. 1 Civ. 18184) slip op. at 9 (Cal. Ct. of App. Jan. 27, 1959).

60. *Id.* at 9-10.

61. *Id.* at 10-11.

words, women dressed in slacks, without makeup, pairing up with other women, were still human beings.

The Deputy Attorney General was outraged by the court of appeal opinion and filed a scorching petition for rehearing. He threw case law at the court upholding prohibitions for sale of alcohol to minors, women and Indians. On behalf of the State of California, he sputtered and sneered:

> [T]he court apparently does not deem the blatant display of lesbians of their strange nature as disgusting. That they paired off, dressed in male attire, carressed [sic] one another and even kissed one another is treated by this Honorable Court as just wholesome activity.[62]

The California Supreme Court granted the Attorney General's outraged petition for review, and subsequently caused the brave and wonderful court of appeal opinion to legally evaporate.

In its *Vallerga* opinion, the California Supreme Court also reversed the license revocation, reaffirming the *Stoumen* principle that a bar owner would not lose his or her license merely for serving the wrong kind of people. The court found Business and Professions Code section 24200(e) unconstitutional under *Stoumen*.[63] However, even as it purported to uphold *Stoumen*, the California Supreme Court invited the state to shut down gay bars based on its authority to stop immoral activity, such as, for example, women pairing with other women, women dancing with other women and women dressing like men.[64] Thus, the court expressly validated the results of *Nickola* and

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62. Respondent's Petition for Rehearing at 22, *Vallerga* (No. 1 Civ. 18184). The brief wistfully concludes, "American society has not yet fallen so low." *Id.* at 23. Shockingly, the court responded to this petition and granted rehearing. After investigating the attorney general's arguments about legislative history, the court of appeal reaffirmed its initial opinion (reversing the trial court opinion) in July of 1959, approximately six months after the first opinion. *Vallerga v. Dep't of Alcoholic Beverage Control*, 343 P.2d 54, 57 (Cal. Ct. App. 1959).

63. It is concluded, therefore, that subdivision (e) purports to authorize revocation of a license without requiring anything more to be shown than that the premises are a resort for certain classes of persons, and as such is unconstitutional for the reasons set forth in the Stoumen case. Language in the Kershaw and Nickola cases contrary to this construction of subdivision (e) of section 24200 is disapproved.

Vallerga, 347 P.2d at 912.

64. In the petition for modification, it was noted that the opinion's summary of "women kissing other women" distorted the record, which actually consisted of testimony from an agent who, when asked "whether he had ever observed expressions of affection between the patrons, his answer was:"

> Yes, TO A MINOR DEGREE . . . on SOME OCCASIONS . . . you would see a female with her arms around another female, or kissing themselves on the cheeks and neck. ONCE IN A WHILE you would see that.

Kershaw.[65] Even as it proceeded to strip lesbians and gay men of our rights as human beings, and locate us concretely and absolutely in the category "sex pervert," the court claimed for itself evenhandedness:

> This is not to say that homosexuals might properly be held to a higher degree of moral conduct than are heterosexuals. But any public display which manifests sexual desires, whether they be heterosexual or homosexual in nature may, and historically have been, suppressed and regulated in a moral society.[66]

While uttering this pronouncement of equality, the *Vallerga* court then went on to reveal its utter opposition to it. To the California Supreme Court in 1959, heterosexual romance — men dancing with women, women dancing with men, women dressed to attract men, men dressed to attract women, even perhaps, a man in a bar kissing a woman, simply did not constitute a "public display which manifests sexual desires . . . ."[67] This astounding claim of equality reveals the deep heterosexist arrogance and contempt with which the court pushed lesbians and gay men behind the specter of sexual perversion. The court seemingly rejected the hateful arguments of the Attorney General which warned that if allowed to congregate, homosexuals would "metastasize,"[68] and chose, instead, rhetoric about equality. But, as the attorneys for the First and Last Chance argued in their

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Petition for Modification of Opinion Without Change in the Judgment, and Petition for Rehearing at 57k, *Vallerga* (S.F. 20285).

65. The court adopted the Attorney General's argument that "[c]onduct which may fall short of aggressive and uninhibited participation in fulfilling the sexual urges of homosexuals . . . may nevertheless offend good morals and decency by displays in public which do no more than manifest such urges." 317 P.2d at 912 (citations omitted).

66. *Id.*

67. *Id.*

68. Petition for Modification of Opinion Without Change in the Judgment, and Petition for Rehearing at 4, *Vallerga* (S.F. 20285). The winners and amicus petitioned the California Supreme Court for a Modification of Opinion. They argued that dicta in the court's opinion was "unconsciously influenced by the ancient and outmoded misconceptions, prejudices, and false taboos regarding sexual behavior in general, and homosexuality in particular, expressed by the Deputy Attorney General . . . ." *Id.* They cited as evidence Mr. Manuel's arguments that "the Legislature had adopted the policy of 'discouraging and stamping out homosexuality,' " and that homosexuality was a disease that if " 'left unfettered' could 'metastasize throughout the community . . . .' " *Id.* at 4-5. The State of California had previously invoked this medical model in *Nickola*:

> There are many who argue that actually homosexuals and sexual perverts are sick persons who should not be treated like criminals. Such a philosophical argument may be a valid one but it does not detract from the right of the State to take effective measures to preclude that type of sickness from adversely affecting the community as a whole. The gathering of such afflicted persons with regularity in a premises dispensing alcoholic beverages has been determined by the Legislature to constitute a danger to the health, safety and morals of the People of the State and that determination should be upheld.

(unusual) Petition for Modification, the *Vallerga* opinion "equates immoral conduct with anything that reveals homosexual nature."[69]

This, of course, is the heart of the conduct/status distinction, and one of the primary reasons that it makes no sense. As soon as the lesbian has done anything to identify herself as a lesbian, that conduct strips her of her pure identity as a human being and marks her as immoral and unfit. That was the message the California Supreme Court sent to lesbians and gay men in 1959.

Perhaps one explanation for the shoddy and disappointing portrayal of lesbians and gay men that ultimately prevailed in these cases was our lack of legal representation and standing. These cases were brought on behalf of the bars' owners, whose attitudes seemingly ranged from shrewd charity to distaste. As mentioned above, Sol Stoumen testified that he threw "homos" out of his bar.[70] Pearl Kershaw's attitude toward her patrons was much more ambiguous, as was her own sexual identity.[71] In the proceedings designed to take away Hazel Nickola's license, a bartender testified that she had told him that it was a gay bar. But Hazel Nickola "stated when she told Mr. Nelson she had a 'gay' crowd she meant a hilarious, jovial crowd."[72]

> The right of the public authorities to prohibit gatherings or congregation of persons during the prevalence of an epidemic and for such purposes to close or recognize the closing of public places [or] institutions has frequently been recognized or assumed.
>
> Under the police power the State has the power to place in quarantine persons suffering from dangerous communicable diseases such as tuberculosis, leprosy, small pox, typhus fever and a number of other diseases.

Respondent's Brief at 50-51, *Nickola* (1 Civ. No. 18014).

69. Petition for Modification of Opinion Without Change in the Judgment, and Petition for Rehearing at 57m, *Vallerga* (S.F. 20285). The brief also complained that the court made too much of the evidence that "a patron complimented and kissed a policewoman disguised as a lesbian." *Id.*

70. *See supra* note 7 and accompanying text. In fact, the gay rights issues that ultimately prevailed in *Stoumen* constituted only a handful of pages in Stoumen's briefing. His main arguments were a species of estoppel and procedural due process claims focused on the fundamental unfairness in the ABC proceeding against him after he had "arranged" to settle the dispute. *See* discussion *supra* note 5.

71. Accusation, *Kershaw* (No. 17693). The only hint in the record is the police allegation that "the licensee, Pearl Kershaw, 'goosed' a male patron in a lewd manner." *Id.* Kershaw's personal situation was at least ambiguous in the record:

> "Agent: You are married?
>
> Kershaw: I guess you could say that."

Unpaginated Hearing Transcript, *Kershaw* (No. 278,421).

72. Accusation at 16, *Kershaw* (No. 17693). That denial was impeached with evidence of a speech that she had made one afternoon:

> At one point during the afternoon Hazel Nickola, the licensee, cut off the music from the juke box, called for silence and made the following speech:

Her own attorney conceded that "if a person seeks and obtains sexual satisfaction with a person of the same sex, that person . . . would be a sexual pervert."[73] One aspect of the evidence against Hazel's was that a white man kissed a Filipino man on the cheek three times.[74] The bar owner's own counsel characterized that conduct as "reprehensible."[75] The record in *Vallerga* suggests that the owner of the First and Last Chance had been told by his attorney that he could not get rid of homosexuals if they were orderly.

The best representation of gay men and lesbians came from the attorneys who represented Sol Stoumen in the Black Cat case in 1951.[76] In fact, lesbian and gay rights became something of a cause for these attorneys, who appeared as amicus in the subsequent gay bar cases. Those attorneys offered the appellate courts a massive amount of scientific and sociological data, including the Kinsey report, in an attempt to refute the popular attitudes reflected by the legislature, the Attorney General and most of the judges. In *Vallerga*, they suggested a picture of the lesbian that bettered any dream of the Daughters of Bilitis:[77] "Lesbians are generally so notoriously circumspect and moral and conform to the proprieties of good public behavior that it is rare to find any state which has applied its sex statutes to them (At common law, the statutes had no application to lesbians.)."[78] In other words, even the best of these lawyers defended lesbian rights by portraying lesbians as a group quite indistinguishable from the D.A.R. or the P.T.A.[79]

> [She asked the patrons not to break bottles or glasses because it ate into her meager profit.] She stated that she was their friend and they should realize that she is their friend; that while she was in the premises no one would bother them.

Id. at 7. The Attorney General used that speech against her:

> Why should dancers in a tavern on a Sunday afternoon be assured that while they were on the premises no one would bother them unless there was an attempt to convey to such patrons that the proprietress would do all that she could to maintain the premises as it was; namely, a resort for sexual perverts.

Id. at 25.

73. Petition for Hearing at 4, *Nickola*, (No. 1 Civ. 18014).

74. Reporter's Transcript at 35, *Nickola*, (No. 1 Civ. 18014).

75. Petition for Hearing at 9, *Nickola*, (No. 1 Civ. 18014).

76. The attorneys were Morris Lowenthal, Juliet Lowenthal and Karl O. Lyon.

77. The Daughters of Bilitis ("DOB") was a national lesbian organization founded in 1955. MARTIN & LYON, *supra* note 48, at 8. Its founders concede, "It seems old fashioned now . . . but one of DOB's goals was to teach the lesbian a 'mode of behavior and dress acceptable to society.' " *Id.* at 75.

78. Petition for Modification of Opinion Without Change in Judgment, and Petition for Rehearing at 57c, n.*, *Vallerga*, (S.F. 20285). *But see*, RUTHANN ROBSON, LESBIAN (OUT)LAW (1992) (Robson refutes this point in her book on lesbians and the law).

79. Daughters of the American Revolution (D.A.R.), Parent Teacher Association (P.T.A.).

The trial court files in *Vallerga* reveal an antidote to the sordid or sanitized representation received by lesbians in these cases. The Deputy Attorney General described an incident in which Shirleen and then Buddy made the error of trying to romance Marge Gwinn, the undercover police officer. The court heard testimony that, when Gwinn was revealed to be a policewoman, Buddy expressed regret: "It's a shame, because I had become quite fond of Marge."[80] Shirleen told Gwinn, "You're a cute little butch."[81] Shirleen and Buddy were literally flirting with danger; flirting with the law. As Merril Mushroom wrote in her essay, *How the Butch Does It: 1959*, "The butch is sultry. The butch is arrogant. The butch is tough."[82]

The antidote to the misrepresentation of lesbians in law — somehow without gender, without race, without class, without sexual desire — is for lesbians to reveal ourselves, as human beings, yes, but also as sexual beings, as women, as women with complex racial and class identities. When we do that, we can appropriate Bertha Harris' praise: "Such work[ ] . . . show[s] what the lesbian is becoming: a creature of tooth and claw, of passion and purpose: unassimilable, awesome, dangerous, outrageous, different: distinguished."[83]

80. Respondents' Petition for a Hearing in the Supreme Court at 7, *Vallerga* (SF 20285).

81. *Id.* at 6.

82. Merril Mushroom, *How the Butch Does It: 1959*, *in* THE PERSISTENT DESIRE, *supra* note 26, at 133.

83. Bertha Harris, *What We Mean to Say: Notes Toward Defining the Nature of Lesbian Literature*, 3 HERESIES 5, 8 (1977).