

WHERE WE ARE 2003

WHERE WE ARE 2003 • AN ACLU REPORT



THE ANNUAL REPORT OF
THE ACLU'S NATIONWIDE WORK
ON LGBT RIGHTS AND HIV/AIDS



Lesbian & Gay Rights Project
AIDS Project

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ACLU

AMERICAN CIVIL LIBERTIES UNION

Lesbian & Gay Rights Project
AIDS Project

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RIGHTS AND HIV/AIDS

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How It All Works

The ACLU

The American Civil Liberties Union isn't really one organization at all; it's 50. There is a national organization headquartered in New York and at least one ACLU affiliate in 47 of the states (California has three affiliates, one in San Francisco, one in Los Angeles, and one in San Diego) and in the District of Columbia. The national ACLU has chapter offices in the Dakotas, Wyoming, and Puerto Rico so that just about every U.S. jurisdiction is covered.

The affiliates are very much independent organizations. Each has its own Board of Directors and staff, each sets its own civil liberties priorities, and each decides for itself what cases to take, what state and local bills to work on, and what kind of public education campaigns to run.

The state affiliates and the national ACLU are joined in three ways. The affiliates elect the governing board of the national ACLU. The national and the affiliates share financial support. When you join the ACLU, you become a member of the national ACLU and your state affiliate; when you donate, you give both to the affiliate in your state and to national. But most important, the affiliates and the national ACLU share the same commitment to defend the basic rights guaranteed to all by the federal constitution, and especially the Bill of Rights.

Most of the direct civil liberties work of the ACLU is handled by the ACLU's affiliates. The job of the national office is to coordinate. On some national issues, this means taking the lead. More often, it means working with affiliates – consulting with large affiliates on priorities and strategy, working together with medium-sized affiliates, and doing cases and campaigns for small affiliates.

The Lesbian & Gay Rights and AIDS Projects

The national ACLU has a division called the Lesbian & Gay Rights and AIDS Projects. It has a Director, Litigation Director, four lawyers, a Public Education Director, a Federal Legislation and Policy Director, and a Development Director, along with supporting staff.

Five affiliates (Illinois, Indiana, Georgia, Michigan, and Southern California) also have staffed projects that focus on LGBT rights, two more have a lawyer who specializes in LGBT rights (Mississippi, Northern California), and at least four more have activist member/volunteer groups working on LGBT rights and/or AIDS (Delaware, Eastern Missouri, Ohio, and Southern and Northern California).

But the heart of the Projects exists less in formal structure than in what the ACLU does. As the docket printed in the second part of this report shows, virtually every affiliate either lobbies or litigates on these issues, and most do a considerable amount of both. The national Projects set overall priorities, develop strategies, help affiliates decide what to do and how to do it and, particularly in the small states, provide the staff power. The ACLU Lesbian & Gay Rights and AIDS Projects are the collective effort of all the affiliates and the national office working together.

You

The structure of the ACLU Lesbian & Gay Rights and AIDS Projects is complicated, but helping us isn't. If you want to make a contribution to the ACLU's LGBT rights and HIV/AIDS work in your state and across the country, please send it to:

ACLU Foundation – LGRP
125 Broad Street, 18th Floor
New York, NY 10004
212.549.2627
lgbhiv@aclu.org

You can also send contributions to your local affiliate but be sure to tell them it's for the ACLU's LGBT rights and AIDS work.

Bush v. Gore: The Worst LGBT Rights Case In Years

by Matt Coles

The worst setback for LGBT equality in the courts was *Bush v. Gore*, the Supreme Court decision that ended the Florida recount – not because it delivered the presidency to George Bush, but because of the way it did it.

Sound crazy? Take a closer look.

Two aspects of *Bush v. Gore* shocked lawyers: the order halting the recount while the Court took up the case and a sentence in the final decision which apparently meant that the ruling applies only to this one case.

Those two things were shocking – far more shocking than the outcome of the case – because they suggested that the most fundamental idea that underpins our constitution, our whole society – the so-called “rule of law” – was a lot weaker than most of us thought.

The rule of law is really a simple idea. It says that we don’t make up the rules as we go along. The structure of government, the process by which it operates, and the rights and duties of the people are set by general rules we agree on in advance. When specific issues come up, we use those rules to decide who will resolve a question, how they’ll go about doing it, and the principles on which the decision will be based.

Both the preliminary halt of the recount and the “this-one-time-only” passage in *Bush v. Gore* were completely inconsistent with this basic idea.

The preliminary order halting the recount while the court took up the case effectively prejudged it. It would have been very difficult, perhaps impossible, to get the recount going again in time if the Court had decided the recount was constitutional. And the counting obviously could have gone on while the court considered the case. Either outcome would have remained a practical possibility if it had. By issuing the preliminary order, the court ignored the process for deciding constitutional cases – the very process it lives by as an institution.

The suggestion that the ruling would apply only to *Bush v. Gore* itself, and not to future cases, was even more shocking. Court decisions, and most especially Supreme Court decisions, are supposed to explain the application of general rules



Rule of convenience. The U.S. Supreme Court’s decision in *Bush v. Gore* is one of the worse setbacks in the history of the LGBT movement. The Court disregarded the basic concept of the rule of law – a principle on which the LGBT rights movement dearly depends to achieve greater equality. PHOTO BY KEITH STANLEY

to specific facts. The “good for this case only” statement was practically an admission that the court had made up a rule for this one situation, almost a literal rejection of the rule of law.

Bush v. Gore is a threat to LGBT rights because the movement for LGBT equality, like any plea for the rights of a minority, is premised on the rule of law. As a movement, we insist that the general principles of equality, autonomy, and expression on which our society is founded, fairly applied, require that we be given equal opportunity, fairness, and basic respect.

It is easiest to see this in operation in public interest litigation. A state – like Texas – passes a law making sexual intimacy a crime, but only for same sex couples. A state – like Florida – passes a law saying gay people can’t adopt. Both states say they did it because they disapprove – on moral grounds – of gay people.

The idea of passing a law that discriminates against a group of citizens because you don’t like them is hardly new. States have taken children away from parents in interracial relationships, have denied food stamps to hippies, and have kept the mentally disabled in institutions and later, out of the nicer parts of town, all because people disapproved or were uncomfortable.

Courts overruled all of those decisions, saying that if the concept of equality means anything it has to mean that you can’t disadvantage people because you don’t like them. Saying that the dislike is based in morality – as government said of all of these decisions – doesn’t change the outcome.

The attack on Texas’s same-sex-only intimacy crime and on Florida’s ban on gay adoption essentially comes down to saying that if the constitution doesn’t allow discrimination against hippies or the disabled to show society’s disapproval, it doesn’t allow discrimination against gay people to show disapproval either. That is the rule of law.

The rule of law is not simply the basis for our claims in court; it is the basis for the entire movement for equality. Think about the case for repeal of so-called “sodomy” laws, the case for passing discrimination laws, the case for recognition of relationships. All argue that we fit well established general principles (“same act, same rules” “equal opportunity in the workplace” “same kind of emotional and practical bonds”), and so we should be given the treatment we seek.

Invoking the rule of law rarely works on the first try, either in court or in politics. The essential faith of the movement is that sooner or later, reason will overcome prejudice, and the irrational “gay exception” will disappear.

Bush v. Gore threatens the movement by suggesting its basic premise – that ultimately, the rules are what matter – is, if the stakes are high enough, just plain wrong. And the two years since the decision have been far from reassuring. The President, in a stunning move, has said that any American whom he decides is an enemy combatant can be held indefinitely, without charges, and that no court has the power to review that decision. The constitution expressly forbids holding anyone without charges. The rule of law does not allow the constitution to be applied to some citizens and not others. But to say, as the government does,



Just trust us. Jose Padilla, an American citizen, is being held indefinitely in a military jail as a so-called enemy combatant without charges or a trial and without access to a lawyer.

that one official can effectively suspend the constitution is to reject the rule of law totally.

As a minority fighting for equality, LGBT people cannot afford to let the rule of law get degraded. By itself, law will never bring about true equality. True equality comes only as a society learns that the ideas it has used to justify discrimination are wrong. But the moral force that goes with the rule of law is a powerful tool for changing minds, probably the most powerful tool any minority has.

Anything which threatens the rule of law today is a danger to LGBT equality. So LGBT people have to be crusaders for consistency and fair process. LGBT people have to stand up not just for ourselves, but for anyone else for whom equality, autonomy, and expression are still aspirations.

In a society where it sometimes seems that everyone is out for himself, LGBT people understand to a remarkable extent that salvation lies in a rule of law that protects everyone. LGBT people understand, for example, that a woman's right to choose is not a right closely related to the right of LGBT people to be who they are. It is the same right.

If this sounds high minded, it is really just self interest. It always made practical sense that part of the fight for LGBT equality had to come in a movement for equality, autonomy, and expression for all. No minority wins equality without help. But the threat to the rule of law makes fighting for the overall principle whenever it is under attack essential. The rule of law doesn't work selectively. Without the rule of law, we are all lost. And only a rule of law which applies to us all will save any of us. ♦

In a society where it sometimes seems that everyone is out for himself, LGBT people understand to a remarkable extent that salvation lies in a rule of law that protects everyone.

(So) What if Gay Parents Have Gay Children?

by Leslie Cooper

For years anti-gay activists have tried to scare Americans by telling them that lesbian and gay parents are more likely than heterosexual parents to kill themselves, use drugs, be violent, molest their children, and make their children grow up to be gay. Slowly but surely, more Americans are realizing these allegations are lies – except maybe the one about gay parents raising gay kids. It turns out there might be at least a sliver of truth to this allegation, and that might not be such a bad thing.

Last year the *American Sociological Review*, a reputable scientific journal, published a bombshell of an article by Professors Judith Stacey and Timothy Biblarz. In the article “(How) Does the Sexual Orientation of Parents Matter?”, the authors confirmed the existing social science consensus that children raised by lesbian and gay parents are just as likely to be healthy and well-adjusted as children raised by heterosexual parents. They explained that the research consistently shows that there is no difference between the two groups of children with respect to their healthy development – their self-esteem, psychological well-being, cognitive functioning, and social adjustment, and that there is no disadvantage associated with having gay parents.

However, Stacey and Biblarz disagreed with other social scientists who said there were no appreciable differences between children raised by straight parents and children raised by gay parents. They observed that a few studies showed that children of lesbians were slightly less likely to be constricted by stereotypical notions of gender, e.g. what toys, games, and careers they considered “appropriate” for boys and for girls. And they point out that in one study, the sons of lesbian mothers were less aggressive than other boys and, in another, the daughters of lesbians were more sexually active than the daughters raised by heterosexual moms.

But the real controversy came from the suggestion that children of lesbian and gay parents may be more likely to acknowledge same-sex attraction as they grow up than children of heterosexuals. The support for this finding comes from their analysis of one 25-year British study of children raised by lesbians and children raised by heterosexual parents. The study found that a larger minority of the adult children of lesbian mothers reported that they had at one time or another considered or actually had a same-sex relationship (though none of the children identified as gay or lesbian).

Although this was a study of only 45 children, Stacey and Biblarz speculate that this finding, analyzed in light of major theories of sexual development, indicates a difference between children raised by gay parents and children raised by heterosexual parents.

Right-wing organizations immediately seized on the Stacey and Biblarz article, waving it around as proof that gay people should not be parents or have our relationships legally recognized. They point to the authors’ conclusions to support discriminatory adoption and foster care policies and even to deny lesbian and gay parents custody of their own biological children.



Compulsory heterosexuality?

Not in all families. Professor Judith Stacey co-wrote an article suggesting children raised by gay parents might be less likely to repress same-sex attraction if they experience it.

For example, the Stacey/Biblarz article was relied on by a psychologist hired by the State of Florida to testify in the ACLU's lawsuit challenging the state's ban on gay adoption. Other expert witnesses have used it to oppose same-sex marriage in lawsuits in Canada and Massachusetts. And numerous right-wing pundits frequently use the article on national television talk shows to try to convince the public to support discrimination against gay parents.

The notion that children raised by gay parents may be more likely to have a same-sex relationship riles the extremists. But much more importantly, it plays into the persistent fears of middle America about homosexuality and gay parents. The truth is we live in a world in which most people would rather if no one turned out to be gay.

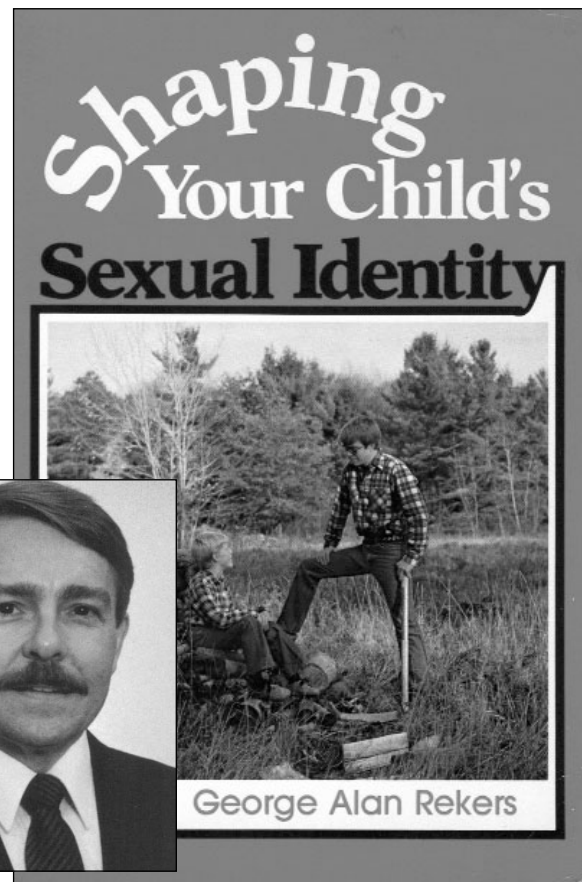
But is it really surprising that children who have lesbian or gay parents would feel freer to consider and act on same-sex desires if they experience them instead of hiding those feelings? Is it surprising that if lesbians and gay men are less rigid about gender roles their children might have greater flexibility in that area as well? Shouldn't we be embracing these differences as potential benefits to children who grow up in gay families instead of letting our opponents distort the information to scare people?

With few exceptions, children of heterosexuals grow up in family environments in which heterosexuality is presumed: "Debbie, you're so pretty; you're going to break all the boys' hearts." Children learn from their parents and others that they had better not be gay. Sometimes it's subtle: "Sue got such a short haircut, I'm starting to worry about her." Sometimes it's not: "If a man ever looked at me the wrong way, I'd break his neck." And for those coming from certain religious traditions, the reasons to stifle and hide gay feelings are even more explicit. Some parents send their "gay-seeming" children to receive "reparative therapy" so that they will grow up straight.

As many of us know firsthand, adolescents who feel same-sex desire are often so ashamed of it that they hide those feelings from the world and from themselves. These kids cannot bear the idea that they might be gay or feel same-sex attraction, let alone acknowledge it to anyone.

We all know people who don't come to terms with it until well into adulthood, or never do, living their lives either without romantic relationships or going through marriages that split love and sexual intimacy and are sometimes empty gestures. The hard evidence of the power of the social pressure not to be gay is the number of adults who voluntarily participate in "therapy" programs and "ex-gay" ministries in an effort to become straight.

Contrast these experiences with those of a child growing up in a family with gay parents, where heterosexuality is not mandatory and the parents' very existence provides counterbalance to the damaging, self-destructive influences outside of the home.



An expert on normal behavior. The State of Florida hired George Rekers as an expert witness to defend the state's ban on gay adoption. Rekers encourages parents to coerce their children into "appropriate" gender behavior through discipline.

PHOTO BY GENE PALMER

Our children may be growing up with less coercion about their sexual orientation and gender expression. That is hardly something to be worried about. Of course this creates a challenge in the battle over public opinion and in the courts regarding gay parents. But we meet that challenge not by hiding or questioning these findings about our children, but rather by helping others understand the meaning of these potential differences and that everyone – whether their parents are gay, straight, or bisexual – should have the freedom to grow up to be whoever they really are without fear. ♦

Stories of Foster Kids and Gay Parents Reach Millions

by Chris Hampton

The desire to parent – to share your life with someone else and to share in the lives of others – is one of the most fundamental human impulses. While not everyone in the LGBT community wants to be a parent, many of us at least have LGBT people in our lives who are parents or want to be parents. And too many lesbians and gay men have had their families torn apart or have missed out on the opportunity to have a family at all because our legal system shuts them out.

Because bringing down restrictions on parenting is something that everyone in the LGBT community (and its supporters) should care about, we had been working for some time on ideas about how to intensify our campaign to change the way America thinks about gay parenting. Then Rosie O'Donnell took a big interest in our ongoing challenge to Florida's law banning adoption by lesbians and gay men. After meeting with us in November of 2001, O'Donnell enthusiastically agreed to help us bring gay parenting the attention it deserves.

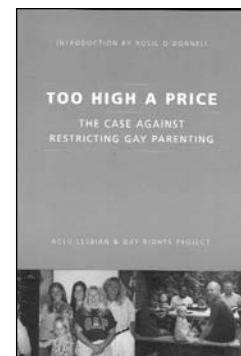
What got O'Donnell's attention was the Lofton-Croteau family, who are part of our lawsuit against the state of Florida. There is no way anyone can say this couple and their kids are not a family – but Florida officials are threatening to take this family's middle son away because he has two dads. Their story moved O'Donnell to come out publicly in a two-hour ABC special last March. The special also prominently featured the Lofton family. Fourteen million people watched it, and viewers sent over 300,000 letters to Florida officials urging them to drop the ban. The letters were sent from www.LetHimStay.com, a website we created to provide information about the campaign to overturn Florida's ban and the families involved.

The day the show aired, we also released a book which has since been distributed to every Florida state legislator and to child welfare and LGBT groups around the country. There's so much conflicting information out there about gay parenting that we decided to create the book, *Too High A Price: The Case Against Restricting Gay Parenting*, that refutes the myths surrounding gay parenting. It explains why child welfare professionals oppose blanket restrictions on LGBT parenting, describes all the major studies on lesbian and gay parenting and why they do not support restrictions, and explains the legal and policy arguments against limits on gay parenting.

And at the very heart of this work are the stories of families like the Loftons – personal stories of love and perseverance that show the strength and resilience of LGBT families. ♦



Plaintiffs,	)
-v-	)
KATHLEEN A. KIRKNEY, Secretary of Florida's	)
Department of Children and Families; and CHARLES	)
ATRIANDER, District Administrator of District XI of	)
Florida's Department of Children and Families,	)
Defendants.	)
APPELLANT'S REPLY BRIEF	
MATTHEW COLE: FBI OF COOPER JAMES D. ESSEKS The American Civil Union Foundation 121 Broad Street, 19 New York, NY 1001 Telephone: (212) 34	
STEVEN ROBERT Fla. Bar No. 87890 The Kozlowski Law 927 Lincoln Road, 4 Miami Beach, FL 33 Telephone: (305) 67	



How “Sodomy” Laws Affect You

by James Esseks

You could go to jail. But more likely, your child will be taken away, you’ll lose your job, and political debates about discrimination laws and domestic partnership will be skewed against you, all because of the country’s remaining sodomy laws.

Sixteen years ago, in *Bowers v. Hardwick*, the Supreme Court held that Georgia’s law against oral and anal sex did not violate the constitutional right to privacy, handing a monumental loss to the gay rights movement. We lost because Justice Lewis Powell joined the 5-4 majority in that case, in part because he thought that this and similar laws were rarely enforced, “moribund” laws that had little if any effect on people’s lives. He was wrong. As gay rights organizations ask the Supreme Court to review Texas and Kansas laws that make same-sex intimacy a crime this year, it’s worth revisiting why these laws are so dangerous and why the fight to rid the country of them remains crucial.

Thirteen states plus Puerto Rico still make oral and anal sex a crime. Four states make it illegal only for same-sex couples; the others technically apply to opposite-sex couples as well. In all of the states, however, both the public and the courts routinely assume that so-called “sodomy” laws really only apply to gay people.

While actual prosecutions for adult intimacy are rare, laws that make it a crime nevertheless have a profound effect on the lives of lesbians and gay men across the country. The mere existence of these laws defines us as criminals in the eyes of many. This criminal status is used as a reason to treat us differently in contexts varying from employment to family law. The laws linger on the books, serving more as a convenient basis for political invective against us because of who we are than as a means of actually imprisoning us for what we do. But the effects are still devastating.

For example, family courts often rely on the mere existence of a law against oral and anal sex to justify separating lesbians and gay men from their children. Virginia’s Supreme Court took away Sharon Bottoms’s young son because it assumed that she, as a lesbian, must be violating the state sodomy law. This despite the court’s recognition that “the record show[ed] a mother . . . devoted to her son.” And Bottoms was clearly treated differently because she’s gay: Virginia bans oral and anal sex between opposite-sex as well as same-sex couples, but Virginia courts never take children away from divorced straight parents for having oral or anal sex much less because of a mere assumption that they do.

Courts in Alabama have similarly used laws making intimacy a crime against lesbian and gay parents, observing in one case that, “While the evidence shows that the mother loves the child and has provided her with good care, it also shows that she has chosen to expose the child continuously to a lifestyle that is [not] legal in this state” The court took the child away from the lesbian mother, just as courts did in similar cases in Arkansas and Missouri.



The difference between gay and straight in Kansas. The State of Kansas has locked up Matthew Limon in this prison for the next 16 years of his life. If Limon were heterosexual, he would have been released last year instead of in 2018.

Even in states that don't make intimacy a crime, courts have relied on laws in other states to justify separating parents from their children. A South Dakota court imposed restrictions on a lesbian mother's visitation with her child simply because intimacy for same sex couples, which was legal there, was a crime in other states to which the mother might travel.

Public employers have fired or refused to hire lesbians and gay men based on laws against intimacy. For example, Georgia's attorney general fired Robin Shahar, an attorney in his office, based on his assumption that, as a lesbian, she must be violating the state's sodomy law. Similarly, an out lesbian was refused a job with the FBI explicitly because she would have to work in states with such laws, a gay man was denied a non-officer job in a police department because of Texas's sodomy law, and a teacher in Washington State was fired because the state's criminal intimacy law made him "immoral" and therefore unemployable.

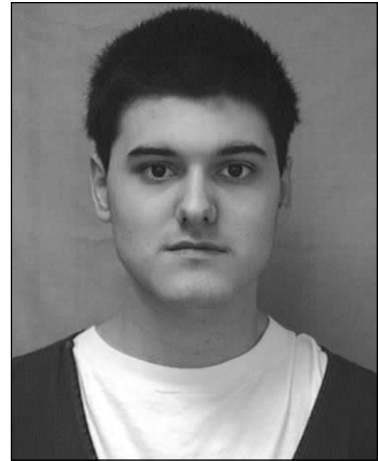
In political debates, laws against intimacy are invoked to deny gay people protection from discrimination and violence. When Utah was considering hate crimes legislation that would cover sexual orientation, one legislator asked, "Why should we pass a law protecting someone who is breaking the law?" Ultimately, another representative concluded, "[H]omo-sexuality, sodomy, is prohibited under Utah law, so the effect of granting special protection . . . to homosexuals would be contradictory under Utah law." The law did not pass.

Similarly, after the city of Austin granted domestic partner insurance benefits to its employees, opponents of the ordinance argued that the benefits were illegal because of Texas's law against intimacy for same-sex couples. The ordinance was repealed and numerous city employees instantly lost health insurance for their partners.

Laws against intimacy are also used to chill the participation of lesbians and gay men in political debates and to devalue their views. Officials tried to use Puerto Rico's sodomy law to intimidate and discredit the Reverend Margarita Sanchez de Leon. Sanchez, a lesbian, appeared before the Puerto Rico legislature to testify against anti-gay legislation. As Rev. Sanchez rose to speak, a legislator inquired for the record whether she was a lesbian and said that anything she had to say should be ignored because she was an admitted criminal. The ACLU represented Rev. Sanchez in her challenge to the constitutionality of Puerto Rico's law, which makes any sexual contact a crime for gay people. The case was designed to highlight the fact that sodomy laws are used to stifle and distort such political debates.

Laws that make intimacy a crime are also used in political debates about whether lesbians and gay men should be barred from serving as adoptive or foster parents. In Mississippi, the state's law against oral and anal sex was invoked in support of legislation that would ban adoption by gay or lesbian couples. As one legislator stated, "A homosexual relationship implies the exercise of illegal activities, and no child should be permitted to enter that type of setting." That legislation passed and became law. Similarly, Arkansas banned foster parenting by lesbians or gay men based in part on Arkansas's law against same-sex intimacy. Since then, the law was struck down by the Arkansas Supreme Court in a case brought by Lambda Legal.

More disturbing still, prosecutions do happen. In two recent prosecutions, one in Texas and the other in Kansas, the defendants have challenged those states' sodomy



All the way to the U.S. Supreme Court. The ACLU is asking the U.S. Supreme Court to review Matthew Limon's case. This is Limon's mugshot, taken when he entered prison.

laws as violating the state and federal constitutions. After state courts upheld the laws, the ACLU, Lambda Legal, and other groups have asked the United States Supreme Court to review these cases.

In the Texas case, John Lawrence and Tyron Garner were arrested in Lawrence's home when police responded to a false complaint of a weapons disturbance there. Convicted and fined, the men challenged the law through the Texas courts but ultimately lost. Represented by Lambda Legal, Lawrence and Garner have filed a petition for review with the Supreme Court. The ACLU submitted a friend-of-the-court brief to urge the Court to take the case.

In the Kansas case, Matthew Limon is serving a more than 17-year prison sentence because he had consensual oral sex with another male when they were both teenagers.

In the Kansas case, Matthew Limon is serving a more than 17-year prison sentence because he had consensual oral sex with another male when they were both teenagers. Had Limon or the other teenager been a girl, Limon would be

serving no more than a 15-month sentence. The ACLU now represents Limon and has filed a petition asking the Supreme Court to take his case.

Limon's astounding sentence is a product of the interaction between Kansas's same-sex only sodomy law and the state's so-called "Romeo and Juliet" law. Kansas's "Romeo and Juliet" law makes sex with a minor a lesser crime if both people are teenagers – but only if they are of the opposite sex. A Kansas legislator has said the legislature deliberately limited the law to opposite-sex couples because of the state's general ban on same-sex intimacy.

While the Texas and Kansas cases highlight the fact that prosecutions do happen, and that some people are serving hard time simply because they are gay, the background facts about how sodomy laws are used against lesbian, gay, and bisexual individuals are crucial. The Court knows prosecutions are comparatively unusual. This time around, we have to convince the members of the Supreme Court that sodomy laws actually harm lesbians and gay men – that they break up families, cost people jobs, and create unfair political roadblocks. We must convince the Court that these unequal and invasive laws must be abolished. ♦

Gay-Straight Alliances Take the Movement to Every Corner of America

by Joshua Freker

In May, a letter arrived at the ACLU from McAllen, Texas, a small town near the border with Mexico. Crystal Mendoza and Orlando Campa, two high school students, needed help. Students in their school had been harassed for years, and school leaders did nothing to stop it. Then, just over a year ago, a gay student committed suicide because he couldn't take it anymore. For the first time ever, classmates at the school got together to talk about the harassment and other LGBT concerns.

Mendoza, whose mother is a lesbian, was tired of being made to feel ashamed and secretive about her family. She says she and other students decided that if their school refused to address the problem, the students would do it themselves. They held an initial meeting and called themselves HUGS (Helping Unite Gays and Straights). Over 40 people came.

Soon after that meeting, the students asked their high school if they could become an official school group. The principal told them they would get approval only if they agreed not to focus solely on sexual orientation, ordering them to change their name and their mission.

The students, fearing they could miss their chance to make a difference, changed to a general diversity club. HUGS became TAP (Teens Against Prejudice). But that wasn't "de-gay" enough for the principal.

Later in the year, the leaders of TAP coordinated an LGBT visibility event, and the principal responded by suspending the group. Despite the fact that they hadn't publicly addressed LGBT issues for much of the year, he said they were becoming too gay specific. So Mendoza and Campa wrote to the ACLU.

In August, the Project and the ACLU of Texas contacted the school to demand that it allow the students to meet as a GSA and have equal access to the school – or meet the ACLU in court. The school caved, almost immediately. It guaranteed that the students would be allowed to form as a GSA – uncensored – and be treated just like other clubs.



LGBT rights leaders in Kentucky. For over a year, a GSA in rural Boyd County, Kentucky patiently sought recognition as a school club. After two rejections by the school board, the board voted a third time – this time under threat of an ACLU lawsuit – and finally approved the club.

PHOTO COURTESY OF THE COURIER-JOURNAL

Mendoza and Campa are just a few of the thousands of students struggling for LGBT equality in almost every state in the country. Their story represents the success of the very idea of a gay-straight alliance. GSAs started in the late 80s in Massachusetts' private schools and slowly moved to other liberal enclaves, but now they are fast becoming a regular part of high school life everywhere. They are also becoming a crucial force for LGBT equality.

Over the past year, the ACLU's Every Student, Every School help-line had a remarkable increase in calls from student GSA leaders. This past school year, nearly 40 students called to ask for help with their GSAs. Other students contacted ACLU offices in Arkansas, Colorado, Georgia, Hawaii, Kentucky, Pennsylvania, Montana, Nebraska, Wisconsin, and others as well. Virtually all of the students are from small towns and rural areas.

Ten years ago, most people – including these students from small town America – had never heard about GSAs. That started to change when two high-profile GSA lawsuits – one in Salt Lake City, Utah and one in Orange County, California – garnered lots of attention from local and national media. Those Utah and California school administrators didn't realize it at the time, but they helped get the word out about GSAs to students who are now forming them in every corner of America.

When schools refuse equal treatment for GSAs, they often unintentionally transform a conversation between a couple of students and their principal into a community-wide debate.

When schools refuse equal treatment for GSAs, they often unintentionally transform a conversation between a couple of students and their principal into a community-wide debate. A GSA in Neenah, Wisconsin used the denial of their GSA to educate the whole town about LGBT equality. The GSA generated a community letter-writing campaign to the school board, won coverage in the local TV and print news, and sparked a flurry of letters in the local newspaper.

The school's denial of the club created the opportunity for what may be the first-ever public acknowledgment that gay kids exist in their schools and that they are often cruelly mistreated. Andy Sampson, former president of the GSA, responded to a letter to the editor in the local newspaper: "[T]he letter... asked if we can afford to consider sinful behavior as an extracurricular club. To this I only ask if we can afford to have more and more students alienated and hurt because their school does nothing to maintain an atmosphere in which they receive the education they deserve." In the end, with the threat of an ACLU lawsuit, the school board gave in.

If homophobic principals helped spur a national movement, conservative politicians laid the foundation for it. The Equal Access Act, pushed through Congress by conservatives and signed into law by President Reagan in 1984, is the best tool there is to protect GSAs.

Though the intent of the law was to prohibit schools from banning Bible study groups and other Christian activity, the law neutrally says that if a school allows one or more non-curricular groups to have access to the school's resources, the school cannot refuse that access to other groups based solely on the group's ideas.

Three federal judges have already confirmed that the Act applies to GSAs. The first decision came in the Salt Lake case, closely followed by the case in Orange County, California and one in September 2002 in Indiana. The only way a school can refuse to recognize a GSA under the Equal Access Act is if it bans all non-curricular clubs. The school district in Salt Lake toyed with that idea, eventually abandoning it when the federal court made it clear that it would not allow the district to play games about which clubs were non-curricular and which were not. The Equal Access Act has turned out to be one of the most reliable and strongest defenses of LGBT rights efforts we've ever had.

As GSAs continue to spread across the country, it's quickly becoming clear that they are not just a "youth" issue. While LGBT rights organizations lead from major cities, high school students lead from places like McAllen, Texas and Neenah, Wisconsin. They're helping all of us by changing the minds of many Americans we don't often have the chance to reach. These students – LGBT and straight alike – are nothing less than the vanguard of the movement for LGBT equality. ♦

ACLU AIDS Project 2002 HIV/AIDS Survey



Thanks to the following organizations for taking time to participate in the survey:

ACLU Prison Project – Washington, D.C.
African Services Committee – New York, New York
AIDS Action – Washington, D.C.
AIDS Alabama – Birmingham, Alabama
AIDS Center of Queens County – Queens, New York
AIDS Interfaith Network – Fort Worth, Texas
AIDS in Minorities – Birmingham, Alabama
AIDS Outreach Center – Fort Worth, Texas
AIDS Project Los Angeles – Los Angeles, California
AIDS Resources of Rural Texas – Weatherford, Texas
AIDS Rochester – Rochester, New York
AIDS Services of Dallas – Dallas, Texas
Alabama AIDS Coalition – Huntsville, Alabama
Arkansas AIDS Foundation – Little Rock, Arkansas

A Report from the Frontline of the HIV/AIDS Epidemic

by Tamara Lange

Over the past year, the ACLU AIDS Project interviewed approximately 40 community-based AIDS service providers around the country to get a better picture of the civil rights and civil liberties issues facing people living with HIV and AIDS. That picture is even uglier than we had anticipated. We have our work cut out for us.

What follows is a preview of the survey results, which we will use to shape our litigation, policy, and public education efforts. We'll also share the survey with policymakers and other organizations working for the rights of people living with HIV and AIDS.

Almost every agency told us that the biggest problem facing their clients is basic needs – poverty, hunger, illiteracy, adequate medical care, lack of transportation, and housing. Because local agencies are best equipped to help their clients with basic needs and because the focus of our work is civil rights and civil liberties, our report targets areas in which people living with HIV and AIDS face illegal violations of their rights.

Privacy and Fear of Social Stigma

Nearly every one of the providers with whom we spoke reported serious violations of medical privacy. In New Mexico, a patient first learned that he was HIV-positive from a receptionist in front of a waiting room full of people. Police in St. Louis found a young man's HIV medication when they searched his car and disclosed his HIV status to his father, saying he had a right to know. The New York City Department of Health disclosed a person's HIV status to his employer. A teacher in Florida informed an entire class that a particular student was HIV-positive. A receptionist at a nursing home in Texas told a woman that the man holding her baby might give it AIDS.

These incidents are likely the tip of the iceberg, for even people who reported egregious breaches of confidentiality were typically too afraid to confront the problem if it meant disclosing their HIV status to

more people. Nevertheless, such breaches of confidentiality can and do unravel HIV-positive people's lives. After their HIV status was disclosed, several people were literally driven out of Paris, Texas with hate mail and vandalism of their homes.

The social stigma associated with HIV means that people avoid getting tested – and avoid seeking treatment when they test positive – because they are afraid their privacy will be violated. Especially in rural areas and in African American, Latino, and Native American communities, people are afraid of being abandoned by their families and rejected by their churches.

Quite a few of the service providers surveyed explained that fear of being cast out is so extreme that people go to extraordinary measures to protect their privacy, like traveling from Alabama to Georgia to get tested or driving 350 miles across Montana to get treatment. As more and more states require testing agencies to report the names of people who test positive or seek treatment, this apprehension has increased, and it now presents an enormous barrier to keeping HIV-positive people alive and to keeping others from being infected. In New York, labs are now reporting the names of doctors who request HIV-related lab work for their patients, and the state is prosecuting those doctors who don't report when HIV-positive patients seek treatment.

Discrimination

Despite some advances, discrimination against people living with HIV is still pervasive and affects virtually every aspect of life from employment to housing to access to basic medical care.

Job discrimination is still a problem. Most service providers had stories of HIV/AIDS-based job discrimination. An AIDS organization in Tallahassee receives approximately 10 complaints a year from people who say they were fired because of HIV status. Another provider in Texas typically receives at least one call every week from someone who was fired or demoted because of HIV status. Employers in Detroit and New York ask illegal questions, including “what medications are you taking,” and “have you been on disability” on job applications, in interviews, and after making job offers. According to local agencies, in Dallas and Fort Worth it is “a given” that disclosure of sta-

Big Bend Cares, Inc. – Tallahassee, Florida
 Blacks Assisting Blacks Against AIDS – St. Louis, Missouri
 Brooklyn AIDS Task Force – Brooklyn, New York
 Center for Disease Control – Washington, D.C.
 East Alabama AIDS Outreach – Auburn, Alabama
 Gay Men's Health Crisis – New York, New York
 Hispanic AIDS Awareness – Miami, Florida
 HIV/AIDS Advocacy Program – Detroit, Michigan
 HIV Hotline & Counseling Services – Tallahassee, Florida
 Latino Family Services – Detroit, Michigan
 Minority AIDS Project – Los Angeles, California
 Missoula AIDS Council – Missoula, Montana
 Movers, Inc. – Miami, Florida
 NAACP – St. Louis, Missouri
 National Association of People with AIDS – Washington, D.C.
 National Association of State and Territorial AIDS Directors – Washington, D.C.
 National Minority AIDS Council – Washington, D.C.
 Navajo AIDS Network, Inc. – Gallup, New Mexico
 New Mexico AIDS Services – Albuquerque, New Mexico
 New York Harm Reduction Educators – Bronx, New York
 The Osbourne Association – Bronx, New York
 People of Color AIDS Foundation – Santa Fe, New Mexico
 Pridelines – Miami, Florida
 Resource Center of Dallas – Dallas, Texas
 Santa Fe Community Housing Trust – Santa Fe, New Mexico
 SHISA – Tallahassee, Florida
 South Beach AIDS Project – Miami, Florida
 Southwest C.A.R.E. Center – Santa Fe, New Mexico
 St. Louis Effort for AIDS – St. Louis, Missouri

tus means a decision not to hire, particularly in the restaurant business. One Texas employer required an HIV-positive employee to use a different bathroom, eat in a separate location, and wear long-sleeved clothing in the summer.

Discrimination is pervasive in medical and social services. Medical and social services play a critical role in the daily lives of many HIV-positive people, but this lifeline is often dangerously unreliable because of ignorance and discrimination. All over the country, doctors, dentists, skilled nursing and psychiatric facilities, and drug treatment centers refuse to provide services to HIV-positive patients. One hospital in rural Texas has tried on several occasions to send HIV-positive patients seeking emergency care to the local AIDS service organization, saying “we’ve got one of yours.” In the most egregious case, a patient who was sent to the hospital because of vomiting and diarrhea was found lying in a hospital bed with nothing but a cup of water on the table. Staff from an AIDS service organization delivered medication to him and asked that he be given an IV. They returned to find the man in the same neglected state. By the time he was transferred to another hospital, it was too late, and he died there. Service providers also told stories about nursing homes and psychiatric or drug centers from Arizona to Los Angeles that flatly refuse to accept HIV-positive clients. Rural service providers in Texas hear about cases from Oklahoma where people who test positive are sent to a gay nurse practitioner with no resources to provide HIV care.



Serving over 10,000 people living with HIV/AIDS. The AIDS Project of Los Angeles, pictured at a Latino LGBT pride event, reports that nursing homes and drug treatment centers in L.A. refuse to accept HIV-positive patients.

People living with HIV and AIDS are particularly vulnerable to housing discrimination. Because a disproportionate number of people living with HIV/AIDS are poor, access to housing is a critical problem that is compounded by discrimination. AIDS organizations in Missouri, Arkansas, Florida, and Alabama said they have seen numerous evictions based purely on HIV status. In Dallas, certain apartment complexes associated with social service programs refuse to allow anyone with HIV or any other disability into their programs. Many landlords will not accept checks from social service programs, making it impossible for HIV-positive tenants receiving government subsidies to rent from them. Neighborhood associations from Alabama to New Mexico actively oppose issuance of city and county permits for any new housing facility for people living with AIDS.

HIV in Prisons and Jails

Failing to adhere to a strict schedule when taking HIV medication can make the virus resistant to the medication, so depriving inmates of medication is a matter of life and death. All over the country we heard stories about prisons and jails depriving inmates of medication, skipping doses, or providing one standard set of medications for triple-combination therapy, even for inmates with resistance to one or more of those three drugs.

Nearly everywhere we went people told us that HIV-positive prisoners are released from jail without the medication they need to tide them over until they can obtain follow-up care. In New York, it takes 45 days to qualify for Medicaid; in Dallas, it takes 60 days to get an appointment at the county hospital.

A county jail in Texas reportedly refused to provide medication to one inmate for over two months, asserting that the local AIDS services organization was

responsible for getting him medication. In Santa Fe and Gallup, New Mexico, people with HIV who have been arrested and held over the weekend have begged for their medications to no avail because the jail does not see non-adherence to an HIV-medication regimen as a medical emergency. Several Texas prisons switch inmates to cheaper medications despite the danger that the virus will develop resistance to the medications that keep them alive. AIDS organizations in Los Angeles and Michigan also reported that prisoners have a hard time getting medication and are subjected to dangerous interruptions in medication.

Needle Exchange

There are very few needle exchange programs, and hence very little education about or access to clean needles as a way to prevent the spread of HIV. Those programs that do exist are in imminent danger of having their funding pulled. New Mexico was the only state where providers talked about the availability of successful needle exchange programs. Even in the traditionally conservative city of Roswell, police have been open to needle exchange. In contrast, providers in Detroit and Missoula identified the ban on federal funding of needle exchange as a substantial problem. Of the groups interviewed, only one provider had needles and works-cleaning kits in public view with instructions clearly posted, and they are dismantling their program because of funding problems. ♦

Federally-Funded Religion Will Trample Civil Rights

by Christopher E. Anders

During the earliest days of the civil rights movement, this country emphatically answered two fundamental questions about its commitment to ending discrimination: it decided that religion was no excuse for discrimination, and that no one who got federal money would use it in a discriminatory program. President Bush's "faith-based initiative" program would reverse both of those decisions.

Almost from the birth of the civil rights movement, opponents of civil rights argued that religion required them to discriminate against others. Over the years, rationales for discrimination stemmed from religious views on the divine separation of races, the innate inferiority of women, and the inherent evil of homosexuality. With backing from religious groups, legislatures enshrined these views into the law in the form of segregationist policies, anti-miscegenation laws, prohibitions on women in many workplaces, and laws that made intimacy a crime for same-sex couples.

However, the civil rights movement in the 1940's through the 1960's took up the first fights against religiously-motivated discrimination. Some religious leaders preached that their faith supports inclusion and not discrimination, and litigators and lobbyists argued to courts and Congress that the Constitution does not permit discrimination.

These efforts resulted in key civil rights successes that began with the passage of laws protecting racial, ethnic and religious minorities, then women, and later people with disabilities, and with more uneven success, LGBT people. And at least in most civil rights laws, the balance that was struck was that religious groups could use religious-based preferences to decide

who stands behind the altar, sits in the pews, or even cleans the church building, but could not make discriminatory decisions when they affect the purely secular, everyday activities of others.

On a parallel track, the country's long march toward stopping the government itself from funding discrimination dates back to President Franklin D. Roosevelt. For more than 60 years, the nation has committed itself to the principle that the federal government generally will not provide federal funds to any group – including religious organizations – that discriminates. This ban is comprised of a patchwork of constitutional law, statutory restrictions on government programs, executive orders, and regulations.

The first piece of that patchwork ban was sewn in June of 1941. As the nation mobilized for war, the great civil rights and labor leader A. Philip Randolph was organizing the first March on Washington for Civil Rights. The goals of the march included integrating African-Americans and other minorities into the national eco-

For more than 60 years, the nation has committed itself to the principle that the federal government generally will not provide federal funds to any group - including religious organizations - that discriminates.

conomic and political life as the country prepared for a war that would require everyone to make sacrifices. After negotiations between the Roosevelt Administration and the March committee, Mr. Randolph cancelled the march and President Roosevelt agreed to sign a bold new executive order protecting people from discrimination based on race, religion, color, and national origin.

President Roosevelt ordered all federal agencies to “include in all defense contracts hereafter negotiated by them a provision obligating the contractor not to discriminate against any worker because of race, creed [religion], color, or national origin.” Roosevelt later expanded the civil rights provision to include all government contracts, and Presidents Truman, Eisenhower, Kennedy, Johnson, Nixon, and Carter strengthened its protections. The common objective of all seven presidents from both political parties was to keep taxpayers’ money from going to people, companies, or organizations that discriminate – including on the basis of religion. Congress bolstered the civil rights protections provided by the executive order on contractors by adding statutes affecting a wide range of federal contract and grants programs.

These civil rights protections do not block religiously-affiliated organizations from receiving federal money to provide social services. In fact, many religiously-affiliated groups have participated for decades in federal and state-funded activities. Those organizations, including Catholic Charities, Lutheran Social Services, and the United Jewish Communities, have all agreed to follow the nondiscrimination provisions that apply to other organizations receiving federal funds. Any religious organization can already participate in federal programs by abiding by the same rules.

The President’s faith-based initiative reopens these long-resolved questions about religiously-motivated discrimination and federal funding for groups that discriminate. The initiative has taken several forms. During the summer of 2001, President Bush endorsed a bill in the House of Representatives that would explicitly allow federally-funded religious groups to discriminate in hiring their employees. After a bitterly divisive debate, the House narrowly passed the bill.

Later that year, when Senators Joseph Lieberman and Rick Santorum drafted their Senate “compromise” version, they crafted a bill that would open a vast array of federal programs to greater participation by religious groups, but would not affirmatively allow discrimination. Instead, they left that question open to interpretation by the Bush Administration and the courts. This seemingly neutral approach raises grave concerns because the Administration has already stated its position that congressional silence on civil rights means a green light to discrimination.

During the past two years, the ACLU has been the nation’s most aggressive defender of civil rights against federally-funded religious discrimination. In Washington, the ACLU brought together civil rights and religious leaders



Congress knows about Alicia Pedreira. After getting fired from her job as a counselor at the Kentucky Baptist Homes for Children, Alicia Pedreira started over in Florida. Pedreira’s story has helped people across the country, including members of Congress, understand the problems of government-funded religious groups.

opposed to the faith-based initiative, lobbied members of Congress, submitted testimony to Congress, talked with hundreds of media outlets, and built a grass-roots response to the initiative that resulted in more than 100,000 letters and phone calls to members of Congress.

A particularly powerful tool for the ACLU in our fight in Congress is the story of Alicia Pedreira. The Project represents Pedreira, a lesbian social worker who was fired by the Kentucky Baptist Homes for Children because she did not share their religious views on homosexuality. The employer claimed a right to fire her even though it was receiving 80% of its funds from the state. Pedreira's story is a compelling example of the problems caused by providing government funds to groups that carry out religiously-motivated discrimination.

The case was highlighted at several critical points in the national debate on the President's faith-based initiative. During the only Senate hearing on the legislation, Judiciary Committee Chairman Patrick Leahy discussed the case as an example of the problems that he would like to avoid. And in the waning days of the Congress, Pedreira and Project attorney Ken Choe flew to Washington to brief dozens of Senate staff and coalition partners on the need to stop a last-ditch effort to pass the Lieberman-Santorum bill.

As this article is being written, the faith-based legislation has been stripped of its worst provisions and has slowed to a crawl, and we have realistic hopes that it will die in this Congress. But even without the legislation, President Bush and many of his counterparts in statehouses across the country are implementing the faith-based initiative without legislative approval. They simply exercise their executive discretion to hand out taxpayers' dollars to their cronies (such as a \$500,000 grant made to one of Pat Robertson's charities from the Bush Administration) among the religious groups – with few or no strings attached.

Even if successful in Congress, the ACLU has a long road ahead in fighting the unilateral actions of the President and many governors. It will mean more fights in Congress and state legislatures, more public pressure, and more lawsuits until the attacks stop on the long-standing principles of prohibiting religiously-motivated discrimination in most secular activities and blocking government funds from going to groups that discriminate. ♦

Why We're Asking Courts and Legislatures for Transgender Equality

by *Kenneth Y. Choe*

Winn-Dixie, a Fortune 500 grocery store chain, fired Peter Oiler, one of its truck drivers, when it discovered that he cross-dresses off-the-job.

Winn-Dixie admits that it fired Oiler solely because it considers the way in which he dresses off the job to be insufficiently masculine. Indeed, when asked to explain why Winn-Dixie had fired Oiler, one manager responded: “[Oiler] was doing something that was abnormal in most people’s opinion about what was accepted for a person who is a man.”

On Oiler’s behalf, the ACLU sued Winn-Dixie in federal court in Louisiana, claiming violations of both federal and state laws that prohibit sex discrimination in the workplace.

The ACLU invoked the principle that laws against sex discrimination cover discrimination based on sex stereotypes. In a case in which an employer penalized a female employee because it considered her to be “macho,” the Supreme Court confirmed that “we are beyond the day when an employer could evaluate employees by assuming or insisting that they match the stereotype associated with their group.”

The goal is to establish that this principle applies equally where an employer penalizes a transgendered employee because the employer thinks he or she is insufficiently masculine or feminine. The ACLU has little doubt that this is correct, the inevitable outcome of fair application of the general principle. But we also recognize that it may take us more than one case to convince the courts. New ideas often do.

We seek clarification from legislatures, even as we do so from courts.

Already, two states – Minnesota and Rhode Island – and 46 municipalities – most recently New York City – explicitly prohibit employment and other types of discrimination based on gender identity and expression. Bills addressing discrimination based on gender identity and expression have been introduced in the legislatures of 13 states, and we hope to see such a bill introduced in the Congress in the near future.

Bills addressing discrimination based on sexual orientation but not gender identity and expression have been introduced in the legislatures of 21 states. As a general rule, we support the expansion of the scope of such bills to include discrimination based on gender identity and expression.

Our experiences in Atlanta, New Orleans, and other municipalities have shown that, contrary to conventional wisdom, the inclusion of gender identity and expression in proposed sexual orientation laws does not diminish their chance of success.



Need not apply – unless you’re a real man. Peter Oiler, pictured with his wife Shirley, was fired from his job as a Winn-Dixie truck driver because he cross-dressed off the job. The ACLU is asking a federal judge to reconsider his decision that transgendered people are not covered by federal sex discrimination laws.

Indeed, in Louisville, each time activists agreed to a proposed law addressing discrimination based on sexual orientation but not gender identity and expression, their efforts failed. When they insisted on transgender inclusiveness, however, the law passed.

Moreover, the inclusion of gender identity and expression in bills addressing sexual orientation discrimination provides us with a way to educate lawmakers about the similarities and differences between the discrimination faced by the transgender community and that faced by the lesbian, gay, and bisexual community.

Some have suggested that by pressing for new laws prohibiting discrimination based on gender identity and expression we implicitly suggest that existing sex discrimination laws do not already prohibit gender identity discrimination. Our judicial and legislative efforts, however, are not in conflict with one another.

Discrimination based on gender identity and expression is less likely to occur where civil rights laws put the entire community on notice that such discrimination is unlawful.

First, even though sex discrimination laws implicitly prohibit gender identity and expression discrimination, it is important to make that explicit. Civil rights laws are valuable not only because they provide remedies when discrimination occurs but also because they discourage such discrimination from

occurring at all. Discrimination based on gender identity and expression is less likely to occur where civil rights laws, by their own language, put the entire community on notice that such discrimination is unlawful.

Second, conservative courts continue to cling to analytically flawed interpretations of sex discrimination laws that do not recognize discrimination based on gender identity and expression – especially discrimination based on transsexuality – as a form of discrimination based on sex. These courts could not continue to do so, however, if legislatures were to clarify that the scope of such laws includes discrimination based on gender identity and expression.

Unfortunately, the rise in the visibility of the transgendered community has been accompanied by a rise in discrimination based on gender identity and expression. That rise in discrimination makes it imperative that we make it clear now that the law protects transgendered Americans, and that discrimination against them is illegal and unacceptable. ♦

W H E R E W E A R E 2 0 0 3

LGBT RIGHTS

S T A T E - B Y - S T A T E D O C K E T

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Boy Scouts

California, District of Columbia,
Georgia, Illinois, Louisiana, Wisconsin

Civil Rights Laws

Arizona, Colorado, Delaware, Florida,
Illinois, Iowa, Kentucky, Maryland,
Michigan, Missouri, Nebraska, North
Carolina, Washington, Wisconsin

Domestic Partnership

Alaska, Arizona, California, Connecticut,
Indiana, Maine, Maryland,
Massachusetts, Michigan, Montana,
New Jersey, New York, Ohio,
Pennsylvania, Rhode Island, South
Carolina, Vermont, Washington,
Wisconsin

Equality in Criminal Justice

Arizona, Idaho, Michigan, Missouri,
North Carolina, Texas

Free Expression

California, Florida, Georgia, Hawaii,
Missouri, Oklahoma, Pennsylvania, Utah

Hate Crimes

Colorado, Iowa, Maryland, Mississippi,
South Carolina, Utah, West Virginia

Job Discrimination

Illinois, Kentucky, Michigan, Nevada,
Utah, Washington

Laws Against Sexual Intimacy

Georgia, Kansas, Massachusetts,
Minnesota, Missouri, Puerto Rico, Texas

Marriage

California, Indiana, Massachusetts,
Mississippi, New Hampshire, New
Jersey, Ohio

Parenting

Arkansas, California, Colorado, Florida,
Georgia, Idaho, Indiana, Louisiana,
Michigan, Missouri, Nebraska, New
York, Ohio, Pennsylvania, South
Carolina, Virginia

Religious Discrimination

Kentucky, Pennsylvania

Transgender Issues

California, Connecticut, Idaho, Kansas,
Kentucky, Louisiana, Minnesota,
Mississippi, New York, Ohio, Rhode
Island, Virginia

Youth, Students, & Schools

Arkansas, California, Florida, Georgia,
Hawaii, Idaho, Indiana, Kansas,
Kentucky, Louisiana, Michigan,
Missouri, Montana, Nebraska, New
Hampshire, New Jersey, North
Carolina, Ohio, Pennsylvania, South
Carolina, Texas, Utah, Washington,
Wisconsin

ALASKA

Public Employees Fight for Domestic Partner Benefits

Alaska Civil Liberties Union v. Alaska and Anchorage

Alaska state law forbids state recognition of same-sex marriage and restricts benefits such as health insurance and retirement funds to “spouses” of government employees. Together, these laws place same-sex couples in a double bind by excluding them from marriage but then making marriage the sole prerequisite for receiving benefits. Stay-at-home mom Mari Billington experienced this exclusion from the laws. Since she is denied health benefits through her partner’s government job and can’t afford her own health insurance plan, she applied for Medicaid coverage. But the federal government denied her Medicaid coverage because it treats her same-sex partner as though she were her spouse.

The Project and the Alaska Civil Liberties Union (AkCLU) filed a lawsuit in 1999 claiming that the denial of equal benefits to gay and lesbian employees violates the Alaska constitution. In November 2001, a trial judge upheld the state’s restriction of benefits to married couples, saying that the benefits policy does not discriminate because it treats unmarried straight people no differently than unmarried gay people. In December 2001, the Project and AkCLU appealed the decision to the Alaska Supreme Court. Project Attorney Ken Choe is handling the case along with cooperating attorneys Allison Mendel and Tobias Wolff. Mari Billington, the stay-at-home mom, filed a friend-of-the-court brief to tell the court her story.

ARIZONA

Same-Sex Hugging Banned In Prison

Whitmire v. Arizona Department of Corrections

When William Lyster, an inmate in an Arizona prison, hugged his partner Karl Whitmire during a visit, prison officials warned him that if it happened again he would lose the right to see his partner at all. Prison policy prohibited same-sex affection between inmates and non-family visitors, even though it permitted similar conduct during visits between opposite-sex couples. The prison said, inexplicably, that the policy was necessary to protect gay inmates from violence. Whitmire sued the prison in federal court, but a trial court dismissed the case. A federal appeals court ruled in Whitmire’s favor, finding that the U.S. Constitution’s guarantee of equal protection applies to sexual orientation discrimination. The court also noted that prisoners who are already openly gay would not be protected by the policy. Martha Matthews of the ACLU of Southern California and the National Center for Lesbian Rights represented Whitmire in his appeal.

Arizona Legislature Fails to Protect LGBT Rights

Two bills to protect gay rights failed in the Arizona state legislature. The first bill would have outlawed job discrimination based on sexual orientation and the second would have established a statewide domestic partner registry. The Arizona CLU worked with the Arizona Human Rights Fund to testify and lobby for both bills.

ARKANSAS

Anti-Gay Foster Care Rules Challenged

Howard v. Child Welfare Agency Review Board

After Arkansas's child welfare agency established a policy that "no person may serve as a foster parent if any adult member of that person's household is a homosexual," the ACLU filed a lawsuit in state court challenging the policy on behalf of a gay male couple, a lesbian, and a heterosexual man whose gay son lives with him. The suit charges that the policy violates the right to equal protection under the federal and state constitutions and conflicts with existing state law and policy directives to find foster homes that are "in the best interest of the child." In August 2002, the ACLU asked the judge to strike down the regulation without going to trial. A decision is pending. Project attorney Leslie Cooper and cooperating attorneys David Ivers and Emily Sneddon represent the plaintiffs.



Craig Stoores and Matthew Howard want to help the State of Arkansas take care of children from troubled homes, but a state policy forbids gay people from becoming foster parents.

Lesbian Student Overturns Prom Ban

An Arkansas high school had a policy that any senior wishing to bring a date to the prom who was not enrolled in the school had to obtain approval from the principal. In the past, heterosexual same-sex friends had been allowed to attend the prom together, but when a lesbian student requested permission to bring a female date, the principal denied approval. The ACLU of Arkansas sent a letter to the school district saying that the U.S. Constitution prohibits such discrimination. The school responded by permitting the student to bring her date to the prom.

CALIFORNIA

Students Await Key Federal Appeals Court Ruling

Flores v. Morgan Hill Unified School District

Six former students are suing the Morgan Hill Unified School District and several of its administrators for failing to stop anti-gay harassment and violence. The trial court ordered the case to go forward, but the school administrators took the case to a federal appeals court, arguing that they cannot be held legally accountable because they could not be expected to know that allowing anti-gay harassment in school violates the U.S. Constitution. The ACLU argued that when these students' rights were violated, it was well established that the government could not discriminate based on sexual orientation. After being sent back to the trial court for additional analysis, the case reached the federal appeals court again and now awaits a decision. The ACLU of Northern California, the National Center for Lesbian Rights, and cooperating attorneys Jim Emery, Jill Ginstling, Karin Kramer, Stacey Wexler, Leslie Levy, Diane Ritchie, and Meredith Fahn are handling the case.



A few years ago, Golden West High School was a place where gay students were taunted and threatened on daily basis. Today, students are teaching other students how to be respectful of all people, and teachers and administrators are learning how to prevent harassment. Former student George Loomis made that change possible when he stood up to harassment and discrimination.

School Agrees to Extensive Training Program

Loomis v. Visalia Unified School District

At Golden West High School, George Loomis faced harassment from students, teachers, and administrators for being gay. When Loomis requested help, the school removed him from regular classes and placed him in a program for delinquent students instead of stopping the harassment. On behalf of Loomis and the Gay Straight Alliance Network, the ACLU of Northern California sued the school district. In addition to relying on the U.S. Constitution, the lawsuit became one of the first to sue under California's Student Safety and Violence Prevention Act of 2000, which forbids anti-gay discrimination in public schools. In August 2002, the district settled the lawsuit by agreeing to an extensive, district-wide anti-harassment training program. The settlement integrates student-led trainings about anti-gay harassment into classes for all students and requires training for teachers, administrators, and staff that will teach them how to prevent and combat anti-gay harassment. The ACLU of Northern California and cooperating attorneys Kevin H. Lewis, John Eichhorst, Edward B. Mullen III, Evan Nadel, and Kathleen Morris represented the plaintiffs.

Anti-"Dr. Laura" T-Shirts Banished

Adams v. Southern Counties Placement Committee

When seven employees of Gay and Lesbian Adolescent Social Services, a non-profit LGBT youth services provider, attended the Southern Counties Placement Committee's annual conference for children's services agencies, they were forced to leave for wearing T-shirts protesting the choice of "Dr. Laura" as keynote speaker for the conference. The ACLU of Southern California filed a First Amendment lawsuit in federal court against the Committee arguing that the government cannot sponsor a conference and choose a keynote speaker, but then censor disagreement with the government's chosen speaker. The court rejected the Committee's effort to dismiss the action. A trial date is set for early 2003.

San Diego Sued for Giving Scouts Special Rights

Barnes-Wallace v. City of San Diego and Boy Scouts of America/ Desert Pacific Council

The City of San Diego has given the Boy Scouts exclusive use of city-owned park property in Balboa Park for 50 years for one dollar a year, as well as free use of other city property. This city sponsorship has continued despite the fact that the group openly discriminates against gay people and non-religious people. The ACLU of San Diego is challenging the city's preferential treatment of the Scouts in federal court on behalf of a lesbian couple and an agnostic straight couple, arguing that the city is violating its own civil rights ordinance and the U.S. Constitution's guarantee of equal protection and the separation of church and state. The city lost an attempt to dismiss the lawsuit, and the case is now in the information-gathering stage. ACLU of San Diego attorneys Jordan Budd and Elvira Cacciavillani are handling the case with the help of cooperating attorneys

M.E. Stephens, Mark Dannis, Drew Woodmansee, and Shannon Daily.

In 2001, when the Boy Scouts asked the City to renew its lease for the park property, the ACLU of San Diego and the Lesbian & Gay Men's Center launched a campaign against the renewal. The groups generated media coverage, inspired significant citizen involvement, and gave televised testimony at a packed public hearing. Unfortunately, the council renewed the lease, keeping the lawsuit alive.

Censored Gay-Friendly Teacher Wins Settlement

Debro v. San Leandro Unified School District

When Karl Debro, a heterosexual high school teacher in the San Leandro public schools, expressed his opposition to racism and homophobia in a classroom discussion, the school disciplined him for raising "objectionable" topics in class. He sued the school district in federal court, arguing that the district had violated his First Amendment right to free expression. After the trial court ruled against him, the ACLU of Northern California helped his appeal with a friend-of-the-court brief, arguing that Debro's speech was constitutionally protected. Before the federal appeals court heard the case, the case settled favorably for Debro. Cooperating attorneys Thomas R. Burke and Eric M. Stahl, Ann Brick and Maggie Crosby of the ACLU of Northern California, and Romana Mancini of the Project authored the brief, which was joined by Lambda Legal and the California Teachers Association.

California Supremes to Consider Second-Parent Adoptions

Sharon S. v. Superior Court

Lesbians and gay men have been using California's adoption procedures to secure second-parent adoptions (where one person adopts a partner's biological or adoptive child) for over 10 years. When a lesbian couple broke up during the process of a second-parent adoption, the biological mother tried to stop it from going through. The case reached a California state appeals court, which ruled that California law does not authorize second-parent adoptions at all. California has since passed a law that allows domestic partners to adopt each other's children, but the second-parent adoption decision calls into question the validity of thousands of adoptions performed before that law passed. The California Supreme Court has agreed to review the decision. The ACLU of Southern California and the ACLU of San Diego filed a friend-of-the-court brief arguing that California's adoption statutes should be interpreted to permit second-parent adoptions and that the court's decision should not invalidate previously approved second-parent adoptions. A decision is pending.

California High Court to Address Nature of Parental Rights

Butler v. Harris

The ACLU of Southern California participated in a case before the California Supreme Court addressing the difficult balance between the rights of parents to decide who can see their children and the right of grandparents who wish to visit their grandchildren. The case is important for lesbians and gay men because gay parents often face homophobic relatives who want to take away their children and courts have a history of ignoring the rights of non-biological gay parents. The ACLU's brief asked the court to protect the decision-making rights of parents while not defining "parent" in a way that would exclude lesbians and gay men. A decision is pending. Martha Matthews of the ACLU of Southern California wrote the

friend-of-the-court brief, which was joined by the ACLU of San Diego, the National Center for Lesbian Rights, and other groups.

Lawmakers Advance LGBT Rights

The ACLU affiliates of California supported numerous bills affecting LGBT rights in the state legislature. Two of these key bills passed the legislature, and two have not yet passed. Of the bills that have passed, one will allow surviving domestic part-

ners to inherit from their partners in the absence of a will and the other would explicitly ban anti-LGBT bias in foster care. The domestic partner bill was signed into law by Governor Gray Davis in September 2002, and the foster care bill was awaiting the governor's approval as of September 2002. Of the two bills that did not yet pass, one would prohibit the state from contracting with vendors who do not offer equal employment benefits to domestic partners of their employees and the other would explicitly ban discrimination against transgendered people. Though the Senate failed to push forward the transgender civil rights bill, the state department of fair employment and housing made a commitment to accept these discrimination cases under existing state sex discrimination laws. Finally, the ACLU lobbied against a bill in the California legislature that would prohibit the promotion of homosexuality in public education. This bill did not pass.



Project Director Matt Coles meets with the ACLU of Northern California board of directors in San Francisco to facilitate cooperation on LGBT rights and HIV/AIDS work. The ACLU offices in California took LGBT-related cases as early as 1940.

Affiliates Advocate for Safe Schools

The ACLU of Northern California sponsors the Friedman Project, which provides safe schools training programs for school students and faculty. The Project's peer-to-peer program helps train students to speak with other high school students about LGBT issues. The ACLU of Southern California is working both in Los Angeles County and with a statewide coalition to implement the recently passed state safe schools law. The coalition works to establish programs that offer training and education for teachers, develop advocacy skills for school officials and administrators, motivate youth and parent advocates, and provide information on raising potential litigation.

Securing the Freedom to Marry

This past year, a new coalition formed to secure the freedom to marry for same-sex couples in California. The ACLU of Northern California is part of the group and participated in town hall meetings, released poll data to the press, and conducted action alerts regarding the issue of gay marriage. The coalition aims to win full marriage equality in the next five years.

LGBT Youth in Foster Care and Youth Probation Systems

The ACLU of Southern California works with other advocates, judges, social workers, and placement providers in Los Angeles County (which has the nation's largest foster care system) to advocate for policy changes, better training for social workers and placement providers, youth outreach, and public education to ensure that LGBT youth receive safe and appropriate care and services in the foster care

and youth probation systems. The ACLU of Southern California is also involved in a statewide coalition to advocate for positive legislation and statewide policy on these issues. The coalition helped pass a law that will ban anti-LGBT bias in the state foster care system. As of September 2002, Governor Davis had not yet signed it into law.

San Diego LGBT Community Honors ACLU

The Tom Homann Law Association, an LGBT attorney association, honored ACLU of San Diego President Charles Bird for his defense of second-parent adoptions in California. The San Diego Democratic Club gave its top communications award to Dale Kelly Bankhead, the affiliate's Public Affairs Director, for her work furthering the interests of the LGBT community in the media.

COLORADO

Co-Parent Fights to Retain Custody

In re Parental Responsibility for E.L.M.C.

Two Denver women wanted to jointly adopt a little girl. Only one of the women could legally adopt the girl under Colorado law, but a Denver district court judge granted their request for shared rights and responsibilities for their daughter. When the couple later split up, the family court granted 50/50 parenting time for each parent. The adoptive mother is fighting this ruling, arguing to a state appeals court that she alone should have custody because she alone adopted the child. The ACLU of Colorado filed a friend-of-the court brief arguing that the non-adoptive mother should have the right to shared custody of the child. ACLU attorney Mark Silverstein and cooperating attorney Heather R. Hanneman are handling the case.

Father Successfully Challenges Homophobic Custody Ruling

In re Marriage of Dorworth

When Edward Dorworth came out during his divorce, a judge placed two custody restrictions against him but none against his ex-wife. Dorworth was ordered not to have any overnight visitors in the home with his daughter present and not to take his daughter to his church, which welcomes gay men and lesbians. He appealed the restrictions, and the ACLU of Colorado filed a friend-of-the-court brief on his behalf. A state appeals court removed the restrictions. ACLU attorney Mark Silverstein handled the case with cooperating attorney Julie C. Tolleson.

GSAs Spread in Colorado

The ACLU of Colorado worked with student leaders to establish GSAs in two high schools, one in Highlands Ranch and the other in Colorado Springs. Advocating for the students, the ACLU negotiated policies with the schools to ensure that the groups receive equal treatment and recognition.

Hate Crimes and Civil Rights Bills Defeated

The ACLU of Colorado lobbied and testified in support of new hate crimes legislation and a civil rights bill in the state legislature. The bills would have expanded protections to include sexual orientation and gender identity, but neither passed.



This year, the Connecticut legislature extended some legal benefits of marriage to same-sex couples, including the ability to designate one another to make medical and end-of-life decisions.

CONNECTICUT

Connecticut Extends Benefits to Same-Sex Couples

In June 2002, Connecticut Governor John Rowland signed a bill that extends a number of legal benefits to same-sex couples. The new law allows same-sex couples to designate one another to make medical decisions and end-of-life choices, to make private visits to each other in nursing homes, and the ability to transfer a car to one another upon death. The new law also requires the legislature to study public policy reasons for prohibiting or permitting same-sex marriage and civil unions and requires a report on the findings in the next legislative session. The Connecticut Civil Liberties Union (CCLU) actively lobbied for both of these bills.

CCLU Pushes for Transgender Rights

The CCLU advocated for a bill that would ensure that transgendered individuals can amend their birth certificate to reflect a change in gender once they transition. Unfortunately, the bill died in committee.



A Delaware Senate committee chairman refused to let a gay rights bill go to a full floor vote despite a statewide poll showing most Delaware residents support the measure.

DELAWARE

Activists Lobby Hard for Gay Rights

The ACLU of Delaware is working to ban anti-gay bias in housing, jobs, and public accommodations under state law. In support of the proposed legislation, the ACLU sent action alerts to its members, held "lobby days," recruited speakers to testify in the Senate hearing, and held meetings with supporters and opponents of the bill. The ACLU of Delaware also conducted and then publicized a poll that found a majority of Delaware residents supports the measure. The bill passed the House and awaits action in the Senate.

DISTRICT OF COLUMBIA

Boy Scouts Appeal Decision Voiding Anti-Gay Discrimination

Pool et al. v. Boy Scouts of America

When two adult gay Eagle Scouts were excluded from the Boy Scouts because they are gay, the National Capital Area ACLU filed complaints with the D.C. Department of Human Rights, arguing that the Scouts violated a local law prohibiting anti-gay discrimination in public accommodations. While the Commission's decision was pending, the U.S. Supreme Court ruled that a New Jersey gay rights law could not be applied to the Boy Scouts without violating their First Amendment rights. Distinguishing this case from the New Jersey one, the Commission ruled that the Boy Scouts unlawfully discriminated against the Eagle Scouts because they are gay. After the Commission ordered the Boy Scouts to reinstate the Eagle Scouts and awarded money damages and attorneys' fees, the Boy Scouts appealed to the high court for Washington, D.C. A decision is pending.

David M. Gische, Merrill J. Hirsh, and Laura C. Zimmitti are the ACLU cooperating attorneys on this case.

FLORIDA

Federal Appeals Court Reviews Gay Adoption Ban

Lofton v. Florida

Florida law bans gay men and lesbians from adopting children. In 1998, the ACLU and other groups filed a lawsuit challenging the ban on behalf of two children, two gay men who are raising them and seek to adopt them, and a male couple who would also like to adopt. Doug Houghton has raised his son since the boy's homeless father asked Doug, a pediatric nurse, to take care of him. Houghton seeks to protect the security of his relationship to his son by officially adopting him. Wayne Smith and Dan Skahen have taken care of several foster children for the state of Florida, but Florida refuses to allow them to adopt any of these children. Steve Lofton, a pediatric AIDS nurse, has raised three Florida foster children from infancy with his partner Roger Croteau. The youngest of the children, 11-year-old Bert, is eligible for adoption, and Lofton is seeking to adopt him. Since he cannot, the state has indicated that it is looking for other potential adoptive parents for Bert even though he has been a part of Lofton's family since he was merely weeks old. The parents claim that Florida's adoption law violates their constitutional rights to equal protection and family integrity. In August 2001, a federal judge upheld the law, and the ACLU has appealed that decision. Project Director Matt Coles will argue the case at a federal appeals court in March 2003. Coles, Project attorney Leslie Cooper, ACLU of Florida Legal Director Randall Marshall, and cooperating attorneys Steven Kozlowski and Elizabeth Schwartz of Miami represent the adult plaintiffs. Christina A. Zawisza of Florida's Children First Project represents the two children who are plaintiffs.

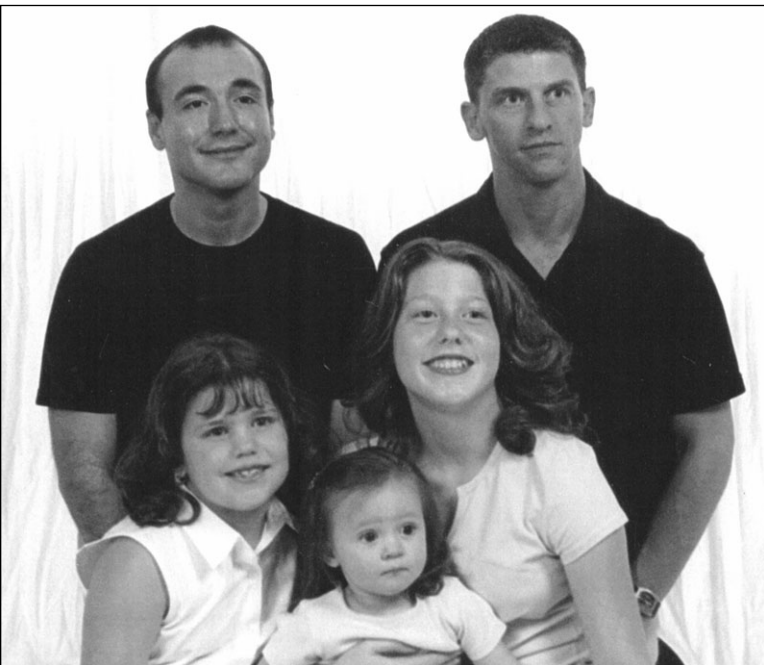
(For more on the ACLU's campaign to overturn Florida's ban on gay adoption, see page 7. For updates and further information on the case, visit www.letthemstay.com)

"Dignity for All Students" Killed in Legislature

The ACLU of Florida worked with other gay rights organizations and LGBT-friendly legislators to lobby for a bill, the Dignity for All Students Act, that would have empowered school authorities to prevent harassment and discrimination against LGBT students. Although some legislators managed to introduce the bill, lead lawmakers refused to schedule a hearing. The ACLU and other groups plan to revive the bill in the next legislative session.

Activists Campaign to Save Civil Rights in Dade County

In 1998, Dade County passed a human rights law with expanded protections covering sexual orientation. A local church-based coalition, backed by the Christian Coalition, has been working to repeal the ordinance and the issue was put on the ballot for the September 2002 primary election. The ACLU of Florida and the Project hired a staff person solely to work with SAVE Dade, a local campaign urging voters to vote against the repeal, and the repeal effort was defeated.



Michael Moody and Michael Hall fell in love, got a civil union in Vermont, and formed a new home together with their daughters from previous marriages. But a Florida judge ordered the family to split apart. Hall's divorce agreement states that his daughters cannot stay with him in the presence of people who aren't close family members, and the judge decided Moody and his daughter don't count as family.

Judge Tears Apart Florida Family

Hall v. Hall

Michael Hall's divorce decree specified that neither he nor his ex-wife could have overnight guests in their homes when their children are present. The one exception to this rule is for "close family members." After the divorce, Hall fell in love with Mike Moody, the two moved in together, and Moody and his daughter and Hall and his two daughters became a family. After learning of the change in Hall's household, a family court judge ruled that Hall was violating the divorce decree because Moody and his daughter are not Hall's "close family members," despite the fact Hall and Moody entered into a civil union under Vermont law. Currently, Moody and his daughter are forced to leave the home whenever Hall's daughters stay with him. The Project represents Hall in his appeal of that ruling in state court, arguing that Moody and his daughter are not merely "visitors or guests" and that the restriction violates Hall's constitutional right to family integrity and equal protection. A decision is pending. Project attorney Tamara Lange is handling the case.

Girls Can Wear Pants to Graduation

Bloomington High School had a policy requiring senior girls to wear dresses or skirts – and banning them from wearing pants or suits – under their graduation gowns

during graduation. To protest the policy, graduating seniors Alicia Taurig and Amber Smith enlisted the help of the ACLU of Florida and National Center for Lesbian Rights (NCLR). The groups sent a letter to the school demanding that it amend its policy because it discriminated against female students' privacy, liberty, and First Amendment rights. In response, the principal allowed the girls to wear slacks underneath their gowns at graduation. ACLU of Florida Legal Director Randall Marshall and NCLR attorney Karen Doering wrote the demand letter.

GEORGIA

Park Agrees to Stop Restricting Speech

The ACLU sued Centennial Olympic Park on behalf of a group of gay advocates challenging restrictions on public assemblies in the park that made it a criminal offense to hold events that "involve the communication or expression of views or grievances, which has the intent, effect, or propensity to draw a crowd of onlookers...." The ACLU charged that the restrictions were overly vague and banned virtually all forms of expression with which the park officials and employees disagreed. In response, park officials approved changes to the rules that significantly broaden the rights to public assembly and distribution of printed materials. ACLU of Georgia attorneys Gerry Weber, Robert Tsai, and Torin Togut, and cooperating attorney Gary Pelphrey handled the case.

Georgia Mother Loses Right to See Kids

Burns v. Burns

Susan Burns and her former husband are subject to a divorce decree that prohibits their children from visiting either parent if there is a non-spouse or non-relative adult overnight guest in the home. After Burns moved in with her lesbian partner, with whom she entered into a civil union under Vermont law, a judge ordered that her children be kept from spending time with her. Susan Burns appealed the order, arguing that her civil union is equivalent to a marriage. The ACLU filed a friend-of-the-court brief urging the appeals court to rule that, at the very least, the civil union demonstrates that she and her partner are related and that, therefore, Burns did not violate the divorce decree. The appeals court upheld the trial judge's order. Burns appealed to the Georgia Supreme Court, but the Court refused to review the case. ACLU of Georgia attorneys Gerry Weber, Robert Tsai, and Beth Littrell worked with Project attorneys Matt Coles and Ken Choe as well as cooperating attorney Kate Richardson on the case.

ACLU Challenges Fornication Law

J.M. v. Georgia

After a male teenager above the age of consent was caught having sex with his girlfriend, he was charged with violating a state law prohibiting sex between unmarried persons. The ACLU of Georgia filed an appeal on his behalf to the Georgia Supreme Court challenging the constitutionality of the law on privacy, equal protection, and freedom of association grounds. Because Georgia prohibits same-sex marriage, the fornication statute effectively criminalizes all sexual intimacy between same-sex couples. ACLU of Georgia attorneys Beth Littrell and Gerry Weber, and cooperating attorney Catherine Sanderson are handling the case.

Gay Newspaper Banned From Public Library

Marcus v. Ochoopee Regional Library System

Publishers of the Gay Guardian, an LGBT newspaper, were once allowed to leave copies of the paper at the Vidalia Public Library, but after receiving complaints, the library banned the paper. The ACLU of Georgia sent a letter to the library explaining why this censorship violates the First Amendment and urging the library to allow the newspaper to be displayed alongside similar reading materials. ACLU attorneys Gerry Weber and Beth Littrell are working on the matter with cooperating attorney Elizabeth Norman.

Protections for Boy Scouts Die Before Floor Vote

The ACLU of Georgia successfully lobbied against a bill that would have granted special protections for the Boy Scouts of America. The bill was an effort to insulate the Scouts from public backlash against the organization's avowed anti-gay discrimination. ACLU of Georgia attorneys Beth Littrell and Gerry Weber testified against the bill before a Georgia House committee. The bill made it through the committee but did not reach a floor vote.

The GAY GUARDIAN

Serving our Gay/Lesbian Communities of Savannah, Statesboro, Macon, Atlanta and Jacksonville
Entering our 5th Year of Publications for the Advancement of Gay Rights

US Foods Subsidiary : PYA/ MONARCH

Snubs Gay Owned Business
Join our National Boycott!!

Inside (page 7) Will You Be the Next Mr. Queens?

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Call this toll free number
And Ask for Mr. Plumes

1-800-845-8825

Food Giant and subsidiary of US FOODS, PYAMONARCH recently showed its appreciation of business given to it by gay/lesbian owners. This may begin to unfold earlier this year when the gay owners of Bubba Pig's Bar & Out hope to buy from the food giant.

Bubba Pig's is a popular eatery with over 100 locations in the South. It serves a wide base of local customers from nearby towns such as Vidalia, Dublin, Clinton, Hiramville, and even Savannah. The owners jokingly refer to the small restaurant as a Pig and Pup operation - and to all sincerity - it has been an overwhelming success. Most people in mid-state Georgia aren't concerned with who one sleeps with and good food brings people in from everywhere.

The PYAMONARCH salesman assigned the account for Bubba Pig's, however, apparently felt different. The salesman apparently didn't want to serve the gay owned restaurant, maybe afraid he would have very gay customers or something. The family would place orders for goods only to be sold from time to time again that the three were the center. He told the owners of the Bar & Out business that "the company didn't sell pork here", even though he was around the gay restaurant owners were buying as much as 100 in a 1000 pounds a week from a local supplier of pork. He stated about the company not selling pork here upset everyone management to no end and they asked Bubba Pig's owners what PYAMONARCH did.

(continued on page two)

Gay Pride + Gay Participation - Gay Rights

As we head into a New Year, who should be our focus as gays and lesbians living in the deep South and where should we aim our efforts. Many gays and lesbians are victims of the homophobic, prejudiced, and twisted to their jobs and

afraid of what may happen to them if they are out and show it work. Gays and lesbians are a very valuable, yet exploited and often overlooked part of the workforce. Corporate America is the Master and the workers are the slaves.

Does Savannah's First Baptist Church Practice What It "Preaches"?

Last year, the first Baptist Church of Savannah announced to the World that they were withdrawing from the Southern Baptist Convention over philosophical differences and yes, before it or not, the Savannah Church stated that it could no longer belong to the Southern Baptist Convention based on the views of the Convention as homosexuals.

Their announcement coincided with the withdrawal by former President Jimmy Carter who had made it plain and clear why he was withdrawing and according to new reports it appears that First Baptist of Savannah was being likewise strict.

Now we ask...Do they Practice what They Preach?

Had we, excuse the pun, but it must have seemed politically correct for the good Pastor to make this meeting, news gathering announcement last year, a Georgia gay family experienced a very hostile, courteous with South Center Pastor on three front island. These members of the family were attacked and beaten in the fall of the children watched cops beat his messages and his love of his peers.

Later the family attempted to contact and seek counseling from the wonderful members of the Savannah First Baptist Church to no avail. First, after a phone call explaining the dilemma and situation to several members along with a request that the Baptist pastor please call the distraught family, no phone call came.

Why...we must ask...does the wonderful gay men of Savannah not have an active PFLAG chapter to serve us and those of us who would like to actively be of service to our community. PFLAG is a great outlet of successful help to gays and lesbians everywhere, and yet, our fair city lacks this resource. Part of being gay or lesbian is being part of the solution, serving as a guidepost for those of us in need or just coming to terms with the broad side of our selves that we are proud to be and proud this closed minded society in which we live in the Deep South. We all need to get together and form this valuable voice for our community, increased to being a part of the office, call 813-531-8799.

The Vidalia Public Library has banned the Gay Guardian from a display rack for community newsletters because it says some patrons were offended by seeing a gay newspaper.

33

GSA Foes Lose at Statehouse

A bill seeking to require parental permission for students who want to participate in any club or extracurricular activity failed to pass into law. Religious right organizations pushed the bill as a way to prevent student participation in gay-straight alliances. ACLU of Georgia attorney Beth Littrell sent a memo to legislators discussing the bill's potential constitutional violations. The bill died in committee.

Project Advocates LGBT Youth Rights

Last year, the ACLU of Georgia founded the Sticks and Stones Project, a public education initiative aimed at reducing anti-gay harassment in Georgia schools. This year, the ACLU helped a handful of harassed LGBT students facing unresponsive administrators; spoke with nearly 1,000 teachers, education majors, school counselors, and psychologists about the issue; created a database of approximately 300 allies; distributed hundreds of brochures; spoke with high school students and college students; created an interactive website (www.acluga.org/safeschools); and completed a statewide survey of anti-gay harassment.



Keala Chow (above) and Ivy Kaanana (right) successfully fought their high schools outdated, gender-based graduation dress codes.



TOP: KEN IGE, HONOLULU STAR-BULLETIN
RIGHT: GARY T. KUBOTA, HONOLULU STAR-BULLETIN

HAWAII

Schools Ditch Gender-Based Dress Codes

When Ivy Kaanana, a lesbian student at Baldwin High School in Wailuku, Maui, was told she was required to wear a dress for graduation, the ACLU of Hawaii threatened to file a lawsuit arguing that the school's gender-based dress codes were discriminatory. The school backed down and allowed Kaanana to wear shorts and a men's dress shirt on graduation day. Keala Chow, who is a male-to-female transgendered student at McKinley High School in Honolulu, was also told that she would have to wear pants for graduation. After the ACLU of Hawaii again threatened to start litigation against the school, the school relented and did not require her to wear pants.

City Charged Extra to Gay Pride Organizers

On Pride weekend, the city and county of Honolulu charged gay pride parade organizers \$3,000 for signage and traffic control. Since other parades had not been charged for either signage or traffic control, the ACLU of Hawaii threatened to file suit against the city for violating the gay pride parade organizers' constitutional rights. As a result, the city agreed to cover the costs.

IDAHO

Idaho Supremes Will Review Custody Decision

McGriff v. McGriff

In May 2002, a judge in Idaho Falls awarded full custody of two girls to their mother, Shawn McGriff, because he said he didn't like the way the girls' father, Theron McGriff, came out to them. The judge also ruled that Theron could spend time with his daughters only if he agreed not to let his male partner stay at the house when the girls visit. Theron appealed, and the Idaho Supreme Court has agreed to take

the case. The ACLU of Idaho, with the Project's help, is working on a friend-of-the-court brief that will argue that a parent's sexual orientation by itself should not determine custody and visitation. In the meantime, to help keep the family together, Theron's partner sleeps alone in a mobile home on Theron's property whenever the girls come to visit.

Transgendered Inmate Transferred for Proper Care

The ACLU found and worked with two private attorneys to help a transgendered Idaho prison inmate who was being denied adequate medical care. A judge dismissed the inmate's case, but the attorneys helped get her transferred to a medical facility in Vacaville, California where care is provided to transgendered inmates.

ACLU Scores Schools Meeting With State Official

The ACLU of Idaho organized a meeting with the State Superintendent of Public Instruction to address the problems LGBT youth face in schools. The two-hour meeting included several parents of LGBT youth, two gay students, and representatives from the LGBT group "Your Family, Friends, and Neighbors." In addition to this meeting, the ACLU continued its effort to educate teachers and students about LGBT harassment in schools. The ACLU of Idaho distributed pocket cards in English and Spanish to students and teachers across the state. These cards help students identify harassment and provide practical suggestions for how to make it stop.



An Idaho judge will only let Theron McGriff see his children if McGriff's partner stays away from the house while they visit. The Idaho Supreme Court will hear an appeal of this case in the coming year.

ILLINOIS

Gay Man Tries to Limit Scouts' Ability to Discriminate

Richardson v. Chicago Area Council of Boy Scouts of America

When the Chicago Area Council of the Boy Scouts refused to consider Keith Richardson for employment because he is gay, Richardson sued the Boy Scouts for sexual orientation discrimination. While Richardson's case was pending in the Illinois courts, the U.S. Supreme Court ruled that forcing the Boy Scouts to accept a gay man as an assistant scoutmaster violated the groups' First Amendment rights. In Richardson's case, a state appeals court has accepted the ACLU's argument that the Boy Scout's First Amendment right to discriminate under that Supreme Court decision only applies to employees in role-model or other public positions, rather than non-leadership or non-public positions at the organization. The appeals court sent the case back to the Chicago Human Rights Commission for further factual findings, and a decision on Richardson's claim is pending. ACLU of Illinois attorney Lauren Raphael and cooperating attorneys Chip Peters and William M. Aguiar are litigating the case.

Gay Rights Bill Fails in State Senate

ACLU of Illinois Legislative Director Mary Dixon joined other organizations in lobbying for a state law prohibiting sexual orientation discrimination in public accommodations, employment, housing, and credit transactions. The bill passed in the House but failed in the Senate.

INDIANA

Court Orders High School to Recognize GSA

Obermeyer v. Franklin Township Community Schools

When students at the Franklin Central High School attempted to form a gay-straight alliance (GSA), the school told them they could meet only if the organization changed its name to one that was more generic, such as the “Diversity Club.” Later, the school required the GSA to go through a complicated procedure for forming a new club that the school had not required of other groups. In September 2002,

a federal court ordered the high school to recognize the GSA as an official school club, put its picture in the yearbook, and allow it to use whatever name it wanted. The school says it plans to appeal. Sean Lemieux, Director of the Equal Rights Project at the Indiana Civil Liberties Union, represents the GSA.

In September 2002, a federal court ordered the high school to recognize the GSA as an official school club, put its picture in the yearbook, and allow it to use whatever name it wanted.

Couples Sue for Marriage Rights

Morrison v. O'Bannon

In August 2002, the Indiana Civil Liberties Union filed a lawsuit demanding equal treatment for same-sex couples under state law. The ICLU represents three couples, all of whom have entered into civil unions recognized by the state of Vermont. The lawsuit asks the court to rule that the Indiana law banning same-sex marriage violates the state constitution and that Indiana state law requires the state to recognize other state's licenses and contracts, including civil unions. The couples demand marriage licenses or, in the alternative, to have their Vermont civil unions qualify them as spouses under Indiana law. Indiana Civil Liberties Union attorney Sean Lemieux will argue the case.

Court Dismisses Bereavement Leave Case

Cornell v. Roberson

When the State of Indiana denied employee Jana Cornell's request for bereavement leave so she could attend the funeral of her partner's father, the Indiana Civil Liberties Union sued the state. The ICLU argued that the exclusion of same-sex partners from the bereavement leave policy violates the state constitution. A trial court recently dismissed Cornell's lawsuit, saying that the bereavement leave policy is lawful because it discriminates based on marriage not sexual orientation. An appeal is pending.

Court Strikes Down Custody Restrictions

Downey v. Muffley

An Indiana family court told a mother that her lesbian partner could not live with her if she wanted to keep custody of her children. An appeals court reversed this ruling, holding that such a restriction is only warranted if the children are truly harmed by the presence of the partner in the house. Joining a growing number of appellate courts across the country, the court ruled that a parent's sexual orientation alone cannot decide which parent gets custody or visitation with their children. Sean Lemieux of the Indiana Civil Liberties Union represented the lesbian mother.

Lawmakers Block Gay Parenting Ban

For the second consecutive legislative term, a bill to prohibit lesbians and gay men from adopting children or serving as foster parents was proposed in the state legislature and opposed by the Indiana CLU. No committee allowed a hearing, and the bill was defeated.

IOWA

Civil Rights Bills Fail

The Iowa Civil Liberties Union supported two bills aimed at adding sexual orientation to Iowa's nondiscrimination laws. Unfortunately, both failed to pass in the state legislature.

Harmful Changes to Statewide Hate Crimes Statute Opposed

The Iowa Civil Liberties Union worked with the Des Moines Gay and Lesbian Resource Center to oppose changes to the Iowa Hate Crimes statute that would have been potentially harmful to the LGBT community.

KANSAS

Teen Serves 16 Extra Years in Prison Because He's Gay

State of Kansas v. Matthew Limon

Eighteen-year-old Matthew Limon is in prison for 17 years for having consensual oral sex with another male teenager. If Limon were heterosexual and had engaged in oral sex with a girl, he would have served only one year. Kansas's "Romeo and Juliet Law" makes sex with a minor a lesser crime if both people are teenagers – but only if they are of the opposite sex. A public defender appealed Limon's conviction with the help of a brief from the ACLU, but the state appeals court upheld the law. The Kansas Supreme Court refused to review the case. In the fall of 2002, the Project will ask the U.S. Supreme Court to review the case. The ACLU will argue that singling out lesbian, gay, and bisexual youth for harsher prison sentences violates the U.S. Constitution's guarantee of equal protection. Project attorney Tamara Lange is handling the case with the assistance of Jean Gilles Phillips of the Defender Project at the University of Kansas School of Law.

Judge Flunks History Test, Says Sodomy Law Enacted to Prevent AIDS

State of Kansas v. Robert Rowe

Robert Rowe was spotted by a police officer coming out of a public restroom at the same time as another man. After Rowe confessed that he had oral sex, the police officer arrested Rowe and charged him with violating the Kansas sodomy law, which prohibits sex solely between same-sex couples. Rowe was convicted and sentenced to 120 days in jail. A trial court judge upheld the sodomy law because he said it was enacted by lawmakers to prevent the spread of AIDS and to further public morality. In fact, the legislature enacted the law in 1969, over a decade before the AIDS epidemic began. The Project submitted a friend-of-the-court brief in the appeal of the case, explaining that the trial judge got the facts wrong and arguing

that the sodomy law is unconstitutional. Project Crawford Fellow Romana Mancini wrote the brief.

Kansas High Court Invalidates Trans Marriage

In re Estate of Marshall Gardiner

J'Noel Gardiner transitioned from male to female when she was 37 and later married Marshall Gardiner, who died without a will one year after their wedding. When Mr. Gardiner's estranged son learned that Mrs. Gardiner was born anatomically male, he challenged her ability to receive a portion of her husband's estate, arguing that the marriage was actually between two men and therefore invalid under state law. Although the trial court ruled in the son's favor, a state appeals court overturned that decision with a groundbreaking ruling in favor of transgender rights. The appeals court explained that to determine a person's gender, one cannot look solely at chromosomes or any other single, isolated factor. The Kansas Supreme Court overruled the appeals court decision, making J'Noel a stranger to her deceased husband in the eyes of the law. The ACLU of Illinois and the ACLU of Kansas/Western Missouri contributed a friend-of-the-court brief on behalf of Mrs. Gardiner.



Dr. Barrett Hyman has taken his battle to overturn Louisville's civil rights law all the way to a federal appeals court. Pictured is the team defending the law: cooperating attorney Jonathan C. Hardy; Kathleen Campisano, Carol Kraemer, and Dan Farrell from the Fairness Campaign (the group that got the law passed); and Project attorney Leslie Cooper.

KENTUCKY

Federal Appeals Court Hears Challenge to Gay Rights Law

Hyman v. City of Louisville

In March 2001, a federal court dismissed a Kentucky doctor's claim that a Louisville LGBT rights law violates his religious liberties, free speech rights, and freedom of association. Dr. Hyman, a gynecologist, says that his Baptist beliefs compel him to discriminate against LGBT people in his medical practice. In an important victory for civil right laws everywhere, the court ruled that the Constitution does not entitle commercial employers to use their personal religious beliefs to discriminate. The ACLU has been helping the city and county defend the ordinance. Hyman appealed the decision, and Project attorney Leslie Cooper argued the case at a federal appeals court in Cincinnati in September 2002. A decision is pending. Cooperating attorney Jonathan C. Hardy is assisting the ACLU.

Lesbian Challenges State-Funded Religious Discrimination

Pedreira v. Kentucky Baptist Homes for Children

Kentucky Baptist Homes for Children, a state-funded religious organization, fired Alicia Pedreira because she is a lesbian. The same day that Pedreira was fired, KBHC enacted a policy that explicitly bars employment for gay

men and lesbians and says that homosexuality is inconsistent with the organization's Christian values. The Project filed a federal lawsuit in 2000, arguing that KBHC's anti-gay employment policy violates state and federal laws banning religious-based discrimination and that Kentucky is violating the U.S. Constitution by financing an organization that uses state money for religious purposes. The ACLU is using the case to influence legislation and public opinion by demonstrating how dangerous President Bush's faith-based initiative would be for people who work for or receive care from social services agencies. Pedreira's story has been invoked in Congress and in local and national media throughout the faith-based initiatives debate. In July 2001, a federal judge dismissed the majority of the ACLU's claims, and the Project appealed the ruling. A decision is still pending. Attorneys on the case include Ken Choe from the Project, ACLU of Kentucky attorney David Friedman, cooperating attorney Vicki Buba, Ayesha Khan from Americans United for Separation of Church and State, and Michael Adams from Lambda Legal.

Activists Defeat Ban on Civil Rights

The ACLU of Kentucky defeated a proposed legislative prohibition on new and existing civil rights laws in Kentucky. The bill sought to forbid communities from passing new civil rights laws and to eliminate all current local civil rights protections. The bill attempted to abolish not only LGBT rights but also civil rights based on familial status, race, color, religion, gender, age, and disability. It died in committee.

Comprehensive Nondiscrimination Bill Proposed

Kentucky legislators, with the help of the ACLU, proposed comprehensive civil rights legislation that would prohibit anti-gay and anti-transgender discrimination in employment, housing, and public accommodations. Unfortunately, the bill died in committee.

Coalition Stands Up for Youth

The Hate Free Schools Coalition, initially spearheaded by the ACLU of Kentucky two years ago, educates schools, students, and teachers about anti-LGBT harassment in schools. This year, the coalition continued to distribute student harassment pocket cards to educators and students statewide. These cards detail students' rights to be free from harassment and ways to stop it. The ACLU of Kentucky also worked with state legislators to introduce an anti-bullying bill that would protect LGBT youth. Though the bill did not pass, the ACLU anticipates that an improved version of the bill will be introduced in the 2003 legislative session.

School Stalls GSA in Rural Kentucky

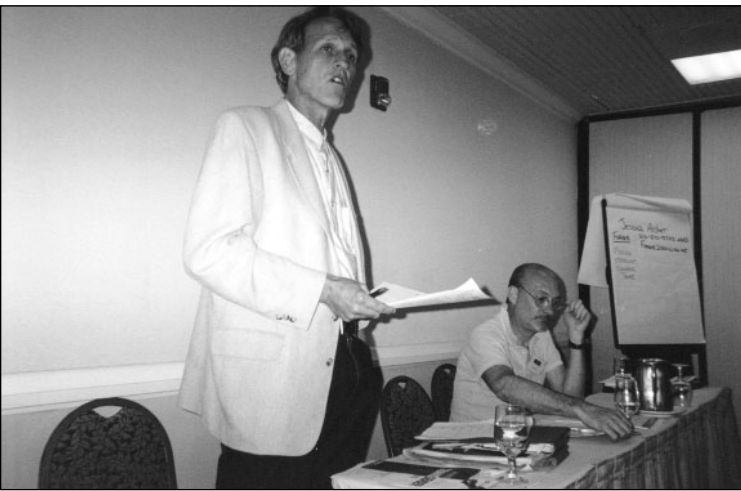
A group of students and a teacher at rural Boyd County High School spent much of the 2001-2002 school year urging administrators to allow students to form a gay-straight alliance (GSA). In February, students petitioned the high school and garnered 120 supportive signatures from the 950 students. The school council denied the students' request in the spring and again in the fall of 2002. The ACLU is considering suing the school.

LOUISIANA

Court Says Anti-Trans Discrimination is Legal

Oiler v. Winn-Dixie

After 21 years of service to his employer, Winn-Dixie truck driver Peter Oiler was fired for cross-dressing while off-duty. Oiler was a loyal employee who regularly received raises and promotions. Winn-Dixie admits it fired Oiler solely because he is transgendered. In the fall of 2000, the ACLU of Louisiana and the Project filed a federal lawsuit on Oiler's behalf, charging Winn-Dixie with sex discrimination under state and federal laws for discriminating against Oiler due to his failure to conform to his expected gender role. In September 2002, a federal court in Louisiana sided with Winn-Dixie and dismissed the lawsuit, ruling that the federal ban on sex discrimination does not apply to transgendered people. The ACLU is asking the judge to reconsider his decision. Project attorney Ken Choe, national ACLU attorney Chris Hansen, ACLU Women's Rights Project Director Lenora Lapidus, and cooperating attorney Ronald Wilson are handling the case.



ACLU of Louisiana executive director Joe Cook (left) talked to a gathering of ACLU leaders from around the country about the need for the organization to take on more transgender rights cases.

Federal Court Says Abstinence-Only Education Violates Constitution

ACLU of Louisiana v. Foster

Citing misuse of taxpayer dollars, a federal court blocked the state of Louisiana from funding religious-based abstinence-only education. The Louisiana Governor's Program on Abstinence, which runs on federal and state dollars, has habitually funded programs that feature religion-based curricula and activities and minister to teens about the "scriptural, spiritual, and practical foundation for combating the issues of premarital sex." The case is the first challenge brought against a program funded through the federal abstinence-only money made available in the 1996 federal welfare reform legislation, which is up for reauthorization this year. Abstinence-only programs jeopardize the lives of sexually active teenagers who need HIV prevention information. In addition, many of these programs use curricula that dangerously stigmatize gay and lesbian students because the federal guidelines governing the programs state that they should teach that a "mutually faithful monogamous relationship in [the] context of marriage is the expected standard of human sexual activity." The case was handled by ACLU Reproductive Freedom Project Director Catherine Weiss and attorney Jaya Ramji, and the ACLU of Louisiana.

Anti-Gay Efforts Stifled at Statehouse

The ACLU of Louisiana monitored an adoption bill in the 2002 legislative session to ensure that it would not be used as a vehicle to prohibit adoption by gays and lesbians. The bill passed without anti-gay adoption language. In addition, the ACLU opposed two bills that would offer tax breaks to the Boy Scouts of America. The ACLU of Louisiana opposed the bills because the Boy Scouts of America discriminates on the basis of sexual orientation and religion. The bills eventually died in committee.

MAINE

Portland Passes Domestic Partner Ordinance

The Portland City Council passed an ordinance requiring non-profit groups that contract with the city as service providers to offer domestic partnership benefits to unmarried couples. The ordinance also created a registry for domestic partners. The Maine Civil Liberties Union testified in support of the ordinance, which makes Portland one of only a handful of cities nationwide that require contractors to have domestic partner benefits.

MARYLAND

Group Used Falsified Signatures, Civil Rights Law Takes Effect

Gelbman v. Willis

The Maryland legislature passed a gay rights act in 2001 that bans discrimination in housing, employment, and public accommodations in Maryland. But before the bill could take effect, a right-wing group called Take Back Maryland sought to put the newly-passed legislation before the voters in a statewide referendum. Take Back Maryland claimed that they had met the minimum requirement of at least 46,000 signatures on petitions for a ballot initiative. The ACLU reviewed the petitions and discovered that many of the signatures were questionable. An independent court-appointed special master confirmed that there were serious problems with more than 7,000 signatures. Take Back Maryland conceded that they didn't have enough valid signatures, and the Anti-Discrimination Act became law on November 21, 2001. Dwight H. Sullivan of the ACLU of Maryland handled the case with the help of cooperating attorney Charles J. Butler and Art Spitzer of the National Capital Area ACLU.

Court Upholds County Domestic Partner Law

Tyma v. Montgomery County

Since March 2000, Montgomery County has extended domestic partner benefits to same-sex partners of county employees. The American Center for Law and Justice, a right-wing advocacy group, challenged the plan in court, arguing that the county violated state law, which does not recognize same-sex marriages. In response, the ACLU of Maryland and other organizations filed a friend-of-the-court brief at Maryland's highest state court in support of the plan. The ACLU contended that the new law is fully consistent with state and federal law and that the county acted within its power to set the terms and conditions of employment for its own employees. The court unanimously held that the Maryland Constitution clearly authorizes counties to extend domestic partner benefits to same-sex couples. ACLU of Maryland attorney Deborah Jeon, the ACLU of the National Capital Area, and cooperating attorneys Benjamin S. Boyd, Jennifer Rohr, and Michael C. Hanlon handled this case.

Hate Crimes Bill Fails

The ACLU testified in support of a proposed bill that would have penalized crimes committed on the bases of gender, sexual orientation, disability, or ancestry. Unfortunately, the bill died in the committee.



Free State Justice, the statewide LGBT group, honored the ACLU of Maryland for its role in successfully challenging an effort to repeal Maryland's new gay rights law. Staff attorney Dwight Sullivan (center right) accepted the award for the ACLU.

ACLU Wins Lesbian & Gay Rights Award

The ACLU of Maryland won the Distinguished Community Service award from Free State Justice, the state's leading LGBT rights group, in recognition of its gay rights work, particularly for its successful campaign to defeat an attempt to repeal the recently-passed statewide gay rights law.

MASSACHUSETTS

Court Limits Scope of Sodomy Law

Gay and Lesbian Advocates and Defenders v. Attorney General

A Massachusetts court ruled that state laws criminalizing oral and anal sex do not apply to consensual, private sex. In a friend-of-the-court brief, the ACLU

argued that the sodomy laws, which included no explicit exception for consensual sex between adults in private settings, violated state equal protection guarantees, as well as the right to privacy under international standards of human rights. ACLU of Massachusetts attorney Sarah Wunsch and cooperating attorneys Carlynn Magliano, David Plotkin, and Erika Templeton wrote the brief.

In Victory for Campaign, Lawmakers Bury Ballot Initiative

A group of anti-gay organizations has been working to amend the Massachusetts Constitution through a statewide ballot initiative to ban gay marriage and any other form of recognition for same-sex couples. The ACLU of Massachusetts joined several organizations in a friend-of-the-court brief arguing that the state Attorney General should not certify the ballots. The Attorney General did certify the initiative to go to the voters, but the legislature later killed the ballot initiative in a procedural move. The ACLU of Massachusetts helped organize the coalition fighting the amendment drive in the courts, the legislature, and the public airwaves. The ACLU is a member of the steering committee, serves on several subcommittees of the coalition, has provided administrative support, and raised money for the effort.

House Stalls Partner Benefits

The ACLU of Massachusetts is working on a bill to offer domestic partnership benefits for state employees. The bill passed the Senate but has been stalled by the Speaker of the House. It is unlikely that the bill will be brought up during the current legislative session.

MICHIGAN

Detroit Repeals “Annoying Persons” Law Targeting Gay Men

Triangle Foundation v. City of Detroit

Detroit police have been using undercover sting operations in parks to target gay men for arrest under local “Annoying Persons” and “Solicitation and Accosting” ordinances. Undercover officers would follow or approach men they perceived to be gay, make eye contact, and encourage the men to respond in a sexual manner. If a man merely responded with a look, gesture, or conversation that officers deemed to have sexual connotations, he was arrested and his vehicle impounded. The undercover operation was part of the “morality units” operations conducted city-wide to eliminate public sexual activity and prostitution, yet none of the arrests actually involved public sexual activity or prostitution. The ACLU of Michigan challenged these ordinances in federal court as a violation of the equal protection rights of gay men. The city agreed to a sweeping settlement that repeals the “Annoying Persons” ordinance, amends the solicitation ordinance, purges the plaintiffs’ arrest records, sends police officers to LGBT sensitivity training, and pays damages to the illegitimately arrested men. ACLU of Michigan attorneys Jay Kaplan, Michael Steinberg, and Kary Moss litigated the case with the help of cooperating attorney Deborah Labelle.



The ACLU of Michigan won a sweeping settlement that requires the police to stop targeting gay men for arrest in city parks, purges the arrested men’s criminal records, and sends police to LGBT diversity training. Pictured: ACLU of Michigan attorneys Jay Kaplan, Michael Steinberg, and Executive Director of the Triangle Foundation Jeff Montgomery. PHOTO COURTESY OF BETWEEN THE LINES

Judge Blocks Second-Parent Adoptions

In Matter of Unmarried Couple Adoption Petitions

Second-parent adoptions have been approved in the Ann Arbor area of Michigan for over ten years. But in June 2002, a local trial court judge decided he wanted to prevent any more second-parent adoptions from being granted, so he reassigned all pending second-parent adoption petitions to himself. The ACLU of Michigan filed a lawsuit in state court on behalf of couples with pending adoption petitions, arguing that the judge lacked the authority to take these actions, has biases that prevent him from ruling impartially, and is incorrectly interpreting Michigan’s adoption law. The judge refused to give up the pending cases, so the ACLU requested that the court assign another judge to review the ACLU’s motion to disqualify him. That request was granted, and a decision from the new judge is pending. Jay Kaplan, Michael Steinberg, and Kary Moss of the ACLU of Michigan are handling the case with assistance from cooperating attorney Connie Jones. In addition to the legal action, the ACLU helped convene a group of over 200 interested attorneys, organizations, and individuals to develop legal, political, and public education strategies to preserve second-parent adoption as an option for LGBT families in Michigan.

High Court Takes Teeth Out of Local Civil Rights Law

Mack v. City of Detroit

A lesbian police officer was discriminated against because of her sexual orientation and sued the City of Detroit under Detroit’s human rights ordinance. Detroit argued in court that it could not be sued in state court under its own local law. The

case was appealed all the way to the Michigan Supreme Court, which agreed with the City. The court ruled that there is no right to sue in state court under a local civil rights law. The ACLU of Michigan filed a friend-of-the-court brief in support of the lesbian police officer's right to sue. ACLU attorneys Jay Kaplan and Mike Steinberg worked on the case with Saura Sahu of the Sugar Justice Center at the University of Michigan Law School.

ACLU Bolsters State & Local Advocates

The ACLU of Michigan supported a bill to amend the state's civil rights laws to prohibit anti-gay discrimination. The bill died in committee. On the local level, the ACLU of Michigan provided support to activists working to pass LGBT rights ordinances and actively opposed proposed laws in Kalamazoo, Traverse City, and Ypsilanti that would have barred civil rights protections for LGBT people. The ACLU also testified in support of city employee domestic partner benefits in Detroit and school district nondiscrimination policies that include sexual orientation.

Statewide Public Education Continues

The ACLU of Michigan created a community education manual called *Know Your Rights: Gay, Lesbian, Bisexual, and Transgendered Families and the Law*. The guide offers an overview of Michigan and federal law regarding LGBT families and ways to protect family relationships. The ACLU also regularly gives presentations and trainings around the state about a range of LGBT legal issues, including information for GSAs and other safe schools efforts.



MINNESOTA

Court Upholds Right of Trans Employee to Use Bathroom

Cruzan v. Special School District #1

Carla Cruzan, a Minneapolis public school teacher, complained that allowing Debra Davis, a male-to-female transgendered library employee, to use the women's bathroom at school violated her religious freedom and created a hostile workplace based on sex. The school district gave Cruzan access to several other bathrooms, including single-person facilities. Unsatisfied with this accommodation, Cruzan asked a federal court to prohibit Davis from using the women's restrooms at school. Both the trial court and appeals court upheld the school district's restroom policy, ruling that allowing Davis to use the restroom did not make a hostile or abusive work environment. The Project filed a friend-of-the-court brief in support of the school district arguing that the school did the right thing by finding an alternative bathroom for Cruzan rather than for Davis because Cruzan's personal beliefs should not burden another employee. The brief also argued that allowing a transgendered employee to use the restrooms appropriate for her gender identity does not create a hostile work environment. Project attorney Tamara Lange wrote the brief on behalf of the ACLU, OutFront Minnesota, and GLSEN of Minnesota.

Students at a Minnesota high school rallied to support transgendered librarian Debra Davis when another faculty member tried to stop Davis from using the women's restroom.

Sodomy Law Confirmed Dead*Devescovi v. Ventura*

The Project and the Minnesota CLU filed a friend-of-the-court brief in a federal court case challenging the sodomy law of Minnesota as it applies to heterosexuals. The ACLU argued that the validity of the law was no longer at issue since a state trial court struck down the law last year as a violation of the state constitutional right to privacy in an ACLU class action. The federal district court agreed and dismissed the case, ruling that the state trial court's decision is binding statewide. Project attorneys James D. Esseks and Leslie Cooper, Teresa Nelson of the Minnesota CLU, and cooperating attorney Timothy E. Branson in Minneapolis wrote the brief.

Minnesota CLU Recognized by State LGBT Group

OutFront Minnesota, a statewide LGBT group, honored the Minnesota CLU for its LGBT advocacy, including its work to overturn the state sodomy law in 2001, to educate the public around LGBT issues, and to advocate for GSAs.

MISSISSIPPI**Anti-Gay Marriage Amendment Fails to Move Ahead**

The Mississippi Senate tried to send a ballot initiative to the voters that would have amended the state constitution to define marriage as an institution between a man and a woman, even though Mississippi already has a law that specifically prohibits same-sex marriage. The ACLU of Mississippi opposed the bill and, fortunately, it died in committee.

Hate Crimes Law Expansion Fails

Bills were introduced in both the House and the Senate this legislative session that sought to expand Mississippi's hate crimes law to include crimes based on the victim's age and sexual orientation. The ACLU of Mississippi supported both bills. Unfortunately, they failed to make it out of committee.

ACLU of Mississippi Launches Public Education Campaign

The ACLU of Mississippi NAPIL fellow Sandi Farrell is organizing a campaign to educate LGBT Mississippians about their rights. The ACLU will distribute "know your rights" publications and educate the LGBT community about the importance of wills and advance health-care directives for same-sex couples. The ACLU is also organizing a referral network of attorneys interested in helping LGBT people.

Transgendered Woman Can Change Driver's License

With the assistance of the ACLU, a transgendered woman was able to change her sex on her birth certificate in order to obtain a Mississippi driver's license. When she presented her corrected birth certificate at the driver's license testing station, she was told that she would also need a court order to get a license. Upon presenting the court order, she was denied a driver's license a second time and threatened with arrest for identity fraud if she attempted to get a license at another station. After the ACLU of Mississippi contacted the driver's license station, the transgendered woman was finally able to obtain her license.

MISSOURI

Men Challenge Missouri's Sodomy Law

State v. Dawson

The ACLU of Eastern Missouri is defending three men who were charged under Missouri's sodomy law after police raided an adult bookstore, discovered people engaged in sexual activity, and arrested only those participants involved with members of the same sex. Missouri remains one of only four states that criminalize sex only for gay and lesbian people. The ACLU will argue that the sodomy law violates equal protection and that the court should interpret the statute so that it does not cover consensual activity. The ACLU of Eastern Missouri represents the men with Lambda Legal.

State Agency Bars Lesbians from Fostering

The Missouri Division of Family Services denied Michelle and Terry Linn Jackson a foster parent license, claiming that it is illegal for same-sex couples to have custody of children. Oddly, there are no known policies or state laws in Missouri prohibiting foster care placement in same-sex households. The ACLU is currently in the process of filing an internal appeal of the state agency's decision. Project Crawford Fellow Romana Mancini is working on the case.

St. Louis Police Used Gay Profiling

Tillman v. St. Louis Police Department

Following sensationalist local news coverage alleging that police were failing to pursue gay men having sex in the park, the police department promptly increased its undercover activities and solicitation arrests. The ACLU of Eastern Missouri publicly expressed concerns that this would lead to improper profiling of gay men by police. Additionally, it advocated on behalf of five men improperly arrested during a sting operation and subjected to homophobic remarks by police officials. Discussions with the police department led to the reinstatement of an official police liaison with the LGBT community and to the attendance of the St. Louis Police Chief at an LGBT Community Coalition meeting.

Gay Rights Bill Fails

Along with other gay rights groups, the ACLU of Eastern Missouri lobbied in support of the Missouri Non-Discrimination Act, which would ban anti-gay discrimination in employment, housing, and public accommodations. The bill gained significant support but eventually died.

Internet Censorship Bill Passes

The ACLU/EM opposed a bill requiring public libraries to install internet filtering software or to create policies blocking access to pornographic material on the internet. The blocking software and policies often restrict access to non-pornographic information about LGBT issues. Despite the ACLU's effort, the bill passed.

ACLU of Eastern Missouri Launches LGBT Project

The ACLU of Eastern Missouri (ACLU/EM) launched the LGBT Project in August 2001, hiring interns specifically to staff the LGBT Project's work and fundraising to

advance the Project's docket and educational programs. The ACLU/EM has been involved in community organizing around LGBT issues on several fronts: it's a part of a coalition of 40 LGBT organizations in the St. Louis area; it's helping to form a St. Louis Anti-Violence Project for victims of anti-LGBT violence; and it created a special web-based resource to provide diversity training and workshops designed to address the needs of the LGBT community. Finally, the LGBT Project of the ACLU/EM is coordinating the Making Schools Safe program in cooperation with the St. Louis LGBT Coalition. The program focuses on providing schools with the incentives and tools to create safe and harassment-free environments for LGBT students.

Law School Violates Nondiscrimination Policy

The ACLU/EM LGBT Project and the ACLU chapter at the Washington University Law School organized opposition to the law school's inclusion of military employees in its loan assistance repayment program. The inclusion violates the University's nondiscrimination policy, which prohibits the school's participation in programs with employers who discriminate on the basis of sexual orientation. Although the decision was ultimately upheld by the dean, the student organizers used the opportunity to negotiate for an LGBT speaker series, a course on LGBT law, and financial support for sending law students to an annual LGBT law conference.

Kirkwood City Council Amends Nondiscrimination Law

The ACLU/EM and the 94th Kirkwood for Justice Committee were successful in convincing the Kirkwood City Council to amend the city's nondiscrimination law to include sexual orientation.

Professors Advocate for Anti-Gay Bias Ban on Campus

The ACLU/EM and professors at Southeast Missouri State University are advocating for the inclusion of sexual orientation and gender identity in the University's nondiscrimination policies. The faculty senate voted overwhelmingly in favor of the amendment, but the University vetoed its inclusion. The ACLU/EM continues to support the campaign for the amendment.

ACLU Receives Award for Service to LGBT Community

The ACLU/EM was the 2002 recipient of the Jum Heofer Community Service Award from Pride St. Louis for being the organization that "best exemplifies what it means to serve St. Louis's LGBT Community."



The ACLU of Eastern Missouri launched the LGBT Project, which will focus on safe schools efforts and establishing a program for victims of anti-gay violence. Staff and interns attended St. Louis Pride.

MONTANA

Lesbian Couples Seek Equal Benefits

Snetsinger v. Montana University System

The Montana university system offers insurance benefits to spouses and to people



Nancy Siegel, Adrienne Neff, Carla Grayson, and Carol Snetsinger (left to right) are suing the Montana university system for refusing to offer domestic partner benefits.

PHOTO BY JAY ERICSON/THE MISSOULA INDEPENDENT

in heterosexual relationships recognized as common law marriages but refuses to offer those benefits to same-sex partners. The ACLU filed a case – both in state court and with the state’s Human Rights Commission – on behalf of two lesbian employees and their partners. In state trial court, the ACLU is arguing that, by discriminating against same-sex couples, the university is violating the state constitutional rights to dignity, privacy, equality, and to pursue life’s basic necessities. At the same time, the Montana Human Rights Commission is continuing to investigate the employee’s claims. Project attorney Tamara Lange and Beth Brenneman from the ACLU of Montana are working with cooperating attorney Holly Franz.

Group Pushes for Safe Schools

The ACLU of Montana is part of a statewide coalition created to stop harassment and discrimination against LGBT students. The coalition has adapted the ACLU Lesbian & Gay Rights Project’s “Making Schools Safe” anti-harassment training manual for Montana schools and has been working to encourage schools to take on the training. The ACLU of Montana has also been assisting numerous individual students who are experiencing harassment, struggling for GSA recognition, and challenging prom discrimination.

NEBRASKA

Court Upholds Ban on Second-Parent Adoptions

In re Luke

A lesbian denied the right to adopt her partner’s biological child appealed the decision to the Nebraska Supreme Court. The Court confirmed that second-parent adoption is illegal, even though Nebraska’s law does not mention, let alone prohibit, this kind of adoption. ACLU of Nebraska attorney Amy Miller represented the mother.

Court Recognizes Lesbian’s Parental Rights

Russell v. Bridgens

While refusing to authorize second-parent adoption under Nebraska law (see above), the Nebraska high court did recognize a second-parent adoption performed

under the laws of another state. A lesbian couple both adopted a child while living in Pennsylvania. When one of the parents moved with the child to Nebraska and asked a Nebraska court to order that the other parent help support the child, the court said that the Pennsylvania second-parent adoption was invalid. The Nebraska Supreme Court overturned that ruling, finding that the out-of-state adoption should be recognized in Nebraska. The ACLU of Nebraska and the Project filed a friend-of-the-court brief arguing that the Pennsylvania adoption should be recognized. ACLU of Nebraska attorney Amy Miller and cooperating attorney Jeremy Patrick worked on the case.

Nondiscrimination Act Makes Historic Advance

The ACLU of Nebraska has lobbied extensively in support of a bill that would ban anti-gay job discrimination in Nebraska. After 20 years of attempts to move the Bill, for the first time it passed out of Committee but died on the floor of the legislature. The process will be re-initiated in 2003.

Students Establish GSAs Across Nebraska

The ACLU helped establish GSAs in rural and urban Nebraska schools by meeting with students and members of rural branches of PFLAG and distributing materials to them about how to form GSAs. The ACLU also regularly provides materials for GLSEN to use in its efforts to organize GSAs in public high schools.

NEVADA

Federal Appeals Court Reviews Gender Stereotyping Case

Rene v. MGM Grand Hotel

Medina Rene was subjected to severe and pervasive harassment for two years at his job. Rene's supervisor and co-workers not only taunted and ridiculed him on a regular basis, but they also repeatedly caressed and fondled him, grabbed his genitals, and poked his anus. After the trial court found that Rene was not protected under existing sexual harassment laws, Rene took his case to a federal appeals court with the help of an ACLU friend-of-the-court brief. The ACLU's brief argued that Rene has a right to sue under gender discrimination laws because the harassment was blatantly sexual in nature, denigrated Rene as a man, and stigmatized him for his perceived failure to conform to masculine gender stereotypes. A decision is pending. The ACLU of Nevada, the National Center for Lesbian Rights, and the Employment Law Center joined the brief written by Martha Matthews of the ACLU of Southern California.

NEW HAMPSHIRE

Lesbian Class Sweethearts Reign Despite Principal's Objection

When a lesbian couple at Dover High School captured 77 percent of the student body vote for class sweethearts, the principal objected and advised that the heterosexual couple with the most votes should win the election instead. The ACLU of New Hampshire lobbied on behalf of the lesbian couple and their student supporters, claiming that it was unconstitutional to allow only heterosexual students to win

such honors. Under pressure from student leaders and the ACLU, the school superintendent allowed the lesbians to reign as class sweethearts.

Coalition Pushes for Marriage

As part of the “Right to Marry Coalition,” the ACLU of New Hampshire is working to secure marriage rights for same-sex couples. The ACLU is hoping to focus first on securing domestic partner rights.

Campaigning for the Rights of LGBT Students

The ACLU of New Hampshire partnered with GLSEN to advocate for the rights of LGBT students in high schools. The ACLU wrote letters to principals in New Hampshire about the needs and rights of this student population and intends to follow up with another letter-writing campaign this year.

NEW JERSEY

Marriage Debate Moves to New Jersey

The fight for same-sex marriage entered New Jersey when seven couples who were denied marriage licenses sued the state in July 2002. The lawsuit claims that denying licenses to same-sex couples violates the state constitution’s privacy and equal protection guarantees. The ACLU of New Jersey plans to submit a friend-of-the-court brief to support the state lawsuit filed by Lambda Legal. Ed Barocas and J.C. Salter of the ACLU of New Jersey are working on the brief.

Lawmakers Unanimously Back Safe Schools Law

The ACLU of New Jersey assisted in drafting and lobbying for a state bill that is the first explicit statewide protection for students who are or are perceived to be LGBT. The bill passed the Senate unanimously and was approved by the Assembly by a vote of 74-0 with only two abstentions. This legislation, which Governor James E. McGreevey has signed into law, will make New Jersey the eighth state in the country to acknowledge the right of students to be free from harassment at school on the basis of their sexual orientation. New Jersey also becomes only the third state to explicitly protect students from harassment based on gender identity or expression.

Coalition to Introduce DP Legislation

The ACLU of New Jersey continues to be a leading participant in the Family Equality Coalition, a statewide umbrella of human rights groups, labor unions, and New Jersey citizens, in drafting and lobbying for comprehensive domestic partnership legislation. The latest draft of the current domestic partnership bill, which would grant unmarried domestic partners the same governmental rights and privileges as married couples, is slated for introduction in September 2002.

NEW YORK

Anti-Trans Landlord Evicts Latino AIDS Agency

Hispanic AIDS Forum v. Estate of Joseph Bruno

The Hispanic AIDS Forum (HAF) is the leading agency providing HIV/AIDS services to Latino, new immigrant, and transgendered communities in New York City. HAF leased space in Jackson Heights, Queens for ten years and had negotiated a new lease, but the landlord refused to continue renting to HAF unless its transgendered clients stopped using common areas in the building, including the main entrance and the bathrooms. HAF was evicted when it refused to discriminate against its own clients. As a result, HAF had to relocate to a much less convenient space for its clients. The Project's Litigation Director, James Esseks, along with cooperating attorneys Edward Hernstadt and Kesari Ruza, represent HAF in a state lawsuit claiming discrimination based on gender, sex, and actual or perceived disability.

Lesbian Challenges Bias in Unemployment Benefits

In the Matter of Jeanne A. Newland

Jeanne Newland left her job in Rochester, New York and moved to Virginia because her partner found a better job. Under New York law, a person who quits her job to relocate with her spouse is eligible for unemployment benefits. When Newland applied for benefits, she learned that she is ineligible only because she is not married to her partner. The Project filed an appeal on Newland's behalf arguing that the denial of unemployment benefits violates state labor laws and the state and federal constitutions. The New York State Unemployment Insurance Appeal Board ruled against Newland. The Project is appealing that decision to a state appeals court. The Project's Crawford Fellow Romana Mancini represents Newland.



New York State believes in trying to help families stay together – except if they are same-sex couples. The state offers unemployment benefits to people who leave their jobs to relocate with their spouses, but Jeanne Newland (right) was denied unemployment because she is not married to her partner, Natasha Doty (left).

Non-Bio Mom Seeks the Right to See Her Child

Janis C. v. Christine T.

Janis C. and her lesbian partner had two children through donor insemination and raised them together for three years. When Janis and Christine, the biological mother, split up, Christine refused to allow Janis to spend time with the child. A family court judge ruled that Janis was entitled to visitation as the child's *de facto* parent, but an appeals court reversed that ruling in 2002. Janis has asked New York's high court to review the case. Project attorney Leslie Cooper and Susan Sommers of

Lambda Legal have co-written friend-of-the-court briefs in support of Janis C. Cooperating attorneys Joseph F. Tringali, Allen Drexel, and Joseph F. Wayland are assisting with the appeal.

NORTH CAROLINA

Blue Cross Threatens Civil Rights Laws

Williams v. Blue Cross/Blue Shield of North Carolina

After the state legislature passed bills giving counties the authority to adopt their own nondiscrimination laws, Orange County adopted a civil rights ordinance. Blue Cross/Blue Shield challenged this county ordinance as unconstitutional in state court, arguing that the state Constitution prohibits the legislature from granting counties the power to pass laws that have effects on trade and labor. The trial court ruled that the ordinance violates the state constitution, and the case is now pending before the state supreme court. The ACLU of North Carolina and the North Carolina Academy of Trial Lawyers, seeking to protect local communities' ability to enact more expansive nondiscrimination laws that cover sexual orientation, filed a friend-of-the-court brief on behalf of the Orange County law. Seth Jaffe of the ACLU of North Carolina and cooperating attorney Robert M. Elliot are working on the case.

Prisoner Allowed to Kiss Partner

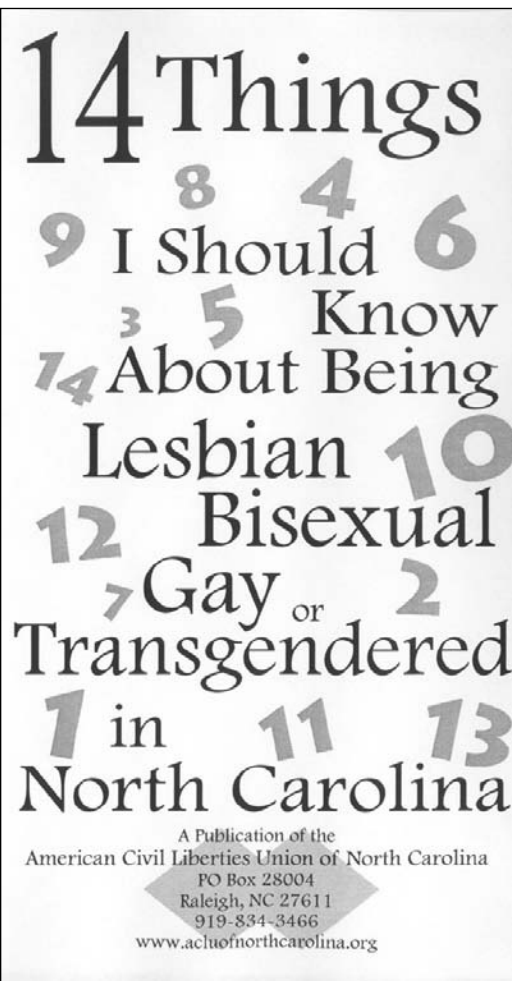
After an inmate complained that he was not allowed to greet his male partner with a kiss during visits, Seth Jaffe of the ACLU of North Carolina wrote a letter on his behalf to the Department of Corrections, arguing that gay inmates and their partners cannot be treated differently than heterosexual inmates and their partners. The Department subsequently issued a statement saying that all inmates may greet their visiting partners on equal terms.

New Brochure Educates Community About LGBT Rights

In the fall of 2001, the ACLU of North Carolina published a brochure called *14 Things I Should Know About Being Lesbian, Gay, Bisexual, or Transgendered in North Carolina*. It summarizes North Carolina laws that affect the state's LGBT community, including relationship recognition, employment, education and schools, and HIV testing; and it identifies resources for the community. The brochure is distributed online, at community events, and through other LGBT organizations.

Activists Keep Pushing Resistant Legislation

The ACLU of North Carolina lobbied around several bills now pending in the state legislature. It supported a bill that would modify the required sex education curriculum by removing a provision that stigmatizes homosexuality. The ACLU also advocated for a bill that would make it easier for counties to pass nondiscrimination ordinances. Currently, counties with populations over 100,000 have to apply to the state legislature for permission to enact civil rights ordinances. Neither of the bills passed.



The ACLU of North Carolina put together this brochure to educate LGBT people about their rights under state law.

OHIO

High Court Requires Equality in Access to Name Changes*In re Jennifer Bicknell*

A lesbian couple applied to the Butler County Probate Court to change their last names so that they and the child they were expecting could share a common family name. Despite the fact that name changes are routinely granted in Ohio for all sorts of reasons, a judge denied the couple's request on the basis that the changes sought would be contrary to "natural law" and public policy. The couple appealed to the Ohio Supreme Court, which overturned the ruling. The high court ruled that the couple's desire to share a family name was a legitimate basis to change their names, and they were entitled to do so. Jillian Davis of the ACLU of Ohio wrote a friend-of-the-court brief in support of the couple's request.

In re Richard Maloney

The same judge (see above) denied a name change request filed by Richard Maloney, a male-to-female transsexual, who had been living as a woman for several years and sought to have her name officially changed to Susan Louise Maloney. The judge, in denying the name change, cited "the natural, social order." The Ohio Supreme Court reversed this decision as well. The ACLU of Ohio filed a friend-of-the-court brief on behalf of Maloney, arguing that the court's decision violated her constitutional equal protection and privacy rights. Jillian Davis wrote the brief.

Court Rejects Mother's Right to See Child*In re Cheyenne Jones*

A lesbian non-biological mother asked a state court to grant her visitation rights with her ex-partner's biological child, whom the two women had raised together from infancy. The trial court denied visitation, ruling that in Ohio the "parent-child relationship" is limited to natural or adoptive parents of a child. The state appeals court affirmed the trial court's decision. The Project and the ACLU of Ohio, along with the National Center for Lesbian Rights (NCLR), filed a friend-of-the-court brief in support of the non-biological mother. Project attorney Leslie Cooper, ACLU of Ohio attorney Jill Davis, and NCLR attorney Courtney Joslin worked on the case.

Bill Would Forbid Any Recognition of Gay Couples

An unusually broad Defense of Marriage Act that would prohibit official recognition of same-sex relationships in any form was passed by the Ohio House in October 2001 and has been sitting without action in the Senate. The ACLU of Ohio has testified against the bill in legislative hearings and continues to advocate against it. Nebraska is currently the only state with such a sweeping ban on recognitions for same-sex couples.

Group Threatens Safe Schools Efforts

A right-wing organization sent letters to Ohio school superintendents warning that schools could face lawsuits as a result of their efforts to promote safe schools for LGBT students, including anti-harassment policies and training programs. In response, the ACLU of Ohio is working with the Ohio chapters of PFLAG and GLSEN to distribute information about LGBT issues and the law to schools and individuals across the state.



After one year of waffling about whether the Cimarron Alliance could post pride banners, the next year Oklahoma City officials flat-out denied the group's request to hang banners.

OKLAHOMA

Oklahoma City Bans Gay Pride Banners

Cimarron Alliance Foundation v. The City of Oklahoma

In the summer of 2001, the Cimarron Alliance Foundation, a statewide gay and lesbian rights group, posted banners promoting the annual Gay and Lesbian Pride Parade on lamp posts in Oklahoma City. Cimarron had obtained the required city permit, but after receiving complaints, the city removed the banners before the permit expired. ACLU of Oklahoma attorney Mark Henricksen sent a letter demanding that the banners be reposted at the city's expense, explaining that the city's actions were illegal censorship and violated the group's free speech rights. In response to the ACLU letter, the city reinstalled the banners, but subsequently the City Council created a new banner policy designed to exclude advocacy messages from LGBT groups. In the fall of 2001, when Cimarron applied for a permit to display banners in honor of Lesbian and Gay History Month, the city denied the permit. The ACLU sued the city on behalf of Cimarron in federal court, alleging that it violated the group's constitutional right to free speech. Henricksen and cooperating attorney Michael Salem represent Cimarron in the suit. A decision is pending.

PENNSYLVANIA

Federal Judge Orders New Trial in Teen Suicide Case

Sterling v. Borough of Minersville

A police officer arrested 18-year-old Marcus Wayman and a male friend for underage drinking, found condoms in their truck, and then threatened to tell Wayman's grandfather that he was gay. Wayman went home that night and committed suicide. Madonna Sterling, Wayman's mother, sued the police and the city for violating her son's right to privacy. In November 2000, a landmark decision from a federal appeals court said that the constitutional right to privacy protects information about one's sexual orientation – making it illegal for public employees to out or threaten to out someone they perceive or know to be gay, lesbian, or bisexual. The appeals court sent the case back to trial where, in November 2001, a jury found the police innocent. However, in June 2002, in a rare move, the federal judge presiding over the case wiped out the jury verdict and ordered a new trial because he believed the evidence did not support the verdict. ACLU of Pennsylvania cooperating attorney David Rudovsky represents Madonna Sterling.

Federal Court Rules Internet Blocking Law Unconstitutional

Multnomah County Library v. United States of America

In May 2002, a federal court in Pennsylvania ruled that the Children's Internet Protection Act is unconstitutional censorship because it violates the free speech rights of library patrons. The Act, which was passed by Congress in December 2000, requires libraries that participate in certain federal programs to install blocking software on internet terminals used by adults and minors in public libraries, regardless

of whether the federal programs paid for the terminals. In March 2001, the ACLU filed a lawsuit challenging the law on behalf of several plaintiffs around the country, including PlanetOut.com and a teenage lesbian from Oregon who used a library to find resources before coming out. Any appeal of the court's decision will go directly to the U.S. Supreme Court, which is required to hear challenges to this law. Attorneys in the case are Ann Beeson, Chris Hansen, and Kevin Bankston of the national ACLU; Stefan Presser of the ACLU of Pennsylvania; David Sobel of the Electronic Privacy Information Center; Lee Tien of the Electronic Frontier Foundation; cooperating attorneys Charles Sims, Frank Scibilia, Stefanie Krause, and Andy Lee; and Tom Sponsler, Multnomah County, Oregon Attorney.

University of Pittsburgh Denies Health Benefits for Domestic Partners

Henson v. University of Pittsburgh

In 1996, the ACLU of Greater Pittsburgh filed a complaint with the Pittsburgh Human Relations Commission against the University of Pittsburgh on behalf of lesbian and gay university employees who are denied health insurance benefits for their partners. The ACLU argued that the use of marriage as a requirement for benefits – which automatically excludes gay couples – violates a Pittsburgh gay rights law. In 2001, the parties agreed to temporarily suspend litigation so the University could appoint a commission to study whether to give domestic partner health benefits to gay and lesbian employees. After spending a year studying the issue, the commission issued a report in May 2002 advising against providing the benefits. The ACLU is now resuming the legal fight against the University. Project attorney Leslie Cooper and ACLU of Greater Pittsburgh attorney Witold Walczak are litigating the case with cooperating attorneys Christine Biancheria, E.J. Strassburger, and Roslyn Litman.



Carol Williams's niece and grandchildren rely on public library computers to do their homework, but a new internet censorship law makes it harder for them to access the information they need. Williams and her niece are plaintiffs in the ACLU's challenge to the law, along with a lesbian teenager who used library computers for information when she was coming out.

Court Upholds Rights of Lesbian Co-Parent

T.B. v. L.R.M.

A lesbian mother sought visitation with the child that she had raised with her former partner, the child's biological mother. The biological mother opposed the non-biological mother's request, arguing that she is not a legal parent and has no right to ask for visitation. The biological mother appealed all the way to the Pennsylvania Supreme Court, which recognized the rights of the non-biological mother. The ACLU of Pennsylvania filed a friend-of-the-court brief on behalf of the non-biological mother. Cooperating attorneys Mary Catherine Roper, David Abernathy, Susan Schleck Kleiner, Eric Cheung, and Megan Traversari worked on the brief.

Pennsylvania Supremes Approve Second-Parent Adoption

In re Adoption of R.B.F. and R.C.F.

In two separate proceedings, a lesbian couple and a gay male couple applied for second-parent adoptions to legally secure their children's relationships with both parents. The petitions were denied by the trial courts, which said that Pennsylvania law does not allow such adoptions. A state appeals court agreed with those decisions.

But, in an unexpected unanimous decision, the Pennsylvania Supreme Court disagreed, ruling that Pennsylvania law permits such adoptions so long as they are determined to be in a child's best interest. The Project and the ACLU of Pennsylvania joined a friend-of-the-court brief filed in support of the parents by other interested organizations.



In the late 90's University of Pittsburgh students helped fuel one of the best-ever LGBT rights public education campaigns. Today, a new wave of students is keeping the heat turned up on the school. This past school year, the Rainbow Alliance led teach-ins and handed out leaflets outside the admissions office.

Court Strikes Down Philly DP Benefit Plan

Devlin v. City of Philadelphia

Seven Philadelphia residents, led by Bill Devlin of the Urban Family Council, challenged the city's domestic partnership ordinance in state court. In August 2002, a state appeals court struck down the ordinance, ruling that the city usurped the power of the state legislature to define and regulate marriage. The City will appeal the decision, and Mayor John Street is asking the court to allow the 295 couples who have signed up for the plan to continue to receive benefits while the case is appealed. ACLU of Pennsylvania cooperating attorney Mary Catherine Roper filed a friend-of-the-court brief with the Center for Lesbian & Gay Civil Rights.

Pittsburgh Police Union Agrees to Ask for Domestic Partner Benefits

For two years a gay police officer has been attempting to get domestic partner benefits from the City of Pittsburgh. While Pittsburgh has offered domestic partner benefits to most city employees for several months, the benefit plan is

still not available to police officers because the benefits haven't been included in the collective bargaining agreement between the city and the union. The ACLU of Greater Pittsburgh filed a complaint on behalf of the officer with the Pittsburgh Human Relations Commission asking it to order the city and union to give domestic partner and other spousal benefits. The police union has agreed that it will ask for the requested benefits in the next contract-negotiation session. The ACLU is monitoring the situation to ensure that the city approves the benefits. Witold Walczak of the ACLU of Greater Pittsburgh is working on the case.

ACLU Protects LGBT Families

The state legislature is considering a proposal to rewrite Pennsylvania's adoption law. The ACLU of Pennsylvania organized a coalition to ensure that LGBT parents and prospective parents are treated equally and that LGBT families are protected under the new law. There are also bills currently pending in the legislature that would eliminate common law marriage in Pennsylvania. The ACLU is advocating continued recognition of common law marriage or a substitute registration process that would also protect the rights of same-sex couples. In addition, the ACLU is working to ensure that a proposed "religious liberty protection" law does not unnecessarily infringe upon state civil rights laws.

PUERTO RICO

High Court Dismisses Sodomy Challenge

Sanchez v. Puerto Rico

When lesbian activist Reverend Margarita Sanchez attempted to testify at a legislative hearing, legislators accused her of engaging in “lesbian practices” and threatened her with arrest. Under Puerto Rico’s sodomy law, any sexual activity between persons of the same sex is a crime. The ACLU represented Sanchez and several other people in a challenge to Puerto Rico’s sodomy law under the Puerto Rico Constitution. In July 2002, the Puerto Rico Supreme Court ruled that Sanchez and the other plaintiffs cannot challenge the law in court because they have not actually been arrested. The ACLU is now assessing other strategies to overturn the law. Project attorney Leslie Cooper and ACLU of Puerto Rico cooperating attorneys Nora Vargas Acosta and Charles Hey Maestre are litigating the case. The ACLU of Puerto Rico has also been active as part of a coalition working to repeal the sodomy law through the legislature.

RHODE ISLAND

Rhode Island Adopts Domestic Partner Law

The ACLU of Rhode Island successfully lobbied the state legislature to expand insurance benefits to domestic partners of public employees. When it was clear that the state government was not implementing the change, the ACLU of Rhode Island threatened to sue on behalf of public employees and their domestic partners. In response to the ACLU’s threat, the state caved and quickly moved to make the benefits available.

Rhode Island Becomes Second State to Pass Trans Rights Law

The ACLU participated in a lobbying campaign to add “gender identity and expression” to the state’s anti-discrimination laws. It is now illegal to discriminate against transgendered and other gender-nonconforming people in housing, employment, public accommodations and in granting credit or loans. Minnesota is the only other state that explicitly bans discrimination based on gender identity.

SOUTH CAROLINA

Bills Promote State-Sponsored Discrimination

The ACLU of South Carolina has been monitoring a number of bills that would severely threaten the rights of LGBT people. Legislators introduced three bills that would block public colleges and universities from promoting basic equality. One bill would prohibit any public school from including sexual orientation in school nondiscrimination policies. Another bill would ban state scholarship money to any public university that provides domestic partner benefits to same-sex couples. A third bill would go a step further by banning all state funding to a school that provides domestic partner benefits. All three of these bills died in committee. Legislators also introduced a bill that would ban adoption by gay men, lesbians,

and bisexuals. It also died in committee. Finally, there was one pro-LGBT rights bill introduced in the legislature. The ACLU of South Carolina supported this measure to add sexual orientation to the state hate crimes law, but the bill did not reach a full vote.

TEXAS

Houston Police Illegally Ignored Domestic Violence

Swidriski v. City of Houston

In 1998 Ilhan Yilmaz shot and killed his boyfriend, 28 year-old Marc Kajs. Kajs, knowing his life was in danger, had sought help from the Houston Police Department before he was killed. Because Kajs was in a same-sex relationship, the police ignored his numerous pleas for protection. On the morning of his murder, Yilmaz chased Kajs into a police station where he pleaded for help. Instead of helping Kajs, the Houston Police ordered him to leave. Gloria Swidriski, the mother of Kajs, sued the City of Houston in federal court, arguing that a policy of denying police protection to lesbian and gay victims of domestic violence is unconstitutional. A federal judge dismissed the case, saying that gays and lesbians are not protected under the U.S. Constitution. The federal appeals court reversed the lower court's decision, explaining that all people, regardless of sexual orientation, are entitled to equal protection of the law. Project attorney Tamara Lange wrote a friend-of-the-court brief on behalf of Swidriski.

Texans Take Sodomy Challenge to U.S. Supreme Court

Lawrence and Garner v. Texas

In 1998, John Lawrence and Tyron Garner were arrested and jailed by the Houston Police Department for having consensual sex in the privacy of Lawrence's apartment. The police barged into Lawrence's home in response to a false report of an armed intruder and found the two men having sex. Both men were convicted of violating Texas' Homosexual Conduct Law, which prohibits oral and anal sex between consenting adults of the same sex. Ultimately, the Texas state courts upheld the convictions in response to a challenge by the two men, represented by Lambda Legal. In July 2002, Lawrence and Garner asked the U.S. Supreme Court to review the case, contending that the Texas sodomy law violates the constitutional right to equal protection, because the law singles out gay men and lesbians for criminal sanctions. They also argue that the law violates the constitutional right to privacy and is asking the Court to overturn its own infamous 1986 decision that upheld a Georgia sodomy law. The Project and the ACLU of Texas filed a friend-of-the-court brief asking the Supreme Court to take the case. At the time this publication was printed, the Court had not yet indicated whether or not it would review the case.

Texas Officials Complicit in Sexual Abuse of Gay Prisoner

Roderick Johnson v. Gary Johnson

In April 2002, the ACLU sued the Texas Department of Corrections in federal court for failing to stop the repeated sexual abuse of African-American, gay inmate Roderick Johnson. Johnson, a Navy veteran serving time for a non-violent offense, has been continuously gang-raped and bought and sold as a sex slave within the prison for over a year, under the threat of death if he resists. Despite being well aware

of Johnson's plight, prison officials have ignored his numerous requests to be transferred to a safer facility. After hearing his complaint, one prison official remarked, "There's no reason why black punks can't fight if they don't want to fuck." The lawsuit highlights the prison systems' failure to protect vulnerable prisoners and the role both racial and sexual orientation bias plays in who gets protected. The ACLU Prisoner's Rights Project and ACLU of Texas attorney Will Harrell are handling the case with a private attorney in Texas. The Lesbian & Gay Rights Project is assisting with public education and legal efforts.

School Relents and Approves GSA

A group of students at James Rowe High School in the border town of McAllen, Texas formed a gay-straight alliance after a classmate committed suicide over his sexual orientation. The school principal said he'd approve the group only if they agreed not to focus solely on sexual orientation. The students reluctantly agreed to make the change and became a general diversity club. Later in the school year when the group participated in an event to raise awareness about anti-gay discrimination, the principal punished them by suspending their meetings for the entire last month of school. After student leaders Crystal Mendoza and Orlando Campa wrote to the ACLU for assistance, Project attorney Ken Choe and ACLU of Texas Executive Director Will Harrell sent a letter to the school demanding that the administrators respect the students' free speech rights, allow the students to form a gay-straight alliance, and have the same access to school resources granted to every other non-curricular student group. In August 2002, the school agreed to allow the students to form a GSA and to treat it equally.

ACLU of Texas Executive Director Nominated for Award

Executive Director of the Texas ACLU, Will Harrell, was nominated for the Atour Legal Improvement Award for his work on the Texas Hate Crimes Act, which incorporated anti-gay crimes into existing hate crimes law in the 2001 Texas Legislative Session.



Roderick Johnson, a former naval officer, was repeatedly gang-raped and sold as a sexual slave in prison, where he was serving a term for a nonviolent offense. Despite repeated complaints, the prison officials refused to help Johnson in part because he is black and gay.

UTAH

Parents Try to Remove Lesbian Teacher

Citizens of Nebo School District v. Weaver

In the latest chapter of an ongoing attempt to fire Wendy Weaver, a 23-year veteran teacher at Spanish Fork High School, because she is a lesbian, a group of parents is asking the state Supreme Court to strip the teacher of her teaching license. The parents claim that she should not be allowed to teach their children because she is a criminal for violating the state sodomy law. In 1998, the Nebo County School District barred Weaver from coaching a girls' volleyball team and required her to sign an order that prohibited her from discussing her sexual orientation in or outside of the classroom. With the ACLU's help, Weaver won a federal court decision that said government employees cannot be singled out for disciplinary action because of their sexual orientation and that the prohibition on Weaver's ability to be out violated her free speech rights. Following the federal court victory, the group of parents, Citizens of the Nebo School District for Morals and Legal Values, tried

to get Weaver fired with a new case, this time in state court. In 1999, a state trial court judge threw out the key claims alleged by the group against Weaver, and the parents appealed to the Utah Supreme Court. The ACLU of Utah represents Weaver, claiming that the parents' lawsuit, if successful, would violate Weaver's free speech rights as well as her right to equal protection. Former ACLU of Utah Legal Director Stephen Clark will argue the case in October 2002. Cooperating attorney Richard Van Wagoner is assisting the ACLU of Utah with the case.

Proposed Hate Crimes Bills Include Sexual Orientation

For the first time in Utah's history, two hate crime bills that included sexual orientation were proposed. The Senate bill provided enhanced penalties for crimes committed on the basis of certain specified characteristics of an individual or group. Rather than increasing penalties, the House version urged judges to assign community service hours and diversity training to those convicted of hate crimes. The ACLU of Utah lobbied in support of the bills. Unfortunately, both bills failed.

VERMONT

ACLU Helps Defend Civil Union Legislation

Vermont's landmark civil union law, passed in 2000, survived another round of efforts aimed at diluting or repealing the law during the 2001 legislative session. The ACLU of Vermont lobbied against these efforts in conjunction with the Freedom to Marry Task Force.

VIRGINIA

Virginia Agrees to Stop Blocking Gay Adoptions

Kaufman v. Virginia Dept. of Social Services

Linda Kaufman, an openly lesbian Episcopal priest who adopted a foster child from the District of Columbia in 1992, and her partner, Liane Rozzell, began proceedings to adopt a second child from D.C. in 1999 but were refused consideration by the Virginia Department of Social Services because they are lesbians. The ACLU of Virginia, along with Lambda Legal, represented Kaufman in a suit against Virginia, arguing that the agency's actions violate state law because they look at factors that are unrelated to the best interests of the child. A trial court rejected the state's attempt to throw out the case. Shortly after, Virginia settled the suit, agreeing to allow Kaufman to proceed with her adoption application and to stop barring interstate adoptions solely because of sexual orientation. Rebecca Glenberg of the ACLU of Virginia litigated the case with Lambda Legal and cooperating attorney Joseph Price.

State Refuses to Recognize Gay Parents

Davenport v. Little-Bowser

The Virginia Department of Vital Records is refusing to issue new birth certificates for children who were born in Virginia but adopted out of state by same-sex couples – something that is regularly approved for married couples who adopt. The

ACLU of Virginia recently filed a complaint in state court on behalf of the adoptive parents arguing that the Department's practice violates state law as well as the U.S. Constitution. Rebecca Glenberg of the ACLU is working on the case with cooperating attorneys Steven Tave, Laurence Eisenstein, Michael Ward, David Lubitz, and Michele Zavos.

Lawsuit Seeks Proper Care for Transgendered Prisoner

De'lonta v. Angelone

In the mid-1990's, the Virginia Department of Corrections (DOC) suspended hormone treatments for male-to-female transgendered inmate Ophelia De'lonta. Even though this has resulted in repeated attempts by De'lonta to castrate herself, officials continue to deny her proper medical treatment. Initially, De'lonta represented herself in a suit in federal district court where she received an adverse ruling. The ACLU of Virginia has since agreed to represent her and maintains that the DOC has a legal responsibility to treat De'lonta's condition so that the self-abuse stops. The case is now before a federal appeals court in Richmond. Rebecca Glenberg of the ACLU and Victor Glasberg represent De'lonta.

WASHINGTON

Court Rules that Anti-Gay Bias Violates U.S. Constitution

Davis v. Pullman Memorial Hospital

Mary Jo Davis experienced constant harassment during her job as a sonographer at Pullman Memorial Hospital, a public institution. Her boss, Dr. Charles Guess, regularly referred to Davis as a "fucking dyke" and a "fucking faggot." At one point, Guess told another doctor, "I don't think that fucking faggot should be doing vaginal exams, and I'm not working with her." When Davis complained, the hospital punished her rather than discipline Guess. They reduced her work hours to three-quarters time so Guess would not have to work with her. Later, Davis was fired. The ACLU got involved in the lawsuit against the hospital and Dr. Guess in 1996. The lower court dismissed the case, but a Washington state appeals court unanimously ruled that anti-gay discrimination against a public employee violates the U.S. Constitution. The homophobic doctor is appealing the case to the state supreme court, but the hospital has not yet said whether or not it will join the appeal. Project attorney Ken Choe and cooperating attorney Richard Reed are handling the case.



It was a critical LGBT rights victory when this state appeals court in Washington ruled that anti-gay discrimination by public employers violates the U.S. Constitution.

Washington Supreme Court Gives Same-Sex Couples Fair Share

Vasquez v. Hawthorne

Frank Vasquez and Robert Schwerzler were lifelong partners who lived together in the same home for 28 years. When Schwerzler died in 1995 without a will, Vasquez, then 67, faced the possibility of being forced to leave their home of nearly three decades. In Washington, when an opposite-sex couple lives together as a family and one member dies, the surviving member can claim some share of the deceased partner's estate, even if they are not married. When Vasquez asserted the same claim, Washington courts dismissed his case, ruling that it would be an end-run around the state's law banning recognition of same-sex marriage to give him a share of the estate. Vasquez appealed to the Washington Supreme Court, which found that

equal distribution of property at the end of a committed relationship cannot be restricted on the basis of sex or sexual orientation. ACLU of Washington attorney Aaron Caplan and cooperating attorneys Roger Leishman and Karen Boxx filed a friend-of-the-court brief in the case.

Washington Passes Law to Protect LGBT Youth

Over the last four years, the ACLU of Washington and other organizations across the state have been actively lobbying to protect LGBT youth from harassment in public schools. Their efforts paid off this legislative session when the Washington legislature passed an anti-harassment bill. The new law requires all school districts in the state to develop anti-harassment policies based on state model guidelines. This bill makes clear that harassment based on any characteristic, real or perceived, is unacceptable and will not be tolerated. The new law went into effect in June 2002.

Tacoma Residents Seek to Repeal LGBT Rights

In April 2002, the Tacoma City Council voted 8-1 to extend the city's nondiscrimination law to cover sexual orientation and gender identity. The ACLU of Washington was actively involved in efforts to pass the ordinance, speaking at hearings and city council meetings. Shortly after the law passed, a group of citizens initiated a repeal effort, and in response, those supporting LGBT rights organized Tacoma United for Fairness (TUFF) to fight the repeal effort. The ACLU is now helping TUFF. The organizations are working together on a public education campaign and looking at the possibility of litigation if the need arises.

WEST VIRGINIA

Charleston Passes Hate Crimes Law

The ACLU of West Virginia lobbied successfully to amend the Charleston hate crimes ordinance to include sexual orientation. The ACLU worked on this project in conjunction with a number of organizations as part of the Gay and Lesbian Task Force. The ACLU and the Task Force also supported similar legislation in Huntington City. That ordinance has not yet passed.

WISCONSIN

Taxpayers Ask State to Enforce Nondiscrimination Law

In the Matter of Petition of Dan Ross

The ACLU of Wisconsin filed a petition at the Department of Administration to exclude charities that discriminate on the basis of sexual orientation from the State's employee workplace giving program. In 2001, about 11,600 state employees participated in the program giving over \$2,500,000 to participating groups. The petition asks that the Department adhere to existing state nondiscrimination laws by prohibiting organizations that discriminate against gay people from participating in the program. The rule, however, does recognize First Amendment rights so that groups like the Boy Scouts of America can still be included among the charitable organizations in the program. The DOA adopted the amendment in July 2002.

ACLU of Wisconsin Legal Director Micabil Diaz is handling the case along with cooperating attorneys Tamara B. Packard and Christopher Krimmer.

Milwaukee Includes Couple Benefits in Labor Contracts

Milwaukee included domestic partnership benefits for unmarried city employees in the labor contracts that were approved by the Common Council in 2001. As a result, the Domestic Partnership Registry Ordinance was amended in 2001 to set up a separate registry for city employees. The ACLU of Wisconsin has been monitoring implementation of the separate registry because of concern about its stringent requirements.

Bills to Provide State Domestic Partnership Benefits Fail

The ACLU of Wisconsin worked with the Domestic Partnership Task Force to campaign in favor of two bills expanding rights for domestic partners. The first would have provided marriage-equivalent legal recognition for same-sex partnerships. The second would have provided health care and retirement benefits to domestic partners of state, local, and school employees. Neither bill made it out of committee.

Pro-Scout Bill Goes Away for Now

The ACLU of Wisconsin monitored a bill that would have prohibited state agencies or local governmental units from discriminating against federally chartered organizations, like the Boy Scouts of America. The bill died in committee.

GSA Struggles for Equal Treatment

The Project and the ACLU of Wisconsin are working with student leaders in Neenah, Wisconsin whose GSA was refused official recognition. The school has refused to provide funding and official club status to the group despite the fact that it provides such support to other non-curricular clubs. The ACLU and students are advocating for the school administration to recognize their GSA and are now considering taking the fight to court. ♦

The ACLU and students in Neenah, Wisconsin, are advocating for the school administration to recognize their GSA and are now considering taking the fight to court.

W H E R E W E A R E 2 0 0 3

HIV/AIDS

S T A T E - B Y - S T A T E D O C K E T

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Access to Healthcare

North Carolina

Confidentiality

Missouri, New Jersey

Criminalizing HIV Transmission

Iowa

Discrimination

California, Illinois

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Medical Marijuana

California

Needle Exchange

Illinois, Massachusetts

Prevention

Illinois, Louisiana, North Carolina

Prisons & Inmates

Illinois, Nebraska, New Hampshire

Testing & Reporting

Illinois, Iowa, Pennsylvania

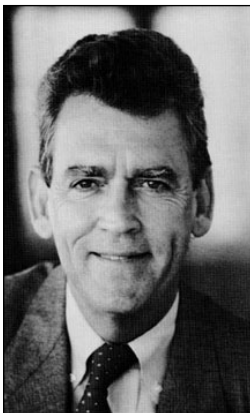
*For information on the ACLU
AIDS Project's nationwide survey
of HIV/AIDS service providers,
see page 14.*

CALIFORNIA

Supreme Court Dilutes Protections for People with Disabilities

Chevron U.S.A., Inc. v. Echazabal

When Mario Echazabal applied to work for a Chevron oil refinery, the company refused to hire him based on its own doctor's assessment that working around certain chemicals in the refinery could damage Echazabal's health, given his chronic liver disease. Echazabal sued Chevron for violating the Americans with Disabilities Act, which allows employers to fire workers who pose a risk of harm to others in the workplace but, he argued, prevents employers from firing workers who pose a risk of harm only to themselves. In a friend-of-the-court brief before the U.S. Supreme Court, the ACLU argued that, just as barring women and racial minorities from certain professions "for their own good" was paternalistic and discriminatory, so is excluding people with disabilities, even if done allegedly to help them. Individuals should get to decide what risks they will take with their own bodies. The Court disagreed, ruling that an employer can refuse to hire an employee if working in the position poses a risk of harm to the employee herself, provided the decision is based on accurate medical information. Project litigation director James Esseks wrote the ACLU's brief, which was a joint effort with the ACLU's Women's Rights Project.



Dr. Marcus Conant is the lead plaintiff in a case challenging a gag order on the ability of doctors to prescribe medical marijuana. Conant has been helping people with HIV/AIDS since the early 1980s.

Court to Decide Doctor's Right to Recommend Marijuana

Conant v. McCaffrey

After California voters passed a law permitting the medical use of marijuana, the federal Food and Drug Administration (FDA) threatened to revoke the licenses of California doctors who recommend marijuana to their patients. The ACLU of Northern California filed a First Amendment lawsuit in federal court on behalf of a group of doctors and patients challenging the FDA's gag order. In 2000, the trial court ruled in the ACLU's favor, prohibiting the federal government from revoking doctor's licenses. The government appealed that decision, and the federal appeals court heard the case in April 2002. A decision is pending. Graham Boyd of the ACLU Drug Policy Litigation Project, cooperating attorney Jonathon Weissglass, and Daniel Abrahamson of the Drug Policy Alliance are handling the case.

Governor Vetoes Compassionate Release for Sick Prisoners

The California Legislature approved a bill sponsored by the ACLU to provide compassionate release for seriously ill prisoners with less than six months to live. Often prisoners with HIV/AIDS and other diseases do not know their diagnosis and cannot advocate for their own release. The bill would have improved the release system by requiring notification and appropriate timetables to ensure that prisoners do not die in prison. Unfortunately, Governor Gray Davis vetoed the bill.

San Diego Implements Medical Marijuana Law

California voters passed a state ballot initiative in 1996 that allows the use of marijuana for medical purposes, but up until recently San Diego had failed to establish any clear guidelines to comply with the law. The ACLU of San Diego helped establish the city's Medicinal Marijuana Task Force. Dale Kelly Bankhead, the ACLU of San Diego Public Affairs Director, was chair of the Task Force's subcommittee that drafted a voluntary verification card program for patients and got it approved by

the City Council in February 2002. The program allows card carriers to possess one ounce of marijuana without getting arrested. The Task Force, with the help of the ACLU, continues to push the City and the police department to develop guidelines to comply with the state law.

ILLINOIS

Bill Would Hold State Accountable for Discrimination

The ACLU of Illinois lobbied for a bill that would allow a state employee to sue the state for discrimination under the federal Americans with Disabilities Act (ADA) and other federal civil rights laws. The legislation is important because the U.S. Supreme Court recently made it impossible for state employees to sue for damages for disability discrimination under the ADA, which provides the primary civil rights protections for people with HIV. The bill passed in the House but never received a hearing in the Senate. The ACLU intends to pursue this measure again in the next session, supported by a coalition of disability rights groups.

State Health Commission Created to Evaluate Sale of Syringes

Half of all new HIV infections result from injection drug use. More than 26,000 residents of Illinois have been diagnosed with AIDS and approximately 100,000 with Hepatitis C. Seventy percent of Illinois AIDS cases among women and 95 percent of pediatric cases are associated with syringe sharing. Armed with these statistics, the ACLU of Illinois joined the Coalition for Responsible Syringe Policy in supporting a bill that would allow adults to purchase sterile syringes at pharmacies without a prescription. After several needle access bills failed in past sessions, both legislative chambers passed a new resolution that creates the Commission on Medical Instruments. Comprised of public health, law enforcement, and family advocacy organizations, the commission will advise the General Assembly on medically appropriate standards for sales of syringes in Illinois, an important first step to enactment of legislation on this issue. The commission's report and a full debate are slated for the spring 2003 legislative session.

HIV Prevention Education for Inmates Bill Fails

The ACLU of Illinois successfully reshaped key legislation affecting HIV/AIDS in prison. After lobbying by the ACLU and AIDS service organizations, the sponsor of a bill that originally would have required mandatory HIV testing of all Illinois Department of Correction inmates agreed to change the bill to propose a voluntary testing program instead. The revised bill would also create an HIV prevention, education, and outreach program for family members and significant others of incarcerated persons; provide all inmates in adult and juvenile facilities with HIV prevention education; and offer information for prisoners about community-based AIDS services. Unfortunately, the legislation failed to pass this session.



Mary Dixon, the state legislative lobbyist for the ACLU of Illinois, fought for stronger nondiscrimination protection for people living with HIV/AIDS, a needle exchange law, and HIV education and voluntary testing for inmates.

Governor Makes Cuts to State HIV Reduction Programs

Faced with unprecedented shortfalls in state revenue, Governor Ryan proposed eliminating a \$2 million program aimed at reducing the transmission of HIV statewide in communities of color, who are among the hardest hit by the spread of HIV. The ACLU of Illinois conducted an emergency free fax action alert that generated 200 faxes to Illinois legislators. Despite these efforts, however, the General Assembly quickly passed the Governor's proposed cuts. Without this funding, 18 programs will be eliminated.

IOWA

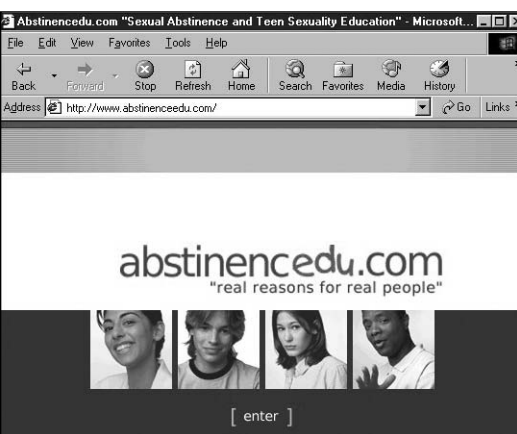
HIV "Sex Offender" Bill Fails

A bill was proposed that would have declared a person who criminally transmits HIV as an "offender" in the state Sex Offender Registry. The Iowa Civil Liberties Union successfully opposed the bill, which never made it out of subcommittee.

HIV Testing Bill Would Infringe on Privacy

When a bill allowing for implied consent to HIV testing was proposed to the state legislature, the Iowa Civil Liberties Union lobbied against the bill, arguing that the measure would threaten privacy rights. The bill failed to pass out of subcommittee.

LOUISIANA



The Louisiana Governor's Program on Abstinence sponsors abstinencedu.com that, among other features, has Christian activists provide answers to teens' health-related questions. The program is funded with taxpayer money.

Federal Court Says Abstinence-Only Education Violates Constitution

ACLU of Louisiana v. Foster

Citing misuse of taxpayer dollars, a federal court blocked the state of Louisiana from funding religious-based abstinence-only education. The Louisiana Governor's Program on Abstinence, that runs on federal and state dollars, has habitually funded programs that feature religion-based curricula and activities and minister to teens about the "scriptural, spiritual, and practical foundation for combating the issues of premarital sex." The case is the first challenge brought against a program funded through the federal abstinence-only money made available in the 1996 federal welfare reform legislation, which is up for reauthorization this year. Abstinence-only programs jeopardize the lives of sexually active teenagers who need HIV prevention information. In addition, many of these programs use curricula that dangerously stigmatize gay and lesbian students because the federal guidelines governing the programs state that they should teach that a "mutually faithful monogamous relationship in [the] context of marriage is the expected standard of human sexual activity." The case was handled by ACLU Reproductive Freedom Project Director Catherine Weiss and attorney Jaya Ramji and the ACLU of Louisiana.

MASSACHUSETTS

Confusing Needle Exchange Laws Lead to Woman's Arrest

Commonwealth v. Maria Landry

Maria Landry, a registered participant in the Cambridge needle exchange program, was charged with unlawful possession of a hypodermic needle while in another Massachusetts city that does not have a needle exchange program. Although Massachusetts generally requires a prescription in order to possess injection equipment, the law was amended so that it would not be a crime for members of a lawful needle exchange program to possess needles. The statute contains no geographic limitation on this lawful possession. The ACLU of Massachusetts is representing Landry in an appeal of her conviction, arguing that the state law should be interpreted to allow members of a needle exchange program to possess needles anywhere in the state, not just within the boundaries of the town where they are registered. The case will have important consequences for the effectiveness of the Massachusetts law on needle exchange to prevent the spread of HIV and AIDS among intravenous drug users. A decision is pending from the high court of Massachusetts. ACLU of Massachusetts attorney Sarah Wunsch is handling the case along with Alicia Young of the ACLU Drug Policy Litigation Project.

MISSOURI

School District Agrees to Protect Student's Confidentiality

After the parents of an HIV-positive student notified the school principal and the school nurse of their son's health status, the school decided – against the parents' will – to inform the child's teachers about the potential risk of transmission presented by the child. At the request of the student's parents, the Project sent a letter to the school demanding that the HIV status of the student not be divulged. In addition to setting forth the law, the Project explained to the school district that given the statistical certainty that some of its students have HIV, Hepatitis C, or other blood-borne illnesses, it did not need to divulge the HIV status of the student in order to train teachers on the importance of universal precautions when assisting injured students. The school district ultimately agreed not to divulge the HIV status of the student. At the school district's request, the Project compiled information to assist the school district in preparing appropriate universal precautions training programs for its teachers. Project attorney Ken Choe handled this matter.

NEBRASKA

Inmate with HIV Placed in Solitary Confinement

State v. Lonnie Thomas

Lonnie Thomas, an inmate with HIV at a Nebraska state penitentiary, was placed in solitary confinement for three years based solely on allegations by an anonymous informant that he had misbehaved. He was not told the content of the allegations. The ACLU of Nebraska filed a federal lawsuit challenging the prison's actions and arguing that Thomas was placed in solitary confinement because he has HIV. The

ACLU argued that the prison's administrative procedures allow for unconstitutional discrimination against inmates with HIV. While awaiting a decision from the Nebraska Court of Appeals, Thomas was finally paroled on March 28, 2002 after serving 1,680 days in solitary confinement. ACLU staff Amy Miller, law student Jeremy Patrick, and cooperating attorney Sue Ellen Wall are handling the case.

NEW HAMPSHIRE

Task Force Focuses on HIV/AIDS in Prisons

The ACLU of New Hampshire is developing a task force to focus on HIV/AIDS issues in prisons. The ACLU has support from several state legislators and is creating a partnership with the New Hampshire Commissioner of Corrections.

NEW JERSEY

Woman with HIV Loses Custody of Child

Doe v. Division of Youth and Family Services

When Jane Doe went to her doctor with complications during her pregnancy, her blood was tested without her consent, and she tested positive for HIV. After Doe gave birth, the child was taken away from her because she refused to allow the doctors to give AZT to the newborn (later the child was found not to have HIV).

In June 2000, the ACLU of New Jersey filed a lawsuit against the New Jersey Division of Youth and Family Services and Capital Health System, Inc. for their discriminatory policies and unlawful treatment of a woman with HIV and her newborn child. Under state and federal constitutions and disability discrimination laws, the ACLU argued that the Capital Health System violated Doe's privacy rights by illegally administering an unauthorized HIV test and that DYFS interfered with her custodial and

The ACLU argued that the Capital Health System violated Doe's privacy rights by illegally administering an unauthorized HIV test and that DYFS interfered with her custodial and parental rights.

parental rights. The plaintiff reached a settlement with DYFS, which agreed to establish guidelines to ensure that DYFS would not automatically take action against a parent who refuses to provide AZT to his or her newborn. Rather, the agency would consider the likelihood of harm to the child and the parent's reasons for refusal. Although the trial court dismissed most of Doe's claims against the state agency, the case against the hospital is continuing. Cynthia Dennis of the Rutgers Women and AIDS Clinic is assisting on the case.

NORTH CAROLINA

Legislature Increases Resources for HIV/AIDS Prevention and Care

The North Carolina legislature passed an HIV/AIDS public health crisis bill that was actively supported by the ACLU of North Carolina. The law increases the

income eligibility limit for the AIDS Drug Assistance Program, increases funding for HIV/AIDS prevention efforts, and directs the Department of Health and Human Services to study programs relating to HIV/AIDS prevention and care. The ACLU is also monitoring a bill currently in committee that would establish a legislative commission to study laws and public policies regarding the treatment of rape victims and health care workers who risk HIV infection.

PENNSYLVANIA

New Law Requires Name Reporting

The state legislature passed a law requiring that the names of people newly diagnosed with HIV be reported to the government. The ACLU of Pennsylvania actively opposed the bill, arguing that it violates the constitutional rights of HIV-positive individuals. The law also calls for anonymous test sites, which the ACLU supports. ♦

LESBIAN & GAY RIGHTS AND AIDS PROJECTS STAFF

The ACLU Lesbian & Gay Rights and AIDS Projects staff are specialists in constitutional law and civil rights who undertake precedent-setting litigation, public policy advocacy, and public education on national issues related to LGBT rights and the rights of those living with or affected by HIV and AIDS.

Lexi Adams is the Projects' Staff Assistant for development and public education.

Chris Anders is the Projects' Federal Policy Director, and Legislative Counsel to the ACLU's Washington National Office, responsible for advancing the Projects' mission on Capitol Hill and Pennsylvania Avenue.

Paul Cates is the Projects' Public Education Director. A former attorney for the New York City Legal Aid Society, he comes to the ACLU after working at Pro-Media Communications.

Ken Choe has been a Staff Attorney since 2000. Before joining the ACLU, he was a political appointee in the Clinton Administration focusing on health care law and policy.

Matthew Coles has been Director of the Projects since 1995. Before that, he was a staff attorney at the ACLU of Northern California.

Leslie Cooper joined the Projects as Staff Attorney in 1998. Before joining the Projects, she worked at Robinson Silverman Pearce Aronsohn & Berman LLP in New York.

Genie Cortez is the Projects' Deputy Director of Development. Prior to that, she worked as a senior director for Changing Our World, Inc., a national fundraising and philanthropic services consulting firm.

Naomi Enright joined as the Project's Legal Assistant in 2001. Previously, she worked as a grant writer at The United Puerto Rican Organization of Sunset Park in Brooklyn, NY.

James Esseks is the Projects' Litigation Director. James was a partner at New York's Vladeck, Waldman, Elias & Engelhard, P.C. before joining the Projects.

Chris Hampton joined our staff as Public Education Associate in 2002. Before coming to the ACLU, she worked on the communications team at Lambda Legal.

Tamara Lange is a Staff Attorney who joined the Projects after working at Caldwell, Leslie, Newcombe & Pettit in Los Angeles and clerking in federal trial and appellate courts.

Romy Mancini is the Projects' Crawford Fellow. Before her arrival, Romy completed a clerkship with U.S. District Judge William K. Sessions III in Burlington, Vermont.

Robert Nakatani has been the Projects' Development Director since 1997. He now works out of the offices of the ACLU of Northern California, dividing his time between the Projects' fundraising efforts and the affiliate's endowment campaign.

Jessie Torrisi is a Grant Writer for the Project. Previously, she wrote grants for Dance Theater Workshop and worked as a literary scout.

Millie Yan is the Projects' Paralegal, joining the ACLU after graduating from the University of Maryland, College Park.

In addition to the Projects' staff, several ACLU affiliates have staff dedicated to LGBT and AIDS work: Sandi Farrell, Equal Justice Works Fellow at the ACLU of Mississippi; Jay Kaplan, staff attorney for the GLBT Rights Project of the ACLU of Michigan; Sean Lemieux, Project for Equal Rights at the ACLU of Indiana; Beth Littrell, Don George Fellow and Director of the Sticks & Stones Project at the ACLU of Georgia; Martha Matthews, David Bohnett Attorney at the ACLU of Southern California.

Front cover pictures (clockwise from top left):

Neenah, Wisconsin – A high school GSA educated the whole town about anti-gay harassment in schools.

U.S. Congress – Alicia Pedreira told Congressional staffers how she got fired from a government-funded religious agency in Kentucky for being a lesbian.

Delaware General Assembly – Activists are very close to passing a statewide gay rights law.

Winn-Dixie Corporate Headquarters; Jacksonville, Florida – For two years in a row, a diverse group of people protested Winn-Dixie's blatant anti-transgender discrimination.

Ellsworth Correctional Facility, Kansas – Matthew Limon is being held in this prison for at least 17 years for having consensual sex with another male teenager.

Sixth Circuit Federal Appeals Court, Cincinnati – Judges will decide whether Dr. Barrett Hyman has the right to discriminate against LGBT people – and overturn Louisville, Kentucky's civil rights ordinance.



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