

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, in her
capacity as Executor of the estate of THEA
CLARA SPYER,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

10 Civ. 8435 (BSJ) (JCF)
ECF Case

**SUPPLEMENTAL
DECLARATION OF
LISA M. DIAMOND**

Lisa M. Diamond declares under penalty of perjury, pursuant to 28 U.S.C.

§ 1746, as follows:

1. My name is Lisa Diamond and I am an associate professor of developmental psychology at the University of Utah, where I have been teaching since 1999.¹ I received a Ph.D. from Cornell University in 1999 in Human Development (*i.e.*, developmental psychology). My areas of specialty include the nature and development of affectional bonds and the nature and development of same-sex sexuality.

2. I have reviewed the papers submitted by the Bipartisan Legal Advisory Group of the United States House of Representatives (“BLAG”) in opposition to the Plaintiff’s motion for summary judgment in the above-referenced lawsuit. BLAG cites my work numerous times in those papers.

¹ I executed a declaration on August 20, 2011, which I understand Plaintiff submitted in support of her motion to strike in this action. This Supplemental Declaration contains additional information that the Court may find helpful in resolving the important issues that this case presents. For the Court’s convenience, I will repeat here some of the statements I made in my August 20, 2011 declaration.

3. Counsel for BLAG never requested that I serve as an expert witness for them in the above-referenced lawsuit. If they had requested, I would not have agreed to do so because I do not think their position on immutability is warranted by the science.

4. I am providing these clarifications of my work on a scientific basis, and I have no other interest or involvement in this case. I have received no compensation for providing this affidavit.

5. BLAG misconstrues my research findings, which do not support the propositions for which BLAG cites them. Specifically, on page 11 of its memo in opposition to the motion for summary judgment, BLAG quotes the following statement from one of my papers: “There is currently no scientific or popular consensus on the exact constellation of experiences that definitively ‘qualify’ an individual as lesbian, gay, or bisexual”—as support for its claim that sexual orientation is not immutable. This is incorrect. My quoted statement concerns the scientific and popular debates over the defining characteristics of LGBT individuals and it says nothing whatsoever about the immutability of sexual orientation itself. Hence, BLAG has incorrectly characterized my research.

6. BLAG goes on to state on page 11 that “according to multiple studies, a high number of persons who experience sexual attraction to members of the same sex early in their adult lives later cease to experience such attraction.” In support of this claim BLAG provides the following quote from one of my articles: “50% [of respondents] had changed their identity label more than once since first relinquishing their heterosexual identity”. This quoted statement refers to sexual identity labels (*i.e.*,

how individuals describe and interpret their sexuality), not to sexual orientation. Neither this article nor any of my other published work supports BLAG's claim that "a high number of persons who experience sexual attraction to members of the same sex early in their adult lives later cease to experience such attraction." *See* BLAG Opp. Br. at 11-12. Hence, BLAG has completely misrepresented my research.

7. The other study cited by BLAG about changing sexual attractions is Nigel Dickson et al., *Same Sex Attraction in Birth Cohort: Prevalence and Persistence in Early Adulthood*, 56 Soc. Sci. & Med. 1607, 1611-12 (2003), an article with which I am familiar. *See* BLAG Opp. Br. at 11-12. BLAG misunderstands this article as well, conflating immutability of sexual orientation with perfect stability of its outward expression. This article does not speak to immutability of sexual orientation (which the authors themselves never claim to have measured), but to the expression of same-sex attraction and behavior over time.

8. Laypeople frequently presume that if a trait is immutable, it will express itself in a rigid deterministic fashion, but this is simply not true. For example, persons with the same genotype (genetic pattern) can have different phenotypes (expression of the genetic pattern). The different phenotypes (expressions) do not change the existence of a common genotype. By analogy in the context of sexual orientation, periodic changes over the life course in the conscious experience of same-sex attraction are changes in the expression of sexual orientation, not in orientation itself (*i.e.*, the underlying capacity for same-sex attraction). The fact that some individuals may show different expressions of same-sex attraction over time does not change the

fact that they belong to a meaningful, scientifically acknowledged class of individuals who share a fundamental and distinctive trait: the capacity for same-sex attractions.

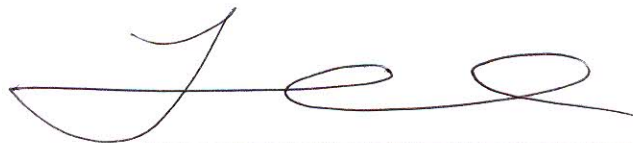
9. Changes in the expression of same-sex attractions or behavior over the life course are also easily explained by the fact that bisexual patterns of same-sex attraction (which includes a pattern such as “mostly but not completely attracted to the same-sex”) are actually more common than most people think (especially among women). Edward O. Laumann et al., *The Social Organization of Sexuality: Sexual Practices in the United States* (1994). Individuals with bisexual patterns of attraction often report differing degrees of same-sex versus other-sex attraction at different periods of time, depending on factors like their social environment and who they are involved with at the time. But the trait of capacity for same-sex attraction remains stable. I am aware of no research suggesting that a bisexual individual’s capacity for same-sex attraction disappears even if its expression may vary over the life course.

10. If the question is whether gays, lesbians and bisexuals are a group of people with a distinct, immutable characteristic, my scientific answer to that question is yes. The fact that a characteristic expresses itself in different ways across the group does not mean that the group itself does not exist. BLAG is correct that for some individuals, same-sex attraction decreases over time. But for some individuals, same-sex attraction is consistent over time. For other individuals, same-sex attraction increases over time rather than decreasing. Such patterns have been documented in the scientific literature on sexual orientation for many years, and they are reviewed in my book, Lisa M. Diamond, *Sexual Fluidity: Understanding Women's Love and Desire* (2008). These patterns reflect naturally occurring variability in sexual expression over

the life course; they do not constitute evidence against the existence of sexual orientation as a basic immutable trait.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Salt Lake City, Utah on this 12 day of September, 2011.

A handwritten signature in black ink, appearing to read 'Lisa M. Diamond', written over a horizontal line.

Lisa M. Diamond