ENDA PASSES THE HOUSE OF REPRESENTATIVES

For the first time in United States history, a house of the United States Congress approved a bill to forbid employment discrimination on the basis of sexual orientation when the House of Representatives voted 235–184 on November 7 to approve H.R. 3685, the version of the Employment Non-Discrimination Act (ENDA) that was put up for a vote.

The normal exhilaration that would have accompanied such an achievement in the past was muted by several factors, perhaps most significantly that a previously-introduced version of the bill that also included a prohibition of discrimination based on gender identity or expression had been withdrawn by the measure’s lead sponsor, U.S. Rep. Barney Frank of Massachusetts, the only openly gay male member of the House, who had determined that lack of support for gender identity coverage among House members threatened to sink the bill. Rep. Frank expressed the view that House passage was an important goal that should not be sacrificed by the inclusion of coverage that lacked support from a majority of House members. He vowed to introduce a companion gender identity bill.

Without necessarily agreeing with Rep. Frank’s appraisal of the level of House support for the more inclusive version of ENDA, a broad coalition of LGBT political and legal groups protested the recasting of the bill on this ground, and also on the ground of an extraordinarily broad religious exemption, but to no avail. The argument articulated by the coalition supporting a vote on the more inclusive ENDA was that the LGBT movement had achieved a consensus that in this respect an incrementalist approach was not desirable, and that a united movement including lesbians, gay men, bisexuals and transgender should move forward together in the struggle for equal legal rights.

Additionally, there was a widespread belief that the Republican minority in the Senate would not allow the bill to come to a vote, even in the narrower sexual-orientation-only version, using Senate rules that permit as few as 40 members to block a measure from achieving a vote on the floor. And the White House issued a statement prior to the House vote, objecting to various aspects of the bill on constitutional grounds, suggesting that only the super-majority required to override a presidential veto would be sufficient to enact the legislation in the current session. Thus, the House vote was symbolic, a marker on the road toward eventual enactment, rather than part of a realistic current effort to achieve enactment in this session of Congress, in which case, argued proponents of the inclusive version, nothing concrete would be lost by putting up the broader measure for a vote and finding out who were the supporters and who were the opponents of the inclusive bill.

Rep. Tammy Baldwin of Wisconsin, the chamber’s only openly lesbian member, proposed an amendment to restore the gender identity coverage, but it was pulled from the floor before being voted upon at the request of the House leadership.

In light of the controversy, the margin by which the measure passed was surprisingly decisive, especially as several members who had been supporters of the bill in the past expressly withheld their support on this vote to protest the lack of gender identity protection. It is impossible to know, of course, whether the bill would have commanded a majority had gender identity remained part of it.

Despite these controversies, Sen. Edward Kennedy of Massachusetts announced that he would introduce a similar measure in the Senate, and some Republicans indicated that if the measure were worded to meet the White House’s technical objections, it might pass. There was still little likelihood that the President would sign such a measure, however, or that it would enjoy so much support in both chambers that the necessary vote in both houses could be obtained to override a veto. Thus, the House vote remained symbolic, an important marker on the road to the eventual enactment that was widely predicted as likely to follow should the Democrats increase their margins in both houses in the 2008 election and the White House go to a Democrat (or perhaps former New York Mayor Rudy Giuliani, who would probably sign a narrowly crafted sexual orientation discrimination bill). N.Y. Times, Nov. 8; BNA Daily Labor Report No. 216 (Nov. 8) & No. 218 (Nov. 13).

 Those inclined to take a historical perspective could see a logical, if hard fought, chain of events leading up to the historic House vote. Historians have lately been uncovering plenty of information about the life of sexual minorities at early times than had been previously imagined, but most would agree that any kind of organized political activities would date to the years immediately following World War II when gay veterans organized around benefits issues and a few activists began organizing in local groups in some major cities.

The first Supreme Court victory came when the court upheld the right to mail gay-oriented publications in the late 1950s, then the Model Penal Code provision that eliminated private consensual sodomy as a crime began to be enacted by states in the 1960s, then the first local laws prohibiting sexual orientation discrimination began to surface in the 1970s. U.S. Rep. Bella Abzug, a New York Democrat, introduced the first federal bill in the House of Representatives early in the 1970s, and it slowly built co-sponsorship as it was reintroduced over the years. In the 1980s came the first state laws banning sexual orientation discrimination, but the major setback of Bowers v. Hardwick, rejecting a federal constitutional challenge to sodomy laws, set up litigation roadblocks in the federal sphere. But progress continued as many state courts rejected Hardwick as a precedent and struck down state sodomy laws using state constitutions. In addition, the 1990s saw the emergence of legislative support for transgender equality on the local and state level, the reform of federal immigration law to drop an existing ban on gay immigrants, and the emergence of more recognition for domestic partners by state and local governments. The 1990s also saw a dramatic expansion in the states that banned sexual orientation discrimination.

Throughout this time, federal legislative proposals to ban sexual orientation discrimination continued to build support. The battle over the military “don’t ask, don’t tell” policy in 1993 led some pragmatic gay rights supporters, led by Rep. Frank, to recraft the federal bill to a narrower employment-related bill, seeking to capitalize on the expressions of support for gay employment rights in the civilian sector emanating from some of the members of Congress who supported a continuing ban on gay military service, and that bill, re-named ENDA, did pick up impressive co-sponsorship and came within a vote of Senate passage in 1996 during the debate over the Defense of Marriage Act.

The beginning of the 21st century was marked by the full emergence of the same-sex
marriage movement, as the Vermont Supreme Court ordered legal recognition for same-sex partners and then, in rapid succession in 2003, the U.S. Supreme Court struck down sodomy laws in *Lawrence v. Texas* and the Massachusetts Supreme Judicial Court ruled for full marriage rights for same-sex couples in *Goodridge*. (2003 will probably be recorded as an extraordinary high point for LGBT rights in the U.S.) As even more states passed sexual orientation discrimination laws over the past several years (notably Illinois and New York), by the time the House vote came, a majority of the U.S. population was residing or working in jurisdictions where such discrimination was unlawful, but federal legislation was still needed to protect workers in the significant number of states that lacked such protection, and the new Congress elected in 2006, with Democratic majorities in both chambers, provided the first hospitable environment for their consideration. Thus, the House vote on November 7 marked an important event in LGBT history, despite the significant problems that many had with the measure that was approved. Necessarily, it was merely an interim step, and heavy debate about the next steps to be taken can be expected.

As to the impact of the House vote as legislative history, see the article below about the new pretrial ruling in the *Scherzo* case on November 28, the first to mention it as somehow becoming a part of the legislative history on this issue, but without clearly suggesting how it might weigh on the continuing question of discrimination against transsexuals as sex discrimination under Title VII of the Civil Rights Act of 1964. A.S.L.

**LESBIAN/GAY LEGAL NEWS**

**3rd Circuit Denies Relief to Gay HIV+ Asylum Applicant from Venezuela**

On November 10th, the U.S. Court of Appeals for the 3rd Circuit denied an asylum appeal by a gay Venezuelan citizen living with HIV, Judge Fisher, writing for a unanimous panel, found that the petition for asylum was untimely, and that petitioner’s claims for withholding of removal and protection under the Convention Against Torture (CAT) lacked sufficient evidence. *Periera Rocha v. Attorney General of the United States*, 2007 WL 3261810 (3d Cir.).

Born in Portugal, the petitioner was a Venezuelan citizen when he came to the United States in 1995. In 1999, he learned that he had contracted HIV. After being placed in removal proceedings in 2003, the petitioner conceded removal but pled for asylum because America would be threatened upon return to Venezuela, where he claimed to have been sexually assaulted by the police because he is gay. The petitioner also submitted evidence concerning the conditions of homosexuals and treatment for HIV in Venezuela, including documents alleging that the police murdered his brother, who was also gay.

In order to overturn the decision of the immigration judge and Board of Immigration Appeals, a reviewing court must find evidence that “not only supports a contrary conclusion, but compels it.” As the asylum claim was dismissed because it was untimely, and there were no extraordinary circumstances excusing delay, Judge Fisher refused to review the denial of asylum.

Turning to petitioner’s claim for withholding of removal and protection under the CAT, Judge Fisher faulted the lack of evidence. Withholding would only be granted if the petitioner could prove a “clear probability” that his life or freedom would be threatened upon return to Venezuela. Since he actually had returned to Venezuela to visit eight times after his abuse and based his asylum claim mainly on the availability of HIV medication, Judge Fisher held that he had not shown a strong physical or liberty threat. He also could not claim protection under the CAT because none of the evidence provided rose to the level of torture.

The petitioner also accused the immigration judge (IJ) of bias against him, to the point of violating his due process rights. In reviewing the transcripts, Judge Fisher held that the IJ was merely annoyed at the petitioner, but did not at any time insult or belittle him. Judge Fisher also refused to denounce the IJ’s exclusion of evidence concerning petitioner’s brother’s death. Though a relative’s death can be pertinent to an immigration hearing, the petitioner failed to prove that the exclusion of evidence prejudiced his claim. *Chris Bencel*

**8th Circuit Denies Asylum to Gay HIV Positive Mexican**

The U.S. Court of Appeals for the 8th Circuit held that a gay and HIV+ Mexican man was correctly found ineligible for asylum, withholding of removal, and protection under the Convention Against Torture (CAT) by the Board of Immigration Appeals (BIA) when his claim of past persecution was based on domestic abuse as a child and his separate claim of future persecution was based on being an adult homosexual with HIV, in *Morales v. Keisler*, 2007 WL 3225541 (Nov. 2, 2007).

On appeal from the BIA, the petitioner was only able to raise issues of law and could not challenge findings of fact that had been made by the Immigration Judge (IJ) or the BIA. The BIA had held that the petitioner’s abuse as a child, which included beatings by his father, mother, and brother, his subsequent running away at age 10, and his attempted suicide at age 12, constituted past persecution. The BIA held that even though he had been harmed by private rather than government actors and that he did not report the abuse to the police, he was excused because of his young age and by the fact that “domestic abuse of homosexual children is a significant problem in Mexico.”

Although the petitioner had failed to file for asylum within one year of arriving in the United States in 1994, the BIA found that his being diagnosed with HIV in 2003 constituted changed circumstances and excused his late filing of his asylum application. The BIA held, however, that because the petitioner was now an adult he no longer could reasonably fear abuse by his family, and that although “attacks on homosexuals and those with HIV are certainly troubling and ... a legitimate concern,” they are not widespread enough in Mexico to support a reasonable fear of persecution, and denied the petitioner’s applications for relief.

The petitioner challenged the BIA’s decision, claiming that they had engaged in impermissible fact-finding when they concluded that he was an adult and that his age constituted changed circumstances. Senior Circuit Judge *Paseo Bowman II*, writing for a panel of the 8th Circuit, held that the BIA had the authority to review the decision of the IJ *de novo* and that they had applied the correct legal standard in determining his changed circumstances.

The petitioner next argued that he had a fear of future persecution as a homosexual adult with HIV. Judge Bowman found that the BIA’s conclusions, that inadequacies in health care for HIV+ individuals in Mexico were not an attempt to persecute those with HIV and that attacks on homosexuals with HIV were not numerous or widespread enough to support a well-founded fear of future persecution, were based on substantial evidence in the record and were therefore not reviewable.

Lastly, the petitioner argued that he should have been granted “humanitarian asylum,” which may be granted even though an individual no longer has a fear of future persecution when the individual’s past persecution was sufficiently severe and atrocious. Judge Bowman held that because the petitioner had not raised this before the BIA, he was precluded from raising it now, but noted that in any event the past persecution suffered by the petitioner did not rise to the level of atrocity required to meet this burden. Judge Bowman also rejected the petitioner’s claim that he was eligible for withholding of removal and relief under CAT, holding that since he had presented the same factual basis for this relief and not met the lower burden of proof for asylum, he did not satisfy...
the higher burden for withholding of removal and CAT protection.

Accordingly, the court of appeals denied the petition for review and affirmed the decision of the BIA and of the IJ denying the petitioner’s application for asylum, withholding of removal, and relief under CAT. Although his primary applications for relief were denied, the petitioner was granted Voluntary Departure by the IJ and the BIA, which allows him to leave the United States within a specified period of time and not be barred from later re-entering in a valid immigration status. Bryan Johnson

Washington Appeals Court Sharply Divided in Transsexual Custody Case

By a 2–1 vote, the Court of Appeals of Washington affirmed a decision by Spokane Superior Court Judge Michael P. Price that Tracy Magnuson should be given primary residential custody of her two children because Robbie Magnuson, their father, was planning to have gender reassignment surgery whose “impact” on the children was unknown. Magnuson v. Magnuson, 170 P.3d 65 (Wash. App., Oct. 23, 2007). So ruling, the court affirmed rejection of the Guardian Ad Litem’s recommendation that Robbie was the preferable parent for primary residential custody based on her parenting skills and relationship with the children. The dissenter, while agreeing with the majority that transgender custody cases should be treated the same as sexual orientation custody cases under state law, i.e., with either sexual orientation or gender identity not being grounds to deny custody, argued that the majority violated its own holding in this case.

The parties married in 1985 and had a son in 1991 and a daughter in 1998. Tracy, the mother, is a surgeon, and Robbie is an attorney. Several years ago Robbie announced “that she needed a reassignment surgery whose ‘impact’ on the children was unknown.” Magnuson v. Magnuson, 170 P.3d 65 (Wash. App., Oct. 23, 2007). Wrote Price, “While the margin is somewhat slim in this particular case, [the mother] is in a more stable and predictable place in her life right now to act as the children’s primary care giver.”

In approving this ruling in an opinion by Judge Stephen Brown, the court found that the abuse of discretion standard applies to reviewing a custody decision, and that the court abuses its discretion “only if its decision is manifestly unreasonable or based on untenable grounds or reasons.” Noting that the GAL’s recommendation is not binding on the court, Brown asserted that the trial court had “carefully considered each child’s relationship with each parent” before making its decision. “The court acted within its fact-finding discretion when drawing inferences from the given evidence of the children’s present uncomfortable and nervous behavior to make the future impact finding. While Robbie points to evidence of the children’s adjustment, we are in no position to find facts, reweigh the evidence, or decide witness credibility.” Brown concluded that the needs of the children, and not Robbie’s transgender status, was the focus in determining primary residential custody, and the court was emphasizing “environmental and parental stability.”

Dissenting, Judge Kulik argued that Judge Price’s finding of lack of stability was impermissibly based on Robbie’s transgender status. Price had written, “The respondent has indicated she will be undergoing sexual reassignment surgery sometime in the very near future. Said surgery may be everything respondent has hoped for, or it may be disastrous. No one knows what is ahead.”

“However,” wrote Judge Kulik, “the statute requires a review of the stability of the child’s relationship with the parent not a review of whether the parent may have a surgery that impacts the parent. The trial court’s conclusion that Robbie’s life was not stable because of her planned surgery was directly and impermissibly related to Robbie’s transgender status. And again, there was no evidence and no finding that Robbie’s transgender status would cause any harm or detriment to the children.” Concluded the dissenting judge, “One parent’s transgender status is not a tenable ground upon which to decide residential placement.”

The result is a decision that is disheartening on the merits even though, doctrinally, it marks an advance for transgender parents in that it is a rare appellate decision holding, at least formally, that gender identity, like sexual orientation, should not in itself be seen as a negative or disqualifying factor in a custody contest. This provides a sharp contrast to some earlier cases that had treated transgender status as automatically disqualifying, usually on the unproven but assumed ground that it would inevitably in the court’s view undermine the ability of the children to develop a “normal” adjustment of their own gender identity and role. A.S.L.

Transsexual’s Sex Discrimination Case Against Library of Congress Survives Motion to Dismiss

In a curiously incomplete opinion, U.S. District Judge James Robertson has again rejected a motion by the Librarian of Congress to dismiss a Title VII sex discrimination claim by Diane J. Schroer, a male-to-female transsexual who was denied employment by the Library. Schroer v. Billington, C.A. No. 05–1090 (November 28, 2007). In so doing, he has provided the first judicial mention of the possible impact of the recent ENDA controversy on interpretation of Title VII, although the meaning of his somewhat cryptic remarks is not ideally clear.

According to Robertson’s summary of the allegations of the complaint, Schroer, a military veteran, applied for a position as a terrorism research analyst at the Library’s Congressional Research Service (CRS). At the time of the application, Schroer was still presenting as male, and interviewed using her previous male name, dressed in traditionally masculine clothing. After the interview, Charlotte Preece of the CRS phoned to offer the position, and Schroer accepted. At a subsequent lunch meeting to discuss Schroer’s beginning of employment, Schroer disclosed to Preece that she was under a doctor’s care for gender dysphoria and would be transitioning before beginning her work. Schroer showed Preece photographs of herself in feminine attire, “in part to allay any concerns that Preece might have about whether Schroer would be dressing in a workplace-appropriate
man. As they left the restaurant, Preece told Schroer that she had “really given [her] something to think about.” The next day, Schroer phoned Schroer and said she would not be a “good fit” given the “circumstances that [they] spoke of yesterday.” Later Schroer received a form email announcing that the position had been filled.

In May 2006, Robertson rejected the defendant’s first attempt to win dismissal of the case, in Schroer v. Billington, 424 F. Supp. 2d 203 (D.D.C. 2006), observing that there were two possible theories for applying Title VII to these factual allegations: the sex stereotyping theory developed in the Price Waterhouse line of cases, and a contention that discrimination on the basis of gender identity is sex discrimination due to a broader understanding of “sex” under Title VII reflected in recent case law. At that time, Robertson asked the parties to make a record on the meaning of “sex” for the assistance of the court. The opinion failed to address other constitutional and statutory claims raised by the plaintiff.

Subsequent to that ruling, Schroer filed an amended complaint, reiterating a claim to violations of the 5th Amendment — equal protection and due process — as well as of the Library of Congress Act, as well as the Title VII claim. The parties supplemented the record with depositions of medical experts, who took opposing positions about whether “sex” consists broadly of gender-related issues or is narrowly focused on chromosomal sex. In addition, as a result of discovery, Schroer added new factual allegations directly supporting the sex stereotyping theory, including that one of Preece’s concerns was that members of Congress who rely on the CRS for terrorism-related research would doubt Schroer’s credibility because her “appearance when presenting as a female would not conform to their social stereotypes regarding how women should look, and members of Congress would not believe that a woman could, in fact, have the kind of life experiences that were part of [ Schroer’s] background.”

This time around, Robertson decided that it was unnecessary to choose between the two Title VII theories he had previously articulated, as the amended complaint clearly stated a claim under the sex stereotyping theory that now has considerable support in the case law. “Schroer’s transsexuality is not a bar to her sex stereotyping claim,” wrote Robertson. “Title VII is violated when an employer discriminates against any employee, transsexual or not, because he or she has failed to act or appear sufficiently masculine or feminine enough for an employer. This is not to say that Schroer’s gender dysphoria is of no significance: a Price Waterhouse-type claim could not be supported by facts showing that Schroer’s non-selection resulted solely from her disclosing of her gender dysphoria and her intention to present herself as a woman. As my previous opinion explained, this is so because protection from sex stereotyping is different, not in degree, but in kind, from protecting transsexuals as transsexuals. The point here, however, is that Schroer does not claim that disclosure of her gender dysphoria was the singular cause of her non-selection. Instead, informed by the discovery that she has taken, Schroer now asserts that she was discriminated against because, when presenting herself as a woman, she did not conform to Preece’s sex stereotypical notions about women’s appearance and behavior.”

So far, this is quite unobjectionable and in line with other case law in light of the factual allegations. But then Robertson offered a puzzling passage referring to the recent controversy about ENDA and the deletion of gender identity from the version of the bill that passed the House several weeks ago.

While acknowledging that some of the case law might support the theory that discrimination against transsexuals is sex discrimination, Robertson states: “[P]laintiff’s definition of sex under Title VII may be too expansive. At the time of my 2006 opinion there was no relevant legislative history as to Title VII’s relationship to discrimination on the basis of sexual identity. That is no longer the case. In recent months, a bill which would have banned employment discrimination on the basis of both sexual orientation and gender identity was introduced in the House of Representatives. See H.R. 2015, 110 Cong., 1st Sess. (2007). An alternate bill that prohibited discrimination only on the basis of sexual orientation was also introduced. See H.R. 3685, 110 Cong., 1st Sess. (2007). The House ultimately passed the version that banned discrimination only on the basis of sexual orientation. Companion legislation in the Senate has not yet been introduced. If Title VII itself bans discrimination on the basis of sexual or gender identity, the omission of protection for transsexuals in H.R. 3685 may be meaningless, but, even in an age when legislative history has been dramatically devalued as a tool for statutory interpretation, one proceeds with caution when even one house of Congress has deliberated on a problem and, mirabile dictu, negotiated a compromise solution.”

Interpreting this comment is difficult. Does Robertson mean to say that the House considered the inclusion of gender identity in ENDA as unnecessary because Title VII already protects transsexuals from discrimination, or that the House’s approval of ENDA without gender identity signals a Congressional intent to withhold protection from transsexuals? Or is he merely indicating that in light of the unsettled situation, it is preferable to use established legal theories to decide Schroer’s case rather than venturing out into an area of uncertainty?

Next, Robertson turns to the constitutional claims, but inexplicably fails to address Schroer’s assertion of an equal protection violation. (Did he just forget about this allegation, which he mentioned in the introductory paragraph of the opinion?) Robertson focuses solely on the due process issue, and concludes that transsexuals do not enjoy any fundamental right to transition from one gender to another that would be improperly burdened by governmental discrimination. He based this ruling on expressions of caution by the Supreme Court against expanding the list of fundamental rights recognized under the Due Process Clause. “No court has held that the Constitution extends protection to a person’s decision to undergo gender reassignment,” Robertson correctly asserted, “and, critically, Schroer has not attempted to show that this right is either deeply rooted in this country’s history or implicit to the concept of ordered liberty.”

This analysis is peculiarly incomplete, omitting any reference to the more expansive view of Due Process that the Supreme Court embraced in Lawrence v. Texas (2003), where Justice Anthony Kennedy emphasized the right of individuals to define their identity as being at the core of Due Process protection. Robertson’s failure to grapple with the language of Lawrence (much of it based on the prior abortion decision, Planned Parenthood v. Casey (1992), leaves his constitutional analysis incomplete and, indeed, superficial.

Robertson also notes that an alternative basis for a Due Process argument, that Schroer has a property interest in the job, was unavailable in this case, not having been asserted in the complaint.

The Library of Congress Act provides that “all persons employed in and about said Library of Congress … shall be appointed solely with reference to their fitness for their duties.” This presumably was intended to require merit selection of such employees and to avoid having the Library of Congress become a patronage dumping ground for unqualified political hacks with claims on members of Congress. Robertson pointed out that the Act does not specifically authorize a private right of action, and that inasmuch as Schroer has stated a viable Title VII claim that would provide appropriate relief, there was no need to invoke the concept of equitable relief against an agency that acts outside its authorized powers.

Thus, the bottom line is that the potential significance of Schroer’s case for the development of transgender law has been reduced, at least for the moment. However, Robertson leaves open the possibility that as the case unfolds it might be necessary to return to the alternative theory of discrimination on the basis of gender identity being sex discrimination. Even so, given the lack of precedent in the District of Columbia Circuit on the use of Title VII sexual
stereotyping theory to counter employment discrimination against transsexuals, the case may help to extend a promising theory to an important federal jurisdiction. A.S.L.

Georgia Supreme Court Narrows Residential Restriction on Registered Sex Offenders

In Mann v. Georgia Department of Corrections, 2007 WL 4142738 (Ga. Supreme Ct., Nov. 21, 2007), the court ruled that the state had violated the takings clause of the constitution by requiring Anthony Mann, a registered sex offender, to move out of his home because a child care center had opened within 1,000 feet of Mann’s residence. In a prior ruling, Mann v. State, 603 S.E.2d 283 (Ga. 2007), the court had upheld the requirement that Mann move out of his parents’ home, on the ground that he had a minimal property interest in being able to live rent-free with his parents.

The statute in question, Section 42–1–15, provides that a registered sex offender cannot live or be employed within 1,000 feet of any of a number of specified types of land uses, or any other place where children congregate. In its latest formulation, it not only restricts where an individual buys or rents property, but also requires that an individual who is in compliance with the statute must move if one of the enumerated institutions newly locates within 1,000 feet of the home or business.

In this case, Mann and his wife purchased a house and opened a business nearby where Mann worked, a restaurant, both in compliance with the statute. However, a child care center was subsequently opened within 1,000 feet of both locations, and the police contacted Mann, reminding him that he must immediately relocate. Failure to do so would be a felony subjecting him to 10–30 years in prison.

Mann sought to stay the move and challenge the constitutionality of the requirement. This time, the court was ready to provide him some relief, although not all that he asked.

Looking first to the residency restriction, the court held that it violates the Takings clause of the constitution. Wrote Justice Hunstein, Under the terms of that statute, it is apparent that there is no place in Georgia where a registered sex offender can live without being continually at risk of being ejected. Hunstein noted that several other states had anticipated this contingency by providing that subsequent changes in usages in the proximity of the sex offenders residence not be the basis of a probation violation, citing laws from Alabama and Iowa. The court further observed that because the residential address of sex offenders is publicized pursuant to statute and thus accessible to third parties, “The possibility exists that such third parties may deliberately establish a child care facility or any of the numerous other facilities designated in [the statute] within 1,000 feet of a registered sex offender’s residence for the specific purpose of using [the statute] to force the offender out of the community.” This conclusion was bolstered by remarks in the legislative history suggesting that some proponents of the measure really desired to force registered sex offenders to leave the state (with no concern, apparently, for the risk this would pose to children in neighboring states, truly a good neighbor policy...)

However, the court did not find any violation in imposing a similar requirement on employment. In this case, the court pointed out, Mann could continue managing his restaurant from off the premises, since the restriction didn’t affect the ownership of a business, just employment on the premises.

The court pointed out that the residential and employment restrictions were not life-long, but could be lifted after a specific statutory period of good behavior, another mitigating factor. A.S.L.

Sperm Donor to Lesbian Mom Estopped from Denying Paternity in Support Proceeding

Nassau County Family Court Judge Ellen R. Greenberg has ruled that a married male doctor who allegedly donated sperm more than 18 years ago to a lesbian medical resident at the hospital where he worked who wanted to have a child with her same-sex partner, who is also a doctor, may not deny paternity in a recently filed child support proceeding, even though he claims that he was assured that he would have no support obligations when he agreed to donate the sperm. P.D. v. S.K., Docket No. U–2725–07 (Nassau County, N.Y. Family Court, Nov. 16, 2007) (NY Law Journal, Nov. 29).

The November 16 ruling granted a motion by the law guardian who was appointed to represent the interest of the child, opposing a demand by the alleged sperm donor for genetic testing in support of his opposition to the child support petition. Judge Greenberg’s opinion just focuses on the motion, and does not discuss such other interesting topics as what kind of financial obligation the male doctor may have. Interestingly, while the law guardian opposes the testing, the child’s mother does not, apparently confident that it will confirm the respondent’s paternity.

The mother is identified in court papers as P.D., the alleged father as S.K., and the child, a boy now 18 years old, as K.K.

According to S.K.’s response to the law guardian’s motion that the court rule against his attempt to deny paternity using the doctrine of equitable estoppel, S.K. stated that he had agreed to be a sperm donor at P.D.’s request. “He submits that while he was married at the time, he agreed, based upon numerous promises that he would have no rights or benefits in raising the child, nor any financial responsibili-
reported income of her live-in partner as appropriate, and the current income of the respondent." In a news report on the case, the New York Law Journal (Nov. 29) confirmed from speaking with attorneys for the parties that the support request involved the mothers seeking financial assistant with their son's private college tuition. A.S.L.

Indiana Court of Appeals Affirms Public Indecency Conviction

Rejecting various objections to the fairness of the trial, the Court of Appeals of Indiana affirmed a public indecency conviction and a 120-day prison sentence for a man found by a jury to have exposed himself masturbating to an undercover police officer at a public park. Isom v. State of Indiana, 2007 WL 3287515 (Nov. 8, 2007) (not officially published).

According to the opinion by Judge Carr L. Darden, the police officer testified that he was engaged in an ongoing investigation of inappropriate sexual activity at Boone Pond. The officer testified that while sitting in his parked car, he observed the defendant sit in his own parked vehicle for some time, then exit and walk in front of the officer's vehicle "and he looked at me, winked and smiled and then went on into the woods." The officer followed 200 feet into the woods until he observed the defendant, facing away from him with his pants up. "Approaching with a side profile view of [the defendant]," wrote Judge Darden, "[the officer] asked [the defendant] 'how he was doing,' and [the defendant] "said fine" but kept his body turned away. [The officer] then 'said it was a nice day, [the defendant] said yes, and at that point [the defendant] turned around, exposed his penis to [the officer], had it in his hand, his right hand and was stroking it up and down.'" The officer testified that in the ensuing conversation the defendant suggested that the officer "give him head," at which point the officer identified himself and arrested the defendant.

During the officer's testimony at the ensuing trial on the charge of public indecency, a juror submitted the question, which the judge posed to the officer, "what were you investigating at Boone's Pond on September 14th, what were you looking for, what was the type of criminal activity?" Defendant's counsel had objected to the question, but the judge had instructed the officer to respond "inappropriate sexual activity." Defendant preserved an objection to this, suggesting it was unfairly prejudicial to tell the jury that he got his penis out of his pants at that time, but said he might have been "trying to pee" and because he was uncut would have to hold his penis to retract his foreskin while peeing. He testified that he had no sexual interest or desire at that time because he was feeling ill.

On cross-examination, the prosecution asked, over objection, whether the defendant recalled stating during his booking process at the jail that he was attracted to members of his own sex. During its deliberations, the jury asked to have a copy of the police report, but the judge denied the request without consulting counsel for the parties, on the ground that the police report had not been placed in evidence.

On appeal, defendant argued that it was improper for the officer to have suggested in his testimony that defendant was arrested as part of an investigation of improper sexual activity, as this improperly introduced into the case the implication that he was arrested in a suspicious area because of the activities of others there, and that this was compounded by the implication that he was homosexual from the question posed during cross-examination. (The defendant is a middle-aged married father, business-owner, with long-term church and community involvement, according to the evidence introduced to attempt to mitigate the sentence.) The court of appeals rejected these arguments, apparently satisfied that the juror's question received an innocent answer that did not mention homosexuality, and that the prosecution's question on cross-examination was responsive to defendant's testimony that he was disgusted by the officer's sexually-suggestive actions. The court offered distinctions from the authorities suggested by the defendant, which may or may not seem convincing in light of the overall tenor of the case.

The court rejected the defendant's argument that 120 days in jail was an inappropriate sentence for a person in his circumstances, noting that it was merely a fraction of the statutorily authorized penalty of up to a year in jail.

The opinion reads like a textbook example of wasteful police entrapment activity directed at closeted gay men who go to public rest areas and parks seeking sexual release in wooded areas away from casual public view. A.S.L.

Federal Court Orders Younger Abstention in Ocean Grove Dispute

In a case that became a cause celebre in New Jersey, U.S. District Judge Joel Pisano ruled that the federal court should abstain from interfering with the New Jersey Division of Civil Rights' investigation of complaints by two lesbian couples who were turned down in their attempts to get permission to hold same-sex civil union ceremonies at the Boardwalk Pavilion in Ocean Grove. Ocean Grove Campmeeting Association v. Vespa-Papaleo, 2007 WL 3349787 (D.N.J., Nov. 7, 2007).

Ocean Grove is a community owned by the CampMeeting Association of the United Methodist Church, consisting of approximately one square mile on the New Jersey shoreline. Most of the property is leased to homeowners and businesses, but the Association retains control over parkland and the oceanfront, including a boardwalk and the contested pavilion. The pavilion is used for a variety of community functions, and also in the past been rented to private parties for weddings. After New Jersey enacted its Civil Union Law, Harriet Bernstein and Lisa Paster, residents of Ocean Grove (which reportedly has a heavily gay and lesbian population), applied to hold their civil union ceremony in the Pavilion and were turned down, on the ground that "the requested use was inconsistent with the Campmeeting Association's religious beliefs." They sought to appeal the decision internally, and then filed a complaint with the Division of Civil Rights, alleging discrimination in violation of the state's civil rights law. A second Ocean Grove couple, Janice Moore and Emily Sonnessa, then filed a similar complaint.

The Campmeeting Association then filed suit in federal court, seeking an injunction against the state agency's investigation, asserting that its federal First Amendment rights were violated because it might be ordered to allow civil unions at the Pavilion. Judge Pisano rejected a request for immediate injunctive relief, and issued the November 7 ruling on the defendant's motion to dismiss on the basis of Younger v. Harris, 401 U.S. 37 (1971), in which the Supreme Court established the federal courts should abstain from interfering with ongoing state administrative or judicial proceedings under certain conditions.

For Younger abstention to apply, three requirements must be met, all of which were easily met in this case. First, the state proceeding must be judicial in nature. Judge Pisano found that the procedures used by the Civil Rights Division did follow a judicial path; investigation leading to a hearing process, governed by procedural rules. Secondly, important state interests must be implicated in the proceeding. Judge Pisano agreed that New Jersey "has an important interest in preventing discrimination
in places of public accommodation.” Finally, there has to be an adequate opportunity for the plaintiff in the federal proceeding to raise its constitutional claims in the state proceeding. Pisano pointed out that judicial review of Civil Rights Division orders is available. “Plaintiff will have the opportunity to raise its constitutional challenges” both before the Division of Civil Rights and the state courts.

Consequently, Pisano found that Younger abstention was appropriate and granted the motion to dismiss. Now all attention turns to the Division of Civil Rights. In the meantime, state tax authorities have already moved against CMA's privileged tax status with regard to the Pavilion, pointing out that the status depends upon the structure being open to the public without discrimination. A.S.L.

**Brokeback Lawsuit Hits Another Roadblock**

Struggling to keep alive her lawsuit claiming that key scenes of the hit movie *Brokeback Mountain* were actually based on her novel rather than solely the famous Annie Proulx short story, author Janice Scott-Blanton suffered another setback from the U.S. District Court for the District of Columbia in November. *Scott-Blanton v. Universal City Studios Prods. L.L.P.* 2007 WL 3381557 (D.D.C. Nov. 15, 2007). Faced with defendants’ summary judgment motion, Scott-Blanton asked Judge Ricardo Urbina to postpone adjudication of the motion pending further discovery, but Judge Urbina denied the request, holding that while plaintiff had posited facts that, if true, would indeed create a triable issue, she had nevertheless given no reason to suspect that discovery would actually unearth such facts. Judge Urbina ordered the plaintiff to file a brief on the merits of the motion, doing so in terms that would seem to leave little hope for the future of Scott-Blanton’s lawsuit.

Plaintiff Janice Scott-Blanton is the author of *My Husband Is On The Down Low And I Know About It*, first published in March of 2005. (As of the writing of this article, it is currently clocking in on the Amazon.com ranking charts at # 686,661.) *Brokeback Mountain* is, of course, the multiple award-winning motion picture by director Ang Lee that was based on Annie Proulx’s 1997 *New Yorker* short story and which premiered in December 2005. In January 2007 Scott-Blanton, claiming to have recognized “some similarities” between the film and her novel, filed suit in the district court seeking damages for copyright infringement and a preliminary injunction. The court denied the motion for injunctive relief in July 2007. (See Law Notes for September 2007.)

In opposition to the defendants’ March 2007 summary judgment motion, plaintiff requested, pursuant to Fed. R. Civ. P. 56(f), that she be allowed further discovery and that the court postpone adjudication of the motion until completion of that discovery. Plaintiff alleged that discovery could reveal that, after publication of *Down Low* in March 2005, the defendants wrote a 180-page screenplay and based the film on this screenplay, wrote four new scenes specifically for the screenplay that were similar to plaintiff’s novel, and relied on both Proulx’s short story and plaintiff’s novel in filming. Judge Urbina agreed that, if evidence for these facts turned up in discovery, summary judgment would have to be denied. What he disagreed with plaintiff about, however, was whether there was any reasonable basis to think that discovery would in fact reveal any of this evidence.

Plaintiff relied heavily on various published statements by persons associated with the film that plaintiff claimed demonstrated that the defendants’ version of the film production and timeline was a lie. For example, Ang Lee had stated in an interview that Jake Gyllenhaal was a very different physical type than how his character, Jack Twist, was described in the “novel.” Plaintiff claimed that Lee’s reference to a “novel” — as opposed to short story — demonstrated that Proulx’s story was not the sole source for the film, implying of course that *Down Low* was the novel Lee referenced. Judge Urbina, however, rejected each of these discrepancies in turn, noting (for example) that the casting of Gyllenhaal had indisputably taken place several months prior to the publication of plaintiff’s novel and that Lee certainly must have simply misspoken.

(Plaintiff did note one apparently unexplained discrepancy that, while of little interest to Judge Urbina, might be of more interest to fans of the film. Michelle Williams, who played Heath Ledger’s wife in the film, gave birth to a child with Ledger in, by press accounts, late October 2005. However, she stated in interviews that the child was conceived while filming *Brokeback Mountain* — which cannot be easily squared with the defendants’ statements in the litigation that principal photography ended in August 2004, some 14 months prior. Judge Urbina noted, however, that even according back 9 months from November 2005 and assuming filming was still taking place in February 2005, that date still precedes the publication of plaintiff’s novel.)

In the end, however, it was what might be termed the basically fantastic nature of plaintiff’s claim that appeared to have convinced Judge Urbina, who stated, “In highlighting these interviews, the plaintiff asks the court to conclude that between March and December 2005, the defendants had access to her novel, copied and used parts of her novel to re-write the screenplay and film several new scenes for the motion picture, made additions to the short story based on her novel, and backdated the short story to conceal their mischievous feat. This series of events is so implausible as to be outside the realm of reason.” Accordingly, finding no plausible basis for further discovery, the court denied the plaintiff’s Rule 56(f) request and ordered her to file papers opposing summary judgment on the merits. Glenn C. Edwards

**Federal Civil Litigation Notes**

*Connecticut* — Senior District Judge Warren W. Eginton refused to dismiss a discrimination case brought by Mark DeMoss against the City of Norwalk Board of Education, the superintendent of schools in Norwalk, and the principal of West Rocks Middle School. *DeMoss v. City of Norwalk Board of Education*, 2007 WL 3432986 (D. Conn., Nov. 14, 2007). DeMoss, who is gay and Caucasian, is alleging race and sexual orientation discrimination. In addition to being a classroom teacher in math and science, he was employed as program facilitator for the Connecticut Pre-Engineering Program (CPEP). He was instructed by his principal that the program was designed to assist minority students and that African-Americans should be given preference. DeMoss objected to racial preferences, and claims that the principal retaliated against him for resisting this instruction by complaining to the district coordinator, giving him a negative job evaluation, and intimating that he had HIV/AIDS when he became ill as a result of the hostile environment he was encountering. When DeMoss returned from medical leave, he was relieved of classroom duties and placed in a room outside the principal’s office, then notified in the fall that the Board had voted to terminate his contract immediately. In denying the motion, Eginton found that a delay in serving process on the individual defendants was not prejudicial, that DeMoss had appropriately exhausted administrative remedies despite failing to check a box on his EEOC complaint, and that a timeliness issue could not be resolved in the motion due to the need for fact-finding on the issue of whether there was a continuing violation. Connecticut law makes sexual orientation discrimination unlawful, supplementing DeMoss’s federal Title VII race discrimination and harassment claim.

*Michigan* — Patterson v. Hudson Area Schools, 2007 WL 4201137 (E.D.Mich., Nov. 28, 2007), is a painful decision to read. David and Dena Patterson brought suit on behalf of their son, Dane, now a college student, seeking redress for the horrendous harassment to which he was subject by fellow students (and even in some respects from school personnel) as a student in the Hudson Area Schools. There is no indication in the opinion by District Judge Lawrence P. Zatkoff, granting the defendants’ motion for summary judgment, as to Dane’s sexual orientation, but the tenor of the harass-
ment was grotesquely homophobic, albeit not as graphically physical as some of the most extreme cases that have been reported, such as the paradigm Nabozny case from 1996. In this case, however, the School District successfully defended against liability under Title IX by being responsive every time complaints were brought to the attention of school authorities, including disciplining student offenders when they were identified. Although the school district’s efforts were not ultimately successful, as Dane eventually had to withdraw from school and complete his high school degree through other means because the continuing harassment had psychologically damaged him to the extent that he could not bring himself to set foot in a district school, the court held that the successfulness of the defendant’s efforts was not the issue. After detailing all the attempts the school made to address the problem, Zatkoff wrote, “the Court holds that Defendants were not deliberately indifferent to the alleged sexual harassment against Dane because their actions were not clearly unreasonable in light of known circumstances.” The court also rejected an Equal Protection claim, pointing out that this would require a showing that Dane was being treated differently from similarly situated individuals, and no such showing had been made. (Indeed, and interestingly, the evidence tended to show that the Hudson Area public schools were a hotbed of sexual harassment and rowdy, out-of-control students. The behavior attributed to some of the instructional staff is outrageous. The administrators should be abolished that this detailed account of their inability to control what goes on in their schools is thus exposed to public view, even though they won the lawsuit.)

New York — In Murray v. Visiting Nurse Services of New York, 2007 WL 3254908 (S.D.N.Y., Oct. 31, 2007), a heterosexual man who was laid off in a force reduction unsuccessfully alleged Title VII gender discrimination, alleging that the employer showed favoritism to gay male employees, and that a hostile environment had been created for him because of the campy behavior and speech of the gay male employees. Of course, since Title VII does not prohibit sexual orientation discrimination, and the employer provided a credible, non-discriminatory reason for the termination of the plaintiff’s employment, District Judge Richard J. Sullivan found that no cause of action had been stated under Title VII, echoing the EEOC’s reaction to his administrative complaint. The court did not assert jurisdiction over the supplementary claims under state and local laws that do prohibit sexual orientation discrimination.

Washington — In Cooper v. University of Washington, 2007 WL 3356809 (W.D.Wash., Nov. 8, 2007), a former university employee who claimed he suffered retaliation as a result of email messages he sent sought to argue, among other things, that the basis of discrimination was his “creed.” Commented District Judge Robert Lasnick, “Mr. Cooper’s attempt to label his vitriolic and bigoted attack on gay men in general and the United Way in particular as a ‘creed’ is absurd and no reasonable person could believe that such a diatribe was protected activity under the WLAD.”

Homeland Security — Asylum — The Sexuality and Gender Law Clinic at Columbia Law School announced on November 8 that it had secured asylum for Ven Messam, a gay man from Jamaica who feared persecution if forced to return to that country. Students from the clinic documented the horrific conditions for gay people in Jamaica, where rumors that hostile groups are planning a social cleansing of hundreds of gay people has forced many sexual minorities on the island into hiding. The Clinic can be contacted at eschma@law.columbia.edu for more details about the case, A.S.L.

State Civil Litigation Notes

California — In a somewhat puzzling development in an ongoing saga of sexual orientation discrimination litigation against the Los Angeles Police Department, local newspapers reported on Nov. 1 that the City Council agreed on October 31 to “reinstitute policies banning discrimination.” We were unaware that L.A. had ever repealed such policies. In any event, it seems from the somewhat confusing news reports that the latest development in the long-running case involving openly gay former LAPD Sergeant Mitch Grobeson involves a vote by the council to pay $695,000 in attorneys fees to Grobeson, who won a lawsuit in 1993 requiring changes in departmental policy that he claims were never fully implemented. Grobeson took a disability retirement in 1995 after winning a brief reinstatement, and is again seeking reinstatement and back pay, according to these news reports. Also, it was reported that Mayor Antonio Villaraigosa would be reissuing an executive order banning sexual orientation discrimination in city agencies that had been early issued by former Mayor Richard Riordan. All of this might seem superficial in light of the strong state laws against sexual orientation discrimination that have been enacted in California since this case was initiated long ago, but evidently Grobeson makes a convincing case that the LAPD still has a long way to go towards rooting homophobia out of its departmental cultural. The most recent development includes agreement by the city to improve training for police officers on LGBT issues.

Michigan — In Robinson v. Ford Motor Co., 2007 WL 3202712 (Oct. 30, 2007), the Michigan Court of Appeals confronted the question whether unwelcome workplace harassment of a sexual nature by a heterosexual male employee against another heterosexual male employee would be actionable under the state civil rights act’s ban on sex discrimination and sexual harassment. The employer argued, based on federal cases, that in the absence of evidence that the harasser was a gay man seeking sexual gratification, there could be no allegation of sex discrimination. The trial court and the court of appeals agreed, affirming the trial court’s decision to reject the employer’s motion for summary disposition, but indicated on remand that the trial court needed to make specific findings on remand the plaintiff suffered the harassment because of his sex in order for him to prevail on the merits.

Minnesota — The Rochester Post-Bulletin reports that state District Judge Kevin Land has ruled that a Rochester Athletic Club did not violate state law when it denied a family membership to a lesbian couple, Amy and Sarah Monson. The women claimed sexual orientation discrimination by a place of public accommodation. The club argued that it lawfully restricted family memberships to legally married couples and their children. Wrote the judge, “This morally and legally defensible yet unrealistically narrow definition of family fails to recognize the underlying stability and commitment of the Monsons’ relationship. Other, arguably more enlightened organizations, such as the Rochester Area Family Y, have chosen not to reduce the definition of family in such an anachronistic fashion.” However, he determined that the discrimination was not based on sexual orientation, and that it was up to the legislature to decide whether to extend the protection of the civil rights law to same-sex couples. One of the attorneys representing the women indicated that an appeal would be filed.

New York — The Appellate Division, First Department, has revived a sexual orientation discrimination suit in Crawford v. Liz Claiborne, Inc., 844 N.Y.S.2d 273 (Nov. 1, 2007), finding that the trial judge had improperly allowed the defendants to submit a late motion for summary judgment, and then granted the motion without hearing a substantive response to it by the plaintiff, who had taken the position that he did not have to respond to the motion because it was untimely. The court decided that rules are rules, the motion should have been rejected as untimely, and the case should have proceeded. Rather than remand to the same trial judge, who had already pronounced on the merits of the case without benefit of opposition argument by the plaintiff, the court ordered that the matter be assigned to a different trial judge, making clear that “we neither ‘reproach’ nor ‘impugn the court’s impartiality’; nor, of course, does our mere disagreement with the IAS court’s decision to consider the merits of the motion play any role in that direction. Finally, contrary to the dissent [by Presiding Justice Tom], our concern about the appearance of impartiality is not founded upon Supreme Court
having decided a dispositive motion adversely to plaintiff."

Pennsylvania — In Marcaevage v. Rendell, 2007 WL 3376784 (Pa. Cmwlth. Ct., November 15, 2007), the court found that the state’s hate crimes law was improperly enacted because it was added to a bill that was originally intended to criminalize the destruction of agricultural crops. Rules governing legislation in Pennsylvania evidently restrict adding unrelated amendments to pending legislation past a certain point in the process. In this case, a bunch of people arrested for disrupting a gay rights event in Philadelphia by insisting on urine-face anti-gay evangelism at the event brought suit challenging the law, even though the charges against them had been dropped, claiming standing based on the possibility that they would be criminally charged in the future when they sought, as planned, to perform the same acts. The court found that the criminal amendments bill did not “retain its original purpose” as it went through the legislative process. “We emphasize that no matter how salutary the purpose of a bill may be, it still must comport with the constitutionally mandated requirements for passage.” This means that the effort must be taken to re-enact the bill in conformance with the constitutionally prescribed procedures, unless the Pennsylvania Supreme Court, which takes very few cases, can be persuaded to review this one.

Washington — A King County jury has awarded nearly $4.4 million in damages to a lesbian former Seattle store manager for Good-year Tire & rubber, who claims she suffered retaliation from the company for complaining about a homophobic manager. Rubber & Plastics News (Nov. 26) reported that Melissa Sheffield was hired in 1994 and promoted to manager of a local Goodyear store in the Seattle area in 1999. She won a corporate excellence award in 1999. She won a corporate excellence award and opposed the other. Wrote the judge, “Here I believe there is a demonstrable injury to any voter who is required to vote on a question that is constitutionally defective. Voting is the bedrock, the very lifeblood of the democracy we have. It has to be protected above all, I think.” A.S.L.

Criminal Litigation Notes

California — The California 4th District Court of Appeals rejected a constitutional challenge to the state’s incest law in People v. Scott, 2007 WL 4166217 (Nov. 27, 2007)(partial publication). The jury convicted defendant of violating Penal Code sec. 285, based on evidence that he had sexual intercourse with his 18-year-old daughter. He argued that as his daughter was an adult, the prosecution violated his due process rights, citing Lawrence v. Texas. This was, as usual, a losing argument. Wrote Justice King, “Despite the Lawrence court’s broad pronouncements regarding the liberty interests of persons ‘in matters pertaining to sex,’ Lawrence dealt only with sodomy between consenting adults of the same sex. It did not deal with other ‘matters pertaining to sex,’ including consensual incest between adult members of the opposite sex who are related by consanguinity. In deed, the court emphasized the limited nature of its holding by noting that the case before it did not involve, among other things, ‘persons who might be injured or coerced or who are situation in relationships where consent might not easily be refused.’ This aptly describes adult daughters, who are typically in positions of vulnerability vis-a-vis their older, and thus more authoritative fathers, ‘in matters pertaining to sex.’” The court identified the legitimate state interests at stake as “maintaining the integrity of the family unit, in protecting persons who may not be in a position to freely consent to sexual relationships with family members, and in guarding against inbreeding.”

Louisiana — A gay prisoner’s scheme to make some money backfired when he was successfully prosecuted for filing a false public record and sentenced to fifteen months at hard labor. Conviction and sentence were upheld in State of Louisiana v. Lefear, 2007 WL 3171234 (La. App., 3rd Cir., Oct. 31, 2007). Johnnie Lefear noticed that Deputy Herbert Paul Simons was sexually interested in him. In telephone conversations with friends, he discussed giving in to Simons’ sexual enticements, and then filing a claim that he had been forced to have sex with the deputy and demanding compensation for sexual harassment. Lefear went ahead with his scheme, performed oral sex on the deputy, and filed the report. (He also spoke about what he had done with his friends on the telephone afterwards.) The deputy was fired, but it seems the Louisiana prison records all inmate telephone conversations, and when the conversations surfaced, the prison administrators decided that Lefear’s sexual activity was consensual and prosecuted him for filing a false report. Wrote Judge Decuir, “The evidence in the record demonstrates that Deputy Simons initiated the sexual activity with the Defendant. However, the Defendant clearly noticed the advances, responded to them, and willingly proceeded to engage in oral sex. Rather than a forced encounter, the Defendant had the opportunity to consider the situation, discuss it with friends, and formulate a plan for a successful lawsuit.”

New York — Kings County Supreme Court Justice Jill Konviser-Levine passed sentence on three defendants in the Michael Sandy murder case on November 21, after jury verdicts convicting the defendants of a hate crime, based on evidence that the defendants had used a website to find a gay man to rob. The robbery went bad when the intended victim ran from his assailants onto an adjacent highway, was struck by an automobile, and subsequently died from his injuries. One of the defendants, Anthony Fortunato, claimed that he was gay, and all the defendants asserted that they had no animus against gay people, but Justice Konviser-Levine ruled that under the language of the state’s hate crimes law, such motivation
was not required for a conviction, merely that the victim was selected because of his sexual orientation. The judge approved a negotiated sentence for Ilya Shurov, who pled guilty, of 17–1/2 years, noting that he was the only one of the defendants who had accepted his responsibility in the case. Fortunato was sentenced to 8–1/3 to 25 years. John Fox received a sentence of 7 to 21 years. The youngest defendant, Gary Timmins, pled guilty to attempted robbery and testified against the others in exchange for a negotiated sentence of four years. *New York Times*, Nov. 21, 2007. A.S.L.

**Legislative Notes**

*Florida* — *Palm Beach County* — *The BNA Daily Labor Report*, No. 224, Nov. 21, 2007, relates that the Palm Beach County, Florida, Board of County Commissioners voted on Nov. 20 to add “gender identity or expression” to the list of prohibited grounds for discrimination in the county. There was unanimity about extending this protection in the areas of housing and public accommodations, but one dissenting vote in the employment context, presumably embodying concern about the potential impact on employers and co-workers as workplaces deal with issues of appearance and restroom or locker room usage.

*Iowa* — Waterloo, Iowa, city council members voted unanimously on Nov. 13 to add “sexual orientation” to the local civil rights ordinance. Although state law in Iowa now bans such discrimination, the local action is more than merely symbolic, since it empowers the city’s Human Rights Commission to devote resources to dealing with the issue, and provides a local site for enforcement activities. *wcfcourier.com*, Nov. 14.

*Kentucky* — The Jefferson County Board of Education voted on Nov. 26 to adopt a policy forbidding sexual orientation discrimination in employment including protecting against anti-gay harassment to school employees. The vote was 4–3, and came at the end of a heated meeting at which about 50 members of the public spoke pro and con. *Kentucky Post*, Nov. 27.

*Maryland* — *Montgomery County* — On Nov. 13, the Montgomery County Council voted to amend the county’s human rights law to add gender identity to the list of personal characteristics as to which discrimination is prohibited in employment, housing, public accommodations, cable television service and taxicab service. The vote was unanimous with one member absent. There was considerable discussion about how to deal with the restroom issue. It was resolved by leaving intact an existing provision of the law exempting from compliance “distinctly private or personal” facilities, thus leaving it up to individual employers and landowners to establish rules for the use of their restroom and locker facilities. *BNA Daily Labor Report*, No. 221, Nov. 16, 2007, A–5.

*Ohio* — The Dayton City Commission voted 3–1 to add sexual orientation and gender identity to the list of forbidden grounds for discrimination in the city on November 21. According to a report in the *Dayton Daily News*, the city becomes the 15th Ohio municipality to add sexual orientation to its law. • • • The Toledo City Council voted 10–2 on Nov. 13 to create a domestic partnership registry open to all unmarried couples, the purpose of which is to create a centralized process that can be used by employers seeking to verify relationships as a basis for extending benefits. *Toledo Blade*, Nov. 13.

*Rhode Island* — 365Gay.com reports that the Rhode Island General Assembly voted as part of a special session to override a veto by Governor Don Carchieri of a measure that would provide domestic partners of public employees with the same pension and retirement benefits as spouses.

*Washington* — The city of Edmonds city council voted 6–0 to extend benefits to city employees’ senior or same-sex partner significant others on Nov. 20. Couples must be registered under the state’s domestic partnership law to qualify. City officials said that the measure did not extend to unmarried heterosexual couples who have the option of marrying to obtain coverage. According to a report on *HeraldNet* (Nov. 23), city officials said that “the move protects the city from lawsuits.” Earlier in the month, the city government in Everett took a similar step, by a near-unanimous vote of the Council, 14–1. *HeraldNet* (Nov. 2). A.S.L.

**Law & Society Notes**

*National* — According to statistics released on Nov. 19 by the Federal Bureau of Investigation, reported anti-gay hate crimes made up 16% of total documented hate crimes in 2006, up from 14% in 2005. The rate of all hate crimes increased 8%. Both the House and the Senate have passed bills that would add sexual orientation, gender identity, gender and disability to the existing categories in federal hate crimes law, but the different bills have yet to be reconciled and sent to the president, whose response is unpredictable and undoubtedly dependent to some extent on the other topics covered by whatever bill emerges. It is also possible, regrettably, that a conference committee would report out a bill that omits these categories.

*National* — The Gay & Lesbian Victory Fund endorsed a record 71 openly gay, lesbian, bisexual or transgender candidates this year, and 41 had won election as of the day after the November general elections. An additional openly gay candidate was elected in Rhode Island in a special election later in the month.

*National* — The U.S. Government seems bent upon deporting a gay man who has been living peacefully in the U.S. for many years to Iran, despite the recent indications from Iranian officials that they consider homosexuality to be a capital offense. According to a Nov. 29 report in *Gay City New*, Hassan Parhizkar, 40, is currently in detention in the Maryland Detention Center, awaiting deportation as advocacy groups struggle to persuade the government to allow him to remain. The detailed story, by Doug Ireland, can be found on the Gay City News website under the title US Set to Deport Gay Iranian, which provides links to a website where signatures can be added to a petition asking the government to award relief under the Convention Against Torture.

*National* — Proponents of ending the ban on LGBT military service converged on Washington, D.C., on Nov.30, the 14th anniversary of enactment of the current policy, planning to hold rallies on the National Mall. At the same time, a letter was submitted to Congress on behalf of 28 retired generals and admirals, some now openly gay, calling on Congress to repeal the current policy. *New York Times*, Nov. 30.

*Georgia* — Confusion or just political opportunism? Georgia Fuller, who finished third in the race for a Riverdale, Georgia, City Council seat, has filed suit seeking to invalidate the results of the election on the ground that the front-running candidate, Michelle Bruce, a transsexual, misled voters by running as a woman. Bruce, the incumbent holder of the seat, has been openly transsexual throughout her political career, and is well-known in the community, so the notion that anybody was mislead is laughable, leading City Attorney Deana Johnson to comment that this “sounds like a case of politics.” The suit is pending as a runoff election is scheduled for Dec. 4 between Bruce and the second-place finisher in the Nov. 6 vote, Wayne Hall. *New York Times*, Nov. 23. • • • In other political news from Georgia, some were celebrating the first election of an openly-gay Republican candidate in that state, Brian Bates, a 36-year-old business owner, who won a seat on the Doraville City Council with a convincing 58 percent of the vote. Indeed, Georgia Equality, the state’s largest gay political organization, claims that Bates is the first openly gay Republican to win a race for public office in the Deep South. The other eight openly gay elected public officials in Georgia are all Democrats. *Atlanta Journal-Constitution*, Nov. 26.

*Michigan* — Governor Jennifer Granholm issued an executive order barring discrimination against state workers on the basis of “gender identity or expression,” thus bringing the state in line with the modern trend of including protection for transgender individuals in civil rights policies. The state is still retrogressive in lacking a statute protecting sexual minorities.
from discrimination. The governor’s order states, “State employment practices and procedures that encourage nondiscriminatory and equal employment practices provide desirable models for the private sector and local governments.” New York Times, Nov. 23.

North Carolina — What would Jesus do? One doubts He would take the same action as the North Carolina Baptist State Convention, which voted overwhelmingly on November 13 to expel Myers Park Baptist Church in Charlotte for welcoming gays and lesbians as members without undertaking any effort to convert them to heterosexuality. The president of the state convention’s board of directors told the convention that the Bible calls on believers to turn away from sin, including homosexual behavior, and be healed by Jesus, according to a Nov. 13 report in the Charlotte Observer. The vote was taken by a show of hands, the overwhelming result seen as obviating the needs for a recorded vote.

Pennsylvania — The Philadelphia city solicitor, Romulo Diaz, has indicated that the local Boy Scouts organization has until December 3 to renounce its policy of excluding gay people or it will forfeit the arrangement that it has to rent its headquarters building from the city for $1 a year. Characterized in news reports as a “grand, Beaux-Arts building,” it has been nominally rented from the city since 1928. Once the city completes a formal reassessment of the rental value of the property, it will offer it to the Boy Scouts at a fair market rate. The most recent estimate is that the annual rent will be about $200,000 a year, totally beyond the means of the local Boy Scouts organization, called the Cradle of Liberty Council. The organization has tried to skirt the issue by pronouncing its opposition to discrimination in general terms, but has been told by the national Boy Scouts of America leadership that it may not adopt a policy against sexual orientation discrimination without losing its charter from the national organization. The city council voted last May to evict the Scouts if they did not comply with the city’s non-discrimination requirements. “If I do not receive an executed lease, signed by the Boy Scouts, to remain as tenants paying a fair market rent, we will be looking for alternative tenants that can take over the property June 1, 2008,” Diaz told the press, Washington Post, Nov. 19.

Rhode Island — Openly-gay Democratic candidate Frank Ferri won a special election to the Rhode Island General Assembly to fill a vacancy created by a resignation. Ferri, who has been serving as chair of Marriage Equality Rhode Island, an organization advocating for same-sex marriage, is himself apparently the first person in a legally-recognized same-sex marriage to be elected to public office in the U.S. Ferri, according to a summary distributed by the LGBT Victory Fund, was married to his partner in Canada, and so far that marriage has been recognized in Rhode Island, although its continued recognition may be at stake in a case now pending before the Rhode Island Supreme Court. Ferri won with 53% of the vote in House District 22, which includes the jurisdictions of Warwick Neck, Oakland Beach, and parts of Cominicut. Associated Press, Nov. 28. A.S.L.

**International Notes**

Argentina — LifeSiteNews.com (Nov. 2) reports that a civil appeals court in Argentina rejected a lawsuit by a same-sex couples seeking the right to marry, stating that “the standard that establishes that marriage should be celebrated between people of different sexes has an absolutely objective and reasonable justification, which consists in the interest of the government in granting a privilege to unions that tend to continue the species.” Yet another court unfamiliar with donor insemination...

Australia — With the election of a new Labor government at the national level, the Australian Capital Territory is expected to make a new attempt to enact a civil union law, reasonably confident that the federal government will not follow the path of its more conservative predecessor in vetoing it.

Australia — New South Wales — A controversy blew up around a new law, approved by the upper house of the New South Wales legislature, that would give reproductive donors the right to restrict who could receive their sperm or eggs both on religious or ethnic backgrounds, sexual orientation and marital status. The main purpose of the bill is said to be to allow donor-conceived children to get information about their biological parents when they reach age 18. The measure was defended by Premier Morris Iemma by arguing that it is not in a child’s interest to learn that his or her genetic parent has a fundamental objection to their upbringing. A leading medical ethicist criticized the bill as immoral. ABC Premium News, Nov. 28.

China — Alex Lo Man-nam, age 21, was sentenced to three years in prison for blackmailing a closeted school teacher. The sentence was imposed by Judge Colin Mackintosh in the Hong Kong District Court. Lo had initiated a sexual relationship with the 34 year old teacher, then threatened to report him to the police, noting that at the time Lo was under the age of consent. The court also ordered Lo to make restitution of HK$31,000, the amount he had demanded from the teacher. The judge said that the blackmail was a “persistent, calculated and cynical attack” on the victim, according to a November 29 report in the South China Morning Post.

Iran — Clearing up any lingering uncertainties stemming from Iranian President Ahmadinejad’s assertion at Columbia University that there were no gay people in Iran, Mohsen Yahyavi, a member of the Iranian Parliament who was in England for conference with members of the UK Parliament, commented that Iran believes in the death penalty for homosexuality. According to notes of the meeting that later became public, Yahyavi “explained that according to Islam gays and lesbianism were not permitted. He said that if homosexual activity is in private there is no problem, but those in overt activity should be executed. He argued that homosexuality is against human nature and that humans are here to reproduce. Homosexuals do not reproduce.” Evidently, Mr. Yahyavi is unfamiliar with the lesbian baby boom in the U.S....

Nicaragua — Gay City News reported on Nov. 29 that Nicaragua’s General Assembly revised the nation’s penal code and left out the prohibition on gay sex, the new code going into effect in March 2008. It was asserted that with this reform consensual sodomy is no longer criminal in any of the Spanish-speaking countries of Latin America. Can anybody verify that claim?

Norway — The nation’s state Lutheran Church synod voted 50–34 to lift a ban on gay clergy having same-sex partners, according to a Nov. 24 report in the Guelph Mercury. The decision whether to employ sexually-active gay clergy will be left to individual bishops, however, and at the time of the vote only six of the country’s eleven bishops were expected to open local pulpits to non-celibate gay or lesbian clergy.

South Korea — The removal of “sexual orientation” from the draft of a pending national civil rights bill was defended by the government as removing “controversial” provisions from an original draft that had specified 20 different prohibited grounds of discrimination. The South Korean gay rights organizations criticized the move as caving in to anti-gay bigots who had been critical of the original draft.

Singapore — Investrend (Nov. 16) reports that film censors in Singapore have banned a futuristic video game, Mass Effect, distributed by Microsoft for use in its Xbox console, because players of the game can engage their avatars in simulated sexual activity that includes lesbian sex, which is evidently even a crime in Singapore when the participants are not real. According to the news report, the avatars are not equipped to engage in gay male sex. According to a statement issued by Microsoft in response to the ban, the games takes a mature approach to various relationships ...
United Kingdom — Judge Lord Macphail, High Court in Edinburgh, passed a life sentence on David Meehan (19), and a 12 year extended sentence on Martin Soutar (21) for participation in an anti-gay murder that the judge characterized as “a killing of a callous and brutal character, which appears to have been marked by a homophobic element.” An additional defendant, a fifteen year old boy, was not named in court records because of his youth. According to testimony entered in the court, the 15 year old claimed to have been accosted by the victim while walking through South Inch Park, then contacted Soutar, saying he had been assaulted, resulting in Soutar and a gang hunting down the man and beating him brutally, leaving him lying on the ground to die. According to testimony, the 15-year-old left the scene saying “I hate gays and poolers.” The three defendants went to a party directly after the attack saying “I hate gays and poofers.” The three defendants went to a party directly after the attack and treated same-sex and different-sex couples equally. A.S.L.

Professional Notes

Lambda Legal New Staff — Lambda Legal has announced two new staff lawyer appointments. Christopher Clark, a litigation partner at the firm of Sachnoff & Weaver, is joining Lambda as a Senior Staff Attorney in its Midwest Regional Office in Chicago. He is a University of Chicago Law School graduate. Scott Schoettes is a new staff attorney at Lambda’s HIV Project, based in New York. According to Lambda’s press advisory, he is an openly HIV+ graduate of Georgetown University Law Center, and has been employed as a litigator at Latham & Watkins.

Business Journal, a Phoenix, Arizona, publication, reported on November 9 that the American Bar Association had stated that it was creating a new commission on “sexual orientation and gender identity” to address issues of discrimination in the legal profession. The same article noted that a legislative proposal is pending in Scottsdale, Arizona, to amend local ordinances to forbid discrimination on the basis of race, gender, religion, sexual orientation, gender identity and marital status, applying to city contractors and local businesses. The article can be found at 2007 WLNR 22199516.

Kentucky Supreme Court Disbars Attorney Who Shook Down Gay Colleague — In Treadway v. Kentucky Bar Association, 2007 WL 4145243 (Ky., Nov. 21, 2007), court ordered permanently disbarred an attorney who devised a scheme to extort money from a fellow corporate board member who was engaging in surreptitious gay sex. According to the scandalous facts recited in the opinion, “In 2001, Movant learned that another member of the board had begun a series of homosexual relationships with young men and teenage boys, some younger than age sixteen. After receiving the information, Movant devised a scheme in which he claimed he had been contacted by an attorney representing one minor who wanted to sue the other board member. He advised the board member that he had retained the services of a private investigator to assist in the case at a cost of $10,000. Movant also advised the board member to settle the unfiled civil suit for $56,500. The board member, who trusted Movant as his attorney, issued three checks totaling $66,500 payable to Movant’s escrow account. Movant fabricated the entire story regarding the lawsuit in order to receive money from the board member.” He was indicted for theft by deception, pled guilty to five counts and was sentenced to five years, with fifteen days to serve and the remainder on probation, and ordered to pay $70,000 restitution to his victim. This led to ethics charges, which led to disbarment. (Other ethics offenses were also charged against Treadway, but these are the most interesting!)

Los Angeles Police Department — Robert Saltzman, an openly gay associate dean at the University of Southern California Gould School of Law, was unanimously confirmed by the Los Angeles City Council to join the Police Commission, and was sworn in on November 21. Saltzman indicated that diversifying the force of more than 9500 officers was among the most pressing problems facing the LAPD, where most of the commanding officers are white and only 6 percent of recent police academic graduates were African-American. The five member Police commission makes policy for the LAPD and investigates allegations of wrongdoing. Saltzman has held a variety of public service positions in L.A., and is a member of the National Gay and Lesbian Leadership Institute’s Board of Directors. Daily News of Los Angeles, Nov. 22. A.S.L.

AIDS & RELATED LEGAL NOTES

Formal Legal Requirements Sink Pretrial Detainee’s Failure to Treat Lawsuit

U.S. District Judge Carol E. Jackson granted a motion by health care workers employed at the St. Louis Justice Center to dismiss a pretrial detainee’s action against them for failure to provide his HIV medications, relying on a state law requirement that an affidavit by a qualified health care worker be filed in support of the complaint. Grace v. Harris, 2007 WL 3530200 (E.D.Mo., Nov. 13, 2007).

According to Judge Jackson’s opinion, the plaintiff is a pretrial detainee at the Center, a municipal confinement facility. Plaintiff alleges that he is HIV+ and has been prescribed an “HIV cocktail” of medications “to be administered together at regular times, every day.” According to the complaint, the named defendants, a doctor and two nurses at the Center, “failed to provide him the necessary and prescribed medications to treat his HIV.” He alleges that the result of this deprivation is causing him “extreme physical discomfort and a deterioration of his medical condition.”

Plaintiff, represented by counsel, sued in federal court under 42 USC 1983, claiming deliberate indifference to his medical needs in violation of the 14th Amendment, and asserting state law claims of medical malpractice. Since plaintiff has not been convicted, his action arises under the 14th Amendment rather than the 8th Amendment, as he is not officially being punished for anything yet. However, Judge Jackson, characterizing this as essentially a negligence claim, asserted that such claims are not actionable under 42 USC 1983, thus removing the basis for federal jurisdiction. Normally, this would end the matter, as removal of the sole basis for federal jurisdiction would give the court discretion to decline jurisdiction over the state law claims.

However, rather than recite the ritual language of declining to assert jurisdiction, Judge Jackson went on to note that Missouri law requires all personal injury claims based on “rendering or failure to render health care services” to be accompanied by “the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances.” Evidently, as part of “tort reform” in Missouri, the legislature has decided that inasmuch as a professional negligence case requires expert testimony as to the standard of care, a plaintiff who does not
present at least one qualified expert should not be allowed to initiate a case. This, of course, overlooks the possibility that a plaintiff could establish the necessary evidence through cross-examination of the defendant...

At any rate, having pointed out that this requirement is apparently jurisdictional, requiring the complaint to dismissed without prejudice, Judge Jackson dismissed the complaint. A.S.L.

**AIDS Litigation Notes**

**Federal — 2nd Circuit** — In Alliance for Open Society International, Inc. v. U.S. Agency for International Development, 2007 WL 3334335 (Nov. 8, 2007), the 2nd Circuit issued a summary order in the pending appeal by the federal government of a ruling by Southern District of New York Judge Victor Marrero that certain restrictions placed on federal financial assistance to overseas organizations working on HIV/AIDS issues imposed unconstitutional restraints on speech. Responding to arguments by the government that new guidelines for the implementation of the funding statute that have been published in the federal register and posted to USAID’s website obviate the First Amendment problem, the court returned the case to Judge Marrero for further findings, while keeping in effect the injunction he had issued against implementation of the restrictions pending a final determination on the merits of the case. The court intimated that Judge Marrero could treat the case as ready for a determination of the merits rather than merely determining whether the preliminary injunction remained in effect, in recognition of the importance of settling the constitutional question.

**California** — Even though the defendant, an older man accused of molesting his granddaughter, did not apparently engage in conduct that could have transmitted HIV, he nonetheless could not contest the trial judge’s order that he submit to an HIV test, since he failed to object at the time of trial. People v. Hachler, 2007 WL 417622 (Cal. Ct. App., 1st Dist., Nov. 27, 2007) (not officially published). The court of appeals invoked the doctrine of forfeiture, a “well established procedural principle that, with certain exceptions, an appellate court will not consider claims of error that could have been but were not raised in the trial court.”

*** Similarly, in People v. Landaverde, 2007 WL 4125107 (Cal. Ct. App., 2nd Dist., Nov. 21, 2007) (certified for partial publication), the court found that the defendant in a child sexual abuse case had waived his right to protest HIV testing because he failed to object at the time the testing requirement was imposed, only raising the issue for the first time in a brief on appeal. A.S.L.

**AIDS Law & Policy Notes**

Is the epidemic growing or shrinking? Has it reached a plateau? These questions were buzzing about as World AIDS Day (Dec. 1) approached. The United Nations announced that previous estimates about the size of the world epidemic had been overstated as a result of imprecise methods of measuring the extent of penetration of the virus in undeveloped countries, where statistical sampling methods based on people who came into contact with public health services proved unreliable upon closer study. Thus the relevant UN bodies were reducing their estimates of the total spread of infection, and some were contending that world statistics now show the level of new infections has stabilized in recent years. On the other hand, the *Washington Blade* reported on November 14 that the U.S. Center for Disease Control & Prevention was sitting on startling new data showing that the federal government had been systematically underreporting the rate of new HIV-infections in the U.S. “According to AIDS advocacy groups familiar with the CDC,” reported the *Blade*, “middle level officials at the disease prevention agency have quietly confided in colleagues in professional and scientific circles that the number of new HIV infections now appears to be as high as 58,000 to 63,000 cases in the most recent 12-month period. On its website this week, the CDC left unchanged its longstanding estimate that about 40,000 Americans per year become infected with HIV, a figure it says has remained ‘relatively stable’ for most of the past decade. CDC officials have told leaders of AIDS advocacy groups that the new figures are being withheld while they are subjected to a rigorous peer review process by an unidentified scientific journal, which is expected to publish the findings within the next few months.” The agency indicated that the data would not be ready in time for World AIDS Day. So, while some are contending that current data show some cause for celebration that the world epidemic has peaked and may even be receding, there are alarming indications that complacency in the U.S. could leave us open to a second wave of AIDS epidemic in this country, a subject about which no presidential candidate is talking or being questioned. A.S.L.

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**PUBLICATIONS NOTED & ANNOUNCEMENTS**

**Movement Positions**

**Lambda Legal** — The nation’s oldest and largest LGBT public interest law firm has announced several opportunities for lawyers and law students. Lambda is accepting applications for a staff attorney in its national headquarters office in New York, has announced the availability of internship opportunities in all of its offices for law students (New York, Chicago, Los Angeles, Atlanta, Dallas), and in addition has announced the Tyron Garner Memorial Fellowship for African-American LGBT Civil Rights, a paid summer internship for a law student that has been established in memory of one of Lambda’s clients in the groundbreaking Lawrence & Garner v. Texas case in which the Supreme Court struck down criminal laws against consensual private homosexual conduct. Information about all these opportunities can be found on Lambda Legal’s website, www.lambdalegal.org.

The ACLU Foundation of Florida’s LGBT Advocacy Project is seeking to hire a staff attorney with at least two years of litigation experience. The attorney will be located either in the ACLU’s Miami office or one of the Florida regional offices. Admission to the Florida bar is strongly preferred but not mandatory. To apply, please email, fax or mail cover letter, resume and writing sample to Robert F. Rosenwald, Jr., Director, LGBT Advocacy Project, ACLU of Florida, 4500 Biscayne Blvd. Suite 340, Miami FL 33137–3227, FAX 786–363–1392; Rosenwald@aclufl.org.

**Announcement**

Whittier Law School’s Summer Program on Sexual Orientation and Gender Identity Law hosted by the University of Amsterdam is now co-sponsored by the Williams Institute of UCLA Law School. The program, which features a stellar faculty with a heavy representation of public interest lawyers as well as legal academics, provides an opportunity for participants to earn up to 6 units of academic credit in a program fully approved and accredited by the ABA. The full program runs from July 8 to August 8, 2008, but students can enroll for shorter segments. Details are available on the Whittier Law School web site (www.law.whittier.edu). Interested students should contact the director of the program, Prof. Jon Heilman, at jheilman@law.whittier.edu.

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Baxter, Emily K., Rationalizing Away Political Powerlessness: Equal Protection Analysis of Laws Classifying Gays and Lesbians, 72 Missouri L. Rev. 891 (Summer 2007).

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Donovan, Traci, Foreign Jurisprudence To Cite or Not to Cite: Is That the Question or Is It Much Ado About Nothing?, 35 Cap. U. L. Rev. 761 (Spring 2007).

Durand, Melissa, From Political Questions to Human Rights: The Global Debate onSame-Sex Marriage and Its Implications for U.S. Law, 5 Regent J. Int’l L. 269 (2007) (Note the source: Pat Robertson’s law school....).


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Lavelly, Vanessa A., The Path to Recognition of Same-Sex Marriage: Reconciling the Inconsistencies Between Marriage and Adoption Cases, 55 UCLA L. Rev. 189 (Oct. 2007).

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Minow, Martha, Should Religious Groups be Exempt from Civil Rights Laws?, 48 B.C. L. Rev. 781 (September 2007).


Paik, Anthony, Ann Southworth, and John P. Heinz, Lawyers of the Right: Networks and Organization, 32 L & Social Inq. 883 (Fall 2007) (know thine litigation enemy...).


Russo, Charles J., Same-Sex Marriage and Public School Curricula: Preserving Parental Rights to Direct the Education of Their Children, 32 U. Dayton L. Rev. 361 (Spring 2007).


Stonecipher, Jennifer, Advertising Regulations on Sexually Oriented Businesses: How Far is Too Far?, 72 Missouri L. Rev. 679 (Spring 2007).


Specially Noted:
The Williams Institute at UCLA Law School annually publishes a special volume called *The Dukeminier Awards*, republishing what they call the “Best Sexual Orientation and Gender Identity Law Review Articles” of the previous year. Vol. 6 (2007), just received, features articles by Suzanne B. Goldberg, Holning Lau, Ariela R. Dubler, and Angela Harris, and the winning entry in their annual student writing contest, by Sergey Moudriak. Details about the publication and subscriptions can be obtained through the Williams Institute’s website: www.law.ucla.edu/williamsinstitute.

**AIDS & RELATED LEGAL ISSUES:**


**EDITOR’S NOTE:**

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