May 2010

Columbia Law School Sexuality and Gender Law Clinic
Fourth-Year Report

The Columbia Law School Sexuality and Gender Law Clinic is pleased to present this Annual Report to share the Clinic’s philosophy and educational goals and to highlight the Clinic’s wide range of local, national and global contributions during the past academic year.

Executive Summary:

This has been the Clinic’s busiest year to date, with sixteen students putting in thousands of hours during the course of the 2009-10 academic year in all areas of sexuality and gender law. From high-level amicus briefs to legislative and administrative advocacy to direct representation of asylum seekers, Clinic students learned how to muster all of their legal resources and aptitude to challenge discrimination and violence targeted at women and gay, lesbian, bisexual, and transgender individuals and people with HIV/AIDS. Now in operation for four years, the Clinic is widely known and respected by leading advocates and organizations throughout the country and abroad, leading to an ever-increasing number of requests for our students to work on issues and projects around the world. Spots in the Clinic were also in high demand during the past academic year, with more than five applicants for each of the eight semester-long slots. With a successful, productive year having flown by, we are looking forward eagerly to new and continuing projects in the coming academic year, when the Clinic will be running during the Spring 2011 semester.

The Report in Full

The Clinic’s mission:

The Sexuality and Gender Law Clinic is an intensive learning and working environment that offers students a unique opportunity to hone lawyering and advocacy skills while working directly on cutting edge sexuality and gender law issues. The Clinic provides vital assistance to lawyers and organizations throughout the country and the world that advocate for the equality and safety of women and lesbians, gay men, bisexuals, and transgender individuals.

The Clinic emphasizes multidimensional lawyering, which is the practice of being strategic, smart and creative in identifying and deploying resources to advocate for social change. Our projects encompass all forms of advocacy, including litigation, public policy development, legislative drafting, training, organizing, public education, and media outreach.

The Clinic’s emphasis on reflective, theoretical inquiry complements this practical strategic training. Students in the Clinic have the important experience of reflecting on the role of the social change lawyer and on specific issues in the area of sexuality and gender law at the same time as they are in the midst of actually participating in the process of lawyering for social change.
The Clinic’s projects during the 2009-10 academic year:

The Clinic has accomplished an extraordinary amount of work during the past academic year, ranging from complex litigation and high-level amicus briefs to asylum applications to legislative advocacy. With a four-year track record of producing outstanding work, the Clinic is well established as a resource for organizations around the country working to secure the rights of women and lesbians, gay men, bisexuals, and transgender (LGBT) individuals. Here is a sampling of our work:

• **Family Law Advocacy:** On behalf of forty-five family law academics at law schools throughout New York State, the Clinic filed a major amicus brief to New York State’s highest court regarding the legal rights of functional parents. In keeping with the Clinic’s commitment to multidimensional lawyering, Professor Goldberg and the students who worked on the case published an oped with the Albany Times Union to educate the general public about the issues in the case. To leverage the work further, the students, with Professor Goldberg, are also planning to publish an article growing out of the work on the brief, entitled *Family Law Scholarship Goes to Court: Functional Parenthood and the Case of Debra H. v. Janice R.*

In another major submission, the Clinic filed an amicus brief with the Puerto Rico Supreme Court to support a second-parent adoption case being litigated by a lesbian couple seeking to secure both parents’ legal relationships with their daughter. This brief relies on international law, human rights guarantees, and domestic law related to the protection of children, family relationships as well as nondiscrimination, to show that Puerto Rico’s adoption law can and should be interpreted to support the best interests of children in this type of case.

With the Transgender Legal Defense and Education Fund, Clinic students have also worked to address the unequal treatment of transgender individuals who seek marriage licenses in New York City.

And, at the request of a surrogate judge in New York, the Clinic prepared a Guardian ad Litem report for the second-parent adoption case of an infant regarding the value of having the adoption filmed by CNN for a forthcoming documentary about a gay couple raising a child together.

• **Military Service:** The Clinic is nearing completion of a report that will be submitted to Congress to document the transition to nondiscriminatory military service within several militaries allied with the United States, including Australia, Britain, Canada, Israel, and NATO forces. Clinic students have not only compiled extensive secondary source data but have also conducted a set of interviews and surveys that will be included in the Report.

• **Immigration and Asylum:** Working closely with Immigration Equality, a national organization focused on immigration and asylum rights for LGBT individuals and couples with people with HIV/AIDS, the Clinic completed a major strategic analysis
and action plan to achieve some forms of family recognition for same-sex couples short of an amendment to the immigration law.

In addition, the Clinic represented two asylum seekers who have fled persecution in their home countries because of their sexual orientation. In the fall semester, students handled the case of a Brazilian gay man, who made national and international news after winning his asylum case here. Still pending is the Clinic application on behalf of a gay man from Uzbekistan, who fled his home state and its severe criminal penalties for men who engage in private, consensual sexual relations with other men.

• **Criminal Law and Condoms as Evidence:** During the past several years, numerous gay, lesbian, and trans young people of color have complained to advocacy organizations that they are being targeted for prostitution arrests because of their race and sexual orientation or gender identity, and that, when arrested, any condoms in their possession are treated as evidence of prostitution. This development is both troubling, given the need for condom use to prevent the spread of HIV, and ironic, given that New York City itself distributes condoms with the City’s logo to support public health efforts to stop HIV transmission. The Clinic has worked on this and related issues all year long, together with colleagues at the New York Civil Liberties Union and the Sex Workers Project. Among many aspects of Clinic work in this area, students have engaged in analysis, outreach and advocacy in connection with state legislation that would prohibit the use of condoms as evidence of intent to engage in prostitution. They have also prepared Freedom of Information Law (FOIL) requests for submission to the New York City Police Department to seek information regarding police treatment of condoms as evidence, and a related appeal, to New York’s appellate court, of the New York City Police Department’s failure to provide information regarding a series of raids on sex-related clubs.

• **Domestic partnership legislation:** At the request of a city council member in an East Coast state, the Clinic has drafted an ordinance that would authorize provision of domestic partner benefits to City employees. Not only did Clinic students draft the ordinance language but they also have prepared explanatory memoranda for the City Council to consider as it debates and moves toward passage of the ordinance.

• **Domestic Violence:** Continuing its work on domestic violence from previous years, the Clinic produced several substantial projects during 2009-10. In the Fall, the Clinic, in collaboration with the Columbia Law School Human Rights Clinic, produced a groundbreaking training manual: *Human Rights and Domestic Violence: An Advocacy Manual.* The manual, which was a centerpiece of a major conference at Fordham Law School and continues to be distributed widely, frames a human rights approach to domestic violence cases, including in-depth discussion prepared by Clinic students of trafficking and domestic violence within LGBT communities.

Collaborating again with Caroline Bettinger-Lopez, the Acting Director of the Human Rights Clinic, the Clinic prepared guidelines for law enforcement responders...
to domestic violence that will be provided to federal government specialists with an aim toward national distribution.

• **Trafficking:** The Clinic has prepared a report on intrafamilial trafficking, with a special focus on girls and young women, that will be submitted by the London-based Advice on Individual Rights in Europe Centre (the AIRE Centre) to the European Court of Human Rights. The Report looks primarily at the ways in which this form of forced labor violates rights to both family security and bodily integrity protected by the European Convention on Human Rights.

• **International Projects:** In addition to the international law brief submitted to the Puerto Rico Supreme Court (mentioned above in the family law section) and the Report on intrafamilial trafficking that will be submitted to the European Court of Human Rights, the Clinic has provided support to lawyers in India working on the sodomy law challenge that is before the nation’s high court. At the request of a member of the legal team, Clinic students provided research and briefing related to parent- and child advocacy organizations’ submissions in sodomy law cases in the U.S.

**The Clinic’s Students:**

The Clinic has had the benefit of sixteen outstanding 2L, 3L and LLM students during this academic year, with many of those students continuing on voluntarily to complete ongoing projects. All told, the students will have put in well more than 5600 hours of Clinic work by the end of the Spring 2010 semester.

**The Clinic’s Faculty:**

Professor Suzanne B. Goldberg directs the Clinic. Prior to joining the Columbia faculty (where she also teaches civil procedure), Professor Goldberg directed the Women’s Rights Litigation Clinic at Rutgers-Newark Law School. Throughout the 1990s, Professor Goldberg was a leading lawyer with Lambda Legal, a national organization devoted to challenging discrimination based on sexual orientation and HIV. While at Lambda, Professor Goldberg served as counsel in many cases, including two that eventually became cornerstone gay rights victories before the US Supreme Court – *Lawrence v. Texas*, which invalidated Texas’s sodomy law, and *Romer v. Evans*, which struck down an anti-gay Colorado constitutional amendment.

Professor Goldberg was named the recipient of the Columbia University Willis L.M. Reese Prize for Excellence in Teaching in 2009 and the Columbia Law School Public Interest Faculty Member of the Year in 2008. Goldberg also received the M. Ashley Dickerson Diversity Award from the National Association of Women Lawyers in 2008. Her scholarship has also won several awards, including two Dukeminier Awards from the Williams Institute at the UCLA Law School for the best sexual orientation law review articles in recent years.