MAY 2008

SECOND-YEAR REPORT OF THE
COLUMBIA LAW SCHOOL SEXUALITY AND GENDER LAW CLINIC

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

Executive Summary:

With fourteen students putting in well over 4500 hours during the course of the 2007-08 academic year, the Clinic accomplished an extraordinary amount. From high-level amicus briefs to state and federal legislative advocacy to direct representation of asylum seekers and a prison inmate, Clinic students learned how to muster all of their legal resources and aptitude to challenge violence and discrimination targeted at women and gay, lesbian, bisexual, and transgender individuals and people with HIV/AIDS. After only two years in operation, the Clinic is already widely known and respected by leading advocates and organizations throughout the country. Spots in the Clinic were also in high demand during the past academic year, with five or more applicants for each position. With a successful, productive second year having flown by, we are looking forward eagerly to new and continuing projects in the coming academic year.

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 2007-08 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. Now in our second year, the Clinic is already 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:

- **Marriage Equality:** The Clinic filed amicus briefs in the California and Iowa Supreme Courts this year, both to support marriage rights for same-sex couples. The California brief argued that the state’s effort to provide marriage and domestic partnership as “separate but equal” relationship statuses violates the state constitution’s equality guarantee because the state, through its monopoly over civil marriage, signals that same-sex couples are not worthy of the marriages permitted to different-sex couples. The Iowa brief made a cutting-edge argument that the Iowa Constitution should be interpreted to provide robust equality protections against all types of discrimination, unlike federal equality jurisprudence, which limits rigorous review largely to race and sex discrimination cases. In preparing these briefs, we have worked with Lambda Legal Defense and the National Center for Lesbian Rights as well as the law firms of Winston & Strawn in Los Angeles, and Babich, Goldman, Cashatt & Renzo in Des Moines, Iowa.

- **Anti-Violence:** The Clinic had three major projects this year – two global and one local – challenging sexual and gender-based violence. At the global level, we worked with UNIFEM, the United Nation’s Development Fund for Women, on a major campaign to expose and challenge violence against young women and girls. Clinic students prepared extensive reports on sexual- and gender-based violence in the transitional justice mechanisms of Colombia, Peru, and Sierra Leone. In addition, we wrote a chapter in a major report to the United Nations Committee on the Elimination of Racial Discrimination addressing the link between race, sex, and domestic violence, and showing the particular risks faced by women of color and immigrant women in New York State. This work led, in turn, to our participation in the Coalition for Fair Access to Family Court. The Coalition aims to update New York State’s out-of-date domestic violence laws, which exclude individuals who are not legally married or do not have a child in common with their abuser from going to Family Court for a civil order of protection. Clinic students did extensive research, prepared widely-circulated advocacy materials, and are currently at work on a major report to the New York State Legislature.

- **Attorneys General Advocacy:** The Clinic has developed the nation’s first-ever comprehensive database and analysis of state attorney general opinions addressing LGBT and HIV issues. This resource will be invaluable to activists and scholars seeking to work with state attorneys general going forward. In addition, the Clinic is producing a strategy guide to assist advocacy organizations in working with state attorneys general on LGBT issues. In preparing this project, Clinic students have worked closely with the National State Attorneys General Program at Columbia Law School.
• **HIV Immigration Ban:** The Clinic continued work with Immigration Equality, a national organization that advocates for immigration rights for LGBT and HIV-positive people, on legislation to limit the harmful effects of the U.S. immigration law’s ban on entry by people living with HIV. In addition to extensive new research and legislative analysis, the Clinic put together a legislative strategy guide and analysis for Immigration Equality.

• **Asylum Based on Sexual Orientation and Gender Identity, and Immigration Protection from Sexual Trafficking:** After last year’s successful asylum application for a lesbian from Turkmenistan, the Clinic’s immigration and asylum work on behalf of individuals fleeing persecution has grown exponentially.

  In one widely publicized case, the Clinic won asylum for a gay man who fled sexual orientation-based persecution in Jamaica. In a second case, the Clinic has filed an asylum application for a transgender woman from Mexico who faced extensive, serious persecution while in Mexico and fears that her life will be endangered if she is forced by the U.S. government to return to her home country.

  In addition to advocating for these individual clients, we are leveraging our work by sharing our extensive documentation of conditions for lesbians, gay men, and transgender individuals in Jamaica and Mexico with the U.S. State Department and with LGBT human rights organizations around the world.

  The Clinic also provided research and commentary on several chapters of a manual for lawyers assisting transgender asylum seekers that will be published shortly by Immigration Equality and the Transgender Law Center.

  The Clinic worked closely, as well, with lawyers from McDermott Will & Emery in preparing applications for a young woman and her family members under a relatively new program that allows victims of and witnesses to sexual trafficking and other serious crimes to obtain T or U visas to remain in the United States in exchange for assistance to government prosecutors seeking the perpetrators of these crimes. (Minors do not have to cooperate with prosecutors to obtain the visas.)

  The Clinic will likely take up additional work on T and U visas in the coming years.

• **Antidiscrimination Education, Advocacy, and Litigation Planning:** The Clinic’s antidiscrimination work also had local and global dimensions. Among our leading projects has been the publication of *Defending Your Rights: A Transgender, Lesbian, Gay and Bisexual User’s Guide to the New York Commission on Human Rights*. This publication, which is available in both English and Spanish, in hard copy and on the web, provides a step-by-step guide for discrimination and violence victims to bring claims to the agency that enforces New York City’s Human Rights Law. We aim for this guide to be a prototype for similar outreach efforts elsewhere in the country.

  Another antidiscrimination project had more global dimensions – we did extensive research and analysis of antidiscrimination ordinances and statutes for Project Friends, a Beijing-based organization aiming to advocate for sexual orientation antidiscrimination measures in China.

  In a third, ongoing project, Clinic students have laid extensive groundwork for possible litigation or other advocacy to challenge police departments and newspapers that expose the names and home addresses of individuals who have been accused of violating laws related to sexual conduct in public places. While police departments
do not ordinarily publicize personal information of arrested individuals, unless the arrestees are public figures, some departments make a practice of releasing this information for men accused of soliciting sexual contact with other men in public places (though, notably, most arrests stem from a verbal solicitation rather than physical contact and, also notably, the information is shared upon arrest rather than upon conviction). These same departments typically do not publicize identifying information for heterosexual couples arrested in public “lovers’ lanes.” Although some newspapers do not reproduce the police department’s information, others do – often on the front page. In addition to lost jobs and disrupted family lives, these publications have led some of the arrested men to commit suicide, including recently in Johnson City, Tennessee, where the local paper published the names, home addresses, and photographs of 40 men, ranging in age from 26 to 85, who were arrested in a public park. The Clinic is collaborating with Lambda Legal on this project.

**Constitutional Antidiscrimination Litigation for Gay Prisoners:** The Clinic, together with lawyers at McDermott Will & Emery, has been representing a gay inmate in Massachusetts who faced anti-gay hostility and discrimination by the state’s parole board. The parole board ignored the inmate’s 25-year record during his incarceration, which showed extensive and uncontested participation in rehabilitation and educational programs. Yet, during the hearing, when the inmate testified about the importance of coming to terms with his being gay as part of his rehabilitation, Board members accused him of talking too much about his sexual orientation and deemed him untrustworthy. Clinic students prepared and filed an amended federal constitutional complaint, wrote a brief to oppose the state’s motion to dismiss the complaint, and, on April 30, argued the case before a federal magistrate in Boston. We currently await a ruling in the case. Gay and Lesbian Advocates and Defenders, a New England-focused law reform organization, has also worked with the Clinic on this case.

**Antidiscrimination in Public Schools:** The Clinic jumped into two important projects this past year in the interests of public school students seeking to learn in environments free of anti-GLBT bias. The first was an all-hands-on-deck project to prepare for depositions in a case challenging an Okeechobee Florida high school’s refusal to recognize a student-run Gay-Straight Alliance (GSA). The ACLU Lesbian, Gay, Bisexual, Transgender & AIDS Project is representing the GSA and was our partner organization on this project. The second was to provide extensive support for a series of amicus briefs being coordinated by the National Center for Lesbian Rights. The briefs will defend the recent addition of gender and sexual orientation protections to California’s law that prohibits discrimination in state-funded educational institutions.

**The Clinic’s Students:**

The Clinic has had the benefit of fourteen extraordinary 2L, 3L and LLM students in its second year. Eight students participated in the Clinic in the Fall semester. Three of those
continued into the spring, together with six new students. All told, the students will have put in more than 4500 hours of Clinic work by the end of the Spring 2008 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 Columbia Law School Public Interest Faculty Member of the Year in April 2008 and has also been selected for the M. Ashley Dickerson Diversity Award by the National Association of Women Lawyers. Her scholarship has also won several awards, including two Dukeminier Awards for the best sexual orientation law review articles in recent years.