The Columbia Law School Sexuality and Gender Law Clinic is pleased to present this Third-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 nine students putting in thousands of hours during the course of the 2008-09 academic year, the Clinic accomplished an extraordinary amount, even while running formally for only the fall semester. From high-level amicus briefs to legislative and administrative 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 discrimination and violence targeted at women and gay, lesbian, bisexual, and transgender individuals and people with HIV/AIDS. As we come up on three years in operation, the Clinic is 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 more than five applicants for each position. With a successful, productive third 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 both the fall and spring semesters.

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 2008-09 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 third 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’s amicus brief to the Iowa Supreme Court was part of the successful advocacy strategy that led to that court’s unanimous ruling in April 2008 in favor of marriage rights for same-sex couples. As with all Clinic projects, we focused not only on the immediate task at hand – in this case, filing an amicus brief – but also on leveraging our work in all ways possible. In this instance, leveraging involved not only issuing press releases (which were picked up in the national media, including on the Air America website) but also preparing an introduction to the arguments and republishing our brief with The Journal of Gender, Race & Justice, which is published by the University of Iowa College of Law.

  In addition to filing in Iowa, the Clinic, in past years, has filed briefs in marriage litigation in California and Connecticut. Lambda Legal solicited our Iowa brief; we have also worked with 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 two major projects this year, both on a global level. At the request of the AIRE (Advice on Individual Rights in Europe) Centre in London, we submitted a third-party intervention to the European Court of Human Rights in a sex trafficking case involving a young African woman. Our brief focused on the connection between the remedies available for sex trafficking and slavery. According to our colleague at the AIRE Centre, the brief was instrumental in leading the United Kingdom to delay its efforts to deport the woman who brought the case to the Court. In response to the Clinic’s press release about this filing, the European Lawyer magazine solicited and published an article from the Clinic on the case and, more broadly, on the problem of sex trafficking in Europe.

  The Clinic also drafted and submitted an expert witness report to the Inter-American Commission in a domestic violence case. The case involved a woman’s appeal from a U.S. Supreme Court ruling denying her claim against the Castle Rock, Colorado police department for failing to enforce a restraining order against her former husband, who ultimately murdered three of their children. In addition to preparing the report, we prepared the expert witness for a hearing in October 2007 at which he testified before the Commission. Four Clinic students attended the hearing with Professor Goldberg. Throughout this project, the Clinic collaborated extensively with the Columbia Law School Human Rights Clinic.
• **Reproductive Rights Advocacy:** The Clinic worked on two major projects regarding reproductive rights. Working in partnership with the New York Civil Liberties Union, Clinic students engaged in extensive administrative advocacy to address the disproportionately high malpractice coverage rates charged to medical providers of abortions. Students spent many hours unraveling New York State’s complex insurance regulations and law, learning the state’s regulatory bureaucracy, and developing a set of advocacy strategies for the NYCLU on this issue.

In a second project, Clinic students worked in partnership with the National Advocates for Pregnant Women to draft and file an amicus brief with the Kentucky Supreme Court in a case challenging the criminal prosecution of a woman who tested positive for drugs shortly after giving birth to her daughter. The brief argued that the prosecution contravened both the state’s Maternal Health Act and international legal and health standards protecting women’s access to confidential and non-discriminatory maternal and prenatal health care.

• **Family recognition advocacy:** The Clinic worked closely with Lambda Legal on two family advocacy projects during the fall semester. In one, Gary Day appealed the denial of social security disability benefits to the children he was raising with his partner. Clinic students drafted the appeal to the Social Security Administration, together with Lambda Legal’s cooperating attorneys at McDermott Will & Emery. In the other, students drafted a letter on behalf of a university employee in Georgia who was denied sick leave when he took time off from work to care for his ill partner. The letter showed why granting the family leave was both permissible as a legal matter and valuable as an institutional matter for purposes of recruitment and retention of employees.

• **Asylum Based on Sexual Orientation and HIV status:** Each semester thus far, the Clinic has represented an individual seeking asylum in the United States. This semester, Clinic students handled the case of a gay, HIV-positive man from Cote d’Ivoire in West Africa from start to finish. The case was a complex one because the client had not filed for asylum within a year of arriving in the U.S., as asylum law generally requires. With extensive research and advocacy, Clinic students showed the asylum officer who heard the case that our client satisfied the “extraordinary circumstances” threshold that permits exception to the one-year deadline rule.

Consistent with the Clinic’s commitment to leverage our work wherever possible, Clinic students developed a contact within the U.S. government offices that handle asylum cases and provided the research and documentation from this case and previous cases as resources to be used in review of cases by individuals who do not have advocates but have suffered similar types of persecution on account of their sexual orientation, gender identity, and or HIV-positive status.

• **Antidiscrimination Education and Advocacy:** Building on the Clinic’s successful publication last year of *Defending Your Rights: A Transgender, Lesbian, Gay and Bisexual User’s Guide to the New York Commission on Human Rights*, which is available in both English and Spanish, in hard copy and on the web, a team of Clinic students fanned out across New York City to share copies of the guide and to train advocates in how
best to help their gay, lesbian, bisexual, and transgender clients bring claims before the New York City Commission on Human Rights.

Clinic students also published a report challenging police department use of sex stings. Specifically, the Report, which is directed to police departments, explains the legal problems associated with police practices of singling out men who may be soliciting sex with other men and then publicizing their personal information after arrests are made. In addition to outlining the potential for legal liability, the Report also shows why sex stings are not only ineffective but also harmful as a strategy to address concerns about public sex. Drawing on studies by the U.S. Department of Justice and policing agencies in the United Kingdom, the Report also offers police departments alternative approaches for addressing concerns that do not pose the same liability risks or the same risks of aggravating hate crimes and sexual orientation discrimination. The project grew out of extensive strategizing during the Clinic’s previous year following the front-page publication in Johnson City, Tennessee of the names, home addresses, and photographs of dozens of men, ranging in age from 26 to 85, who were arrested in a public park, which had devastating consequences for many of the men involved. 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, made new law and then successfully settled a constitutional discrimination claim by a gay inmate in Massachusetts who faced anti-gay hostility and discrimination by the state’s parole board and remains involved in helping prepare our client for his new parole hearing. The Clinic got involved in the case more than a year earlier, at the request of Gay and Lesbian Advocates and Defenders. The parole board, in the hearing challenged in this lawsuit, ignored the inmate’s 25-year record during his incarceration, which showed extensive and uncontested participation in rehabilitation and educational programs. 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 October 31, argued the case in federal district court in Boston. Judge Patti Saris affirmed the federal magistrate’s ruling in our client’s favor, recognizing that to the extent the parole board had singled out our client for hostile treatment because of his sexual orientation, it had violated the U.S. Constitution. This is the first case of its kind to recognize a right against sexual-orientation discrimination in the parole hearing context.

**The Clinic’s Students:**

The Clinic has had the benefit of nine outstanding 2L, 3L, and LLM students during the fall semester of its third year, with many of those students continuing on voluntarily into the spring semester to complete ongoing projects. All told, the students will have put in well more than 3500 hours of Clinic work by the end of the Spring 2009 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.