



HUMAN
RIGHTS
CAMPAIGN
FOUNDATION™

919 18th St. N.W., Ste. 800
Washington, D.C. 20006-5509
phone 202/628 4160
fax 202/347 5323
website www.hrc.org

LAWbriefs

March 2003

Vol. 6, No. 1

RECENT DEVELOPMENTS IN SEXUAL ORIENTATION AND GENDER IDENTITY LAW

IN THE HEADLINES

Florida Court Issues Historic Decision Recognizing Transgender Marriage. A Florida Circuit Court judge ruled Feb. 21, 2003, that Michael Kantaras, a female-to-male transsexual, is legally male under Florida law and that his marriage to his former wife was valid as a result. The court also awarded Kantaras primary custody of his two children. The case arose as a custody dispute, when Kantaras' former wife, Linda Kantaras, sought to terminate her ex-husband's parental rights by challenging the validity of their marriage based on his transgender status, of which she was fully aware when they married. Few courts have addressed the validity of transgender marriages. With this decision, Florida joins New Jersey and California in issuing judicial decisions affirming marriages involving transgender persons. Negative case law exists in Texas and Kansas where courts found invalid marriages involving transsexual persons who married after they had undergone gender transition and attempted to marry persons of the other sex. The National Center for Lesbian Rights represented Michael Kantaras in the case. *Kantaras v. Kantaras*, Case No. 98-5375CA, Circuit Court of the 6th Judicial Circuit in and for Pasco County, Fla.

Pennsylvania Legislature Amends Hate Crimes Law to Include Anti-LGBT Motivated Violence.

Pennsylvania became the fifth state to include gender identity as an enumerated characteristic in their hate crimes law and the 28th state to include sexual orientation, following a nine-year lobbying campaign by state and local gay, lesbian, bisexual and transgender advocacy groups. Then Gov. Mark Schweiker, a Republican, signed the measure into law on Dec. 3, 2002.

Federal Victim Compensation Fund Awards Same-Sex Partner. In January, the Justice Department granted federal victim compensation to Peggy Neff, who lost her partner, Sheila Hein, in the Sept. 11, 2001, attack on the Pentagon. The compensation came from a federal fund created to help families of victims of the Sept. 11 attacks. GLBT advocacy groups hailed the decision, saying it was the first known time the federal government has recognized a same-sex relationship. Lambda Legal, which represented Neff, has indicated that at least 22 other domestic partners have filed or considered filing claims under the fund.

Louisville and Jefferson County Non-Discrimination Ordinances Upheld. Two Kentucky jurisdictions, the city of Louisville and Jefferson County, amended their non-discrimination ordinances in 1999 to include "sexual orientation" and "gender identity." Dr. J. Barrett Hyman, a physician practicing in Louisville, filed suit against both the city of Louisville and Jefferson County, claiming the ordinances violated his Free Exercise, Due Process and Equal Protection Clause rights under the state and federal constitutions. A three-judge panel of the U.S. Court of Appeals found Hyman lacked standing to

challenge the ordinance and could not demonstrate the “actual present possibility of future harm.” The court reasoned that Hyman’s views were widely known in his community and therefore it would be unlikely that any gay or lesbian applicants would pursue employment in his office. Moreover, no one that Hyman even suspected of being gay applied to work for him during his 32 years of practice. This ruling vacated an earlier decision in U.S. District Court that said the ordinances did not violate Hyman’s rights. The American Civil Liberties Union represented the Fairness Campaign, the Kentucky GLBT group that lobbied for passage of the ordinance and intervened as a defendant. *J. Barrett Hyman, M.D. v. City of Louisville*, 2002 U.S. App. LEXIS 25793.

EMPLOYMENT

Cracker Barrel Adds Sexual Orientation to Non-Discrimination Policy. The Cracker Barrel board of directors unanimously voted Nov. 26 to add sexual orientation to the company’s non-discrimination policy. GLBT advocacy groups began targeting the company in the early 1990s following the leak of a memo instructing Cracker Barrel employees to demonstrate “normal heterosexual values.”

Detroit Police Officer Loses Employment Discrimination Suit. Linda Mack, a tenured Detroit police officer, lost her final opportunity for a rehearing of an allegation of employment discrimination based on sexual orientation. The Michigan Supreme Court denied a rehearing of Mack’s case, after previously finding for the city of Detroit. Mack, hired as a police officer in 1974 and promoted numerous times, experienced discrimination and harassment and ultimately retired from the police force. She sued Detroit on the basis of a city charter prohibiting sexual orientation discrimination. The court found no cause of action implied in the charter, and furthermore noted that if such a cause of action did exist under the city charter, the suit would be precluded by Michigan’s state tort liability act. *Mack v. City of Detroit*, 2002 Mich. LEXIS 2045.

Former Manager of Helmsley’s Hotel Wins Jury Award. Charles Bell, former general manager of Manhattan’s Park Lane Hotel, sued hotel owner Leona Helmsley in the New York Supreme Court in Manhattan for sexual orientation discrimination. Bell was awarded \$10 million in punitive damages and more than \$1 million in compensatory damages. Supreme Court Justice Walter Tolub instructed jurors to consider Helmsley’s net worth in their deliberations.

FREE SPEECH, RELIGION AND EXPRESSION

Public Library Can Restrict Forum to Government and Library Materials. The Ochopee Regional Library System in southern Georgia had permitted the display of various free publications, including the *Gay Guardian Newspaper*, in their lobby. Following objections to the newspaper, the library restricted access to only library- and government-related publications. The newspaper’s publisher, with the assistance of the ACLU, sought damages and injunctive relief against the library for a violation of free speech rights. The court found for the library and denied the newspaper’s request for a preliminary injunction, finding the library was justified in closing the lobby forum to avoid reasonably anticipated disruption and potential litigation. Furthermore, since the closure affected both GLBT and non-GLBT interests equally, the court concluded that a First Amendment claim would not be successful. *The Gay Guardian Newspaper v. Ochopee Regional Library System*, 2002 U.S. Dist. LEXIS 23970.

MARRIAGE/DOMESTIC PARTNERSHIP/CIVIL UNIONS

Grassroots Effort in New Jersey to Legalize Same-Sex Marriage. Across the state, meetings are occurring aimed at building support for a marriage equality lawsuit and potential domestic partnership legislation. GLBT advocacy groups are joining with other progressive organizations to fight for same-sex marriage and domestic partnership legislation. Seven same-sex couples represented by Lambda Legal are named in the lawsuit, which was filed in June 2002 in New Jersey Superior Court in Jersey City. New Jersey’s attorney general is expected to file a response later this month in the case, *Lewis v. Harris*, L-00-4233-02.

New York City's Metropolitan Transit Authority Sued for Same-Sex Partner Benefits. James Reilly, a 57-year-old subway operator, sued the New York City Transit Authority (MTA) for equal health benefits for his domestic partner of 20 years. Reilly started engineering subway cars in 1970 and later worked as a public advocate for the New York City Council, where his partner was eligible for health coverage. When he returned to work for the MTA, Reilly wrongly presumed his partner would be covered. Although same-sex partners of city employees are entitled to such benefits, the MTA argues it isn't required to provide the benefits because it is an independent agency, separate from the city and state.

New York Man Sues for Partner's Wrongful Death. John Langan filed suit against St. Vincent's Hospital in New York City for medical malpractice and the wrongful death of his 15-year partner, Neal Conrad Spicehandler. The two men were joined in a civil union under Vermont law. New York law allows spouses, children, parents, siblings, grandparents, uncles, aunts, cousins and other specified relatives to sue for wrongful death. Nowhere does the wrongful death law require that a spouse have a marriage certificate. St. Vincent's Hospital is asking a state court to block Langan from suing on the basis that the two men were not married and can't be legally recognized as such. Lambda Legal is representing Langan on the case.

Same-Sex Couple Appeals Decision for Country Club Privileges. B. Birgit Keobke and Kendall E. French are suing the Bernardo Heights Country Club (BHCC) for discrimination based on sexual orientation. The couple, having taken every legal step available to cement their relationship including registering as domestic partners in San Diego and the state of California, is suing because French is restricted to playing on the course only six times a year and for an additional fee. Married couples have unlimited access to the course and the club. Keobke began asking the BHCC to grant French the same golfing rights as other spouses in 1994. Over the years, the board has refused Keobke's requests, even after her lawyer submitted their formal domestic partnership agreements. The couple, with the support of Lambda Legal, recently appealed the dismissal of their case. A decision is not expected until 2004.

Wrongful Death Suit Settled. The wrongful death suit brought after the death of Diane Whipple, who was attacked and killed by two dogs in her San Francisco apartment building, was settled on behalf of Whipple's partner, Sharon Smith, and her mother, Penny Kelly. The settlement, the terms of which remain undisclosed, was negotiated by the National Center for Lesbian Rights and brings closure for Whipple's partner and mother after two years of litigation.

FAMILY LAW

Ohio Supreme Court Amends Prior Decision Regarding Same-Sex Parenting. The Ohio Supreme Court amended its previous opinion in a widely publicized lesbian parenting case, deleting language that referred to second-parent adoption as unavailable in Ohio. Although the court rejected the plaintiffs' claim that both women were the parents of each other's children, whom they raised together, the court stated that the juvenile court could grant the women shared custody of the children if it found that doing so would be in the best interests of the children. The couple feared the language could hurt their case if they ever tried to seek a second-parent adoption. *In re Bonfield* (2002), 97 Ohio St. 3d 387 (Ohio 2002).

Pennsylvania Appeals Court Holds Lesbian Mother Responsible For Child Support. A three-judge panel of the Pennsylvania Superior Court unanimously affirmed a trial court ruling that ordered a non-biological, non-adoptive parent (H.A.N.) to pay child support for the five children she jointly parented with her former partner. On appeal, H.A.N. claimed she should not be required to pay child support since she is not a legal parent, even though she had court-ordered joint legal custody of the children. Since she had acted as a co-parent in all ways from the children's conception through their care and support, the court found she could not claim she had no duty of support. *L.S.K. v. H.A.N.*, 2002 Pa. Super. LEXIS 3806.

California Court Hears ERISA Pre-Emption Case of Lesbian Mother. A San Diego court heard arguments for reinstatement in early February in the case of Guadalupe T. Benitez, a lesbian denied alternative insemination treatment by her doctors based on their religious objections to her relationship with another woman. The case was dismissed last year based on the trial court's analysis that the federal Employee Retirement Income Security Act (ERISA) statute pre-empts state non-discrimination laws, thereby precluding Benitez from making a sexual orientation discrimination claim with respect to her doctors' refusal to treat her. Lambda Legal, supporting Benitez, argues that Benitez's case falls outside the scope of ERISA, which pre-empts state laws that interfere with the operation of employee welfare and pension plans, because there was no question that alternative insemination services were covered by her employer-sponsored health insurance. The doctors admitted that the only reason Benitez was denied care was her sexual orientation, and Benitez argues this violates California's non-discrimination law, the Unruh Civil Rights Act. A decision on whether the case will be reinstated is expected in the next several months. *Benitez v. North Coast Women's Care Medical Group, Inc.*

CRIMINAL LAW

Convicted Murderer Sentenced to Transgender Unit. New Hampshire transsexual woman Jo Shanley, who pleaded guilty to second-degree murder for killing her sister, was sent to a men's state prison in Connecticut with a special transgender unit. Shanley requested to be placed in the women's prison in New Hampshire, but prosecutors instead arranged for her to be incarcerated in the transgender unit of the men's prison.

EDUCATION

University of Pittsburgh and ACLU Continue Fight Over Partner Benefits. The University of Pittsburgh and the ACLU head back to court nine months after a school panel recommended against offering same-sex health benefits. The announcement followed years of legal battles and an agreement reached in May 2001 in which the school promised to consider domestic partner benefits for its employees. However, the school recently filed a brief in Allegheny County Common Pleas Court, arguing that the 1990 city non-discrimination law is invalid and seeking to permanently bar the city from hearing the case.

Eighth Grader Barred from Gym Class Sues Under California's Non-Discrimination Law. The ACLU and NCLR filed suit in federal court in Riverside on behalf of Ashly Massey from Banning, Calif., who was forced to sit in the principal's office during gym class after the gym teacher heard she was a lesbian. The lawsuit states the Banning Unified School District violated Ashly's Equal Protection rights and her rights under the California Student Safety and Violence Prevention Act of 2000. The complaint seeks damages and an injunction requiring the school to develop policies, training and other measures to prevent future discrimination. *Massey v. Banning Sch. Dist.*

Kentucky's Boyd County Board Of Education Bans All School Clubs. In an apparent attempt to avoid a lawsuit by the ACLU, the Board of Education of Boyd County has decided to ban all school clubs in the district. Students of Boyd County began urging the school to allow the gay-straight alliance (GSA) in February 2001. A school council approved the application of the GSA in its high school in October 2002, following a letter from the ACLU articulating the federal requirement that the school treat all non-curricular clubs equally. Local ministers launched an appeal of that decision, and subsequently the board announced its ban of all school clubs. The ACLU has filed suit in federal court to force the board to allow students to form the GSA, alleging the board violated the student's First Amendment rights and rights under the federal Equal Access Act, 20 U.S.C. 4071 (1994).

Texas Student Takes Legal Action to Form Gay-Straight Alliance. The ACLU filed suit in federal court on behalf of a Klein, Texas, high school student who is attempting to start a GSA, following the school's

refusal to act on the student application. The complaint contends the school violated both the First Amendment and Equal Access Act, and requests a preliminary injunction ordering the school to allow the GSA.

University of Montana Policy Denying Benefits to Same-Sex Partners Found Constitutional. A district judge ruled that a University of Montana policy denying health insurance benefits for same-sex partners is constitutional. The policy, based on marital status of employees and not on sexual orientation per se, is a “reasonable and objective standard” for determining eligibility of employment benefits, ruled Judge Thomas Honzel. The ACLU, representing the plaintiffs, plans to appeal to the Montana Supreme Court. Cause No. CDV-2002-97, *Snetsinger v. Montana University System*, case dismissed Nov. 22, 2002.

HIV/AIDS

President Announces Increased Funding for AIDS Fight in U.S., Africa In his State of the Union address, President Bush announced his proposal for an additional \$15 billion over the next five years to address the HIV and AIDS crisis in Africa. Several days later, the president added that he would request \$16 billion for domestic HIV prevention and treatment, a 7 percent increase over the 2003 budget. He also announced measures to speed health care providers’ access to a new, faster test for the HIV virus to promote early treatment for infected persons.

Anti-Gay Appointee to PACHA Withdraws. HIV/AIDS advocacy and GLBT civil rights organizations applauded the withdrawal of Jerry Thacker, presidential appointee to the Presidential Advisory Council on HIV/AIDS (PACHA). Thacker’s record of anti-gay activism and unscientific approaches to AIDS prevention threatened to undermine the credibility of the council. Thacker referred to AIDS as the “gay plague,” and advocated controversial conversion therapies to “cure” people of homosexuality as a means of preventing the spread of AIDS.

Trial Begins For Man Charged with Criminal Transmission of HIV. A Minnesota man, charged with having sex with an Iowa man without telling him he was HIV positive, is being tried in Johnson County District Court, Iowa. Only a small number of similar cases have been tried in the state since the law was enacted four years ago.

IN THE STATES

Louisiana Court Upholds Sodomy Laws. The Louisiana 4th Circuit Court of Appeals affirmed the trial court’s amended opinion in a long-running challenge to the state’s sodomy law, upholding the Louisiana Crime Against Nature statute and several other related statutes. The Louisiana Electorate of Gays and Lesbians Inc., a non-profit organization, along with numerous individuals, sought to have the sodomy statute deemed unconstitutional. The parties argued the statute was unconstitutional on several bases, including Equal Protection, arbitrary application and enforcement against gays and lesbians, free speech, and impairment of the right to assemble. The plaintiffs also claim that the statute’s enforcement subjected them to cruel and unusual punishment. *Louisiana Electorate of Gays and Lesbians, Inc. v. State of Louisiana* 2002 La. App. LEXIS 3689.

Boy Scout Affiliates Lose Battle For Free Mooring Members of an affiliate organization of the Boy Scouts of America, the Sea Scouts, moored their boats free of charge at the Berkeley, Calif., Marina, owned by the city of Berkeley. Following the 1997 enactment of a city policy forbidding the use of city funds to subsidize private group activities that discriminate based on religion and sexual orientation, among other grounds, Berkeley informed the Sea Scouts that they could no longer moor their boats at the city marina unless they expressly abandoned their discriminatory policy against gays as well as atheists. The Sea Scouts declined to comply with this requirement and their free rent subsidy was ended. The Sea Scouts sued the city of Berkeley under breach of contract and First Amendment and Equal Protection Clause claims. The trial and appellate court found no valid contract, nor any First Amendment or Equal

Protection violation. The 1st Appellate District Court of California said that the Sea Scouts “were treated the same as any other group that discriminates.” *Evans v. City of Berkeley*, 2002 Cal. App. LEXIS 5099.

California and Connecticut Legislatures Consider Same-Sex Relationship Legislation. California's Assembly Bill 205 would provide important benefits for California's 400,000 registered same-sex couples and their children. The bill would significantly expand the rights and responsibilities currently available to couples who register with the state as domestic partners. The bill also would require mutual responsibility for debts, disclosures of conflicts of interest, and joint assessment of income for determining eligibility for government-assistance programs. Three bills on same-sex relationships have been introduced in the Connecticut Legislature. House Bill 6389 would extend the rights and responsibilities of marriage to same-sex couples, and H.B. 6388 would establish a category of civil unions similar to those available under Vermont law. The anti-gay H.B. 5356 would define marriage as between one man and one woman and prohibit same-sex couples from marrying.

Mississippi Commission on Judicial Performance Recommends Sanctions For Judge. A state commission on judicial conduct recommended that the Mississippi Supreme Court penalize Mississippi Justice Court Judge Connie Wilkerson, a local judge who publicly advocated that GLBT people should be institutionalized. This recommendation marks only the second time a judicial commission in the South has recommended penalizing a judge for such bias, and marks a first for Mississippi. Mississippi judicial conduct codes explicitly direct judges to avoid expressions of bias or prejudice based on sexual orientation.

Georgia Supreme Court Throws Out Fornication Law. The Georgia Supreme Court ruled unanimously that a 170-year-old law that banned all sex outside of marriage violates the right to privacy. While the case involved two heterosexual teens, the ACLU attorneys who represented the teens advise that the decision applies to GLBT people as well. Following *Powell v. State* 270 Ga. 327, the court found the law violated privacy rights protected by the Georgia Constitution. *In re: J.M.* 2003 Ga. LEXIS 2.

GENDER IDENTITY AND EXPRESSION

Maryland High Court Hears Sex Change Case. In one of the first cases involving gender identity issues to reach a state high court, the Maryland Court of Appeals issued a decision Feb. 11 in the case of Janet Heilig Wright. Born in Pennsylvania under the name of Robert Heilig, Wright sought a legal name change and sexual identity designator change in the Montgomery County Circuit Court in Maryland. She was granted the former but not the latter, based in part on the court's determination that it lacked jurisdiction to grant a legal sex change to a person born outside Maryland. In ruling that Maryland circuit courts may indeed exercise jurisdiction in such cases, the Court of Appeals specified, however, that Heilig had not shown sufficient evidence that she had permanently changed her sex in order to justify the legal sex designator change. The case was remanded to the Montgomery County Circuit Court with instructions to consider such evidence, and the Court of Appeals indicated that if evidence supported the premise that Heilig's sex change was “permanent and irreversible” and created consistency between external anatomy and the new gender, the legal sex change should be granted. *In the Matter of Heilig*, 2003 Md. LEXIS 31.

Nebraska Supreme Court Finds Damage Award Reasonable. JoAnn Brandon, mother of Brandon Teena, won a district court judgment awarding \$98,223 in damages for negligence, wrongful death and intentional infliction of emotional distress in connection with her daughter's death as the result of an anti-transgender motivated attack. Brandon appealed the district court finding on the basis the damages were insufficient. The Nebraska Supreme Court affirmed this judgment, finding the damages reasonable. *Brandon v. County of Richardson*, 2002 Neb. LEXIS 233. Lambda Legal represented Brandon.

Key West Adds Gender Identity and Expression to Human Rights Ordinance. The Key West Commission unanimously amended its human rights ordinance in early January to include gender identity and expression. Key West will become the first Florida city to ban transgender discrimination upon Mayor Jimmy Weekley's signing. The ordinance protects against discrimination in employment, housing, public accommodations and lending, giving enforcement authority to the state attorney's office for housing violations and to the court system for other violations.

Transgender Resident of Virginia Wins Right to Revise Birth Certificate. A female-to-male transgender resident of Virginia recently won the right to obtain a revised birth certificate reflecting his new gender after state officials initially rejected his request. Lambda Legal in Atlanta threatened to sue officials in the Virginia Department of Health's Division of Vital Records on his behalf in late 2002. Virginia law allows amendment of a person's birth certificate upon court order.

New York State Court Judge Rules in Favor of Transgender People. A New York State Court judge in Manhattan ruled in favor of a leading Latino HIV/AIDS agency that was being threatened with eviction by a commercial landlord who sought disclosure of the anatomical sex of the agency's clients. The judge ruled that the physical anatomy of transgender people is irrelevant to gender identity, in response to the landlord's information request. The landlord also sought the client's names; a move the judge found would violate their HIV confidentiality rights. The ACLU AIDS Project represents the Hispanic AIDS Forum in its suit against the landlord, after the landlord refused to negotiate ways to accommodate transgender clients and to renew their lease, a violation of state and local laws that prohibit discrimination based on sex, gender and disability. The Hispanic AIDS Forum is seeking damages for higher rent and relocation expenses. *Hispanic AIDS Forum v. Estate of Joseph Bruno*.

New York Supreme Court Judge Finds Discrimination against Transgender Youth. New York Supreme Court Judge Louise Gruner Gans ruled that Mariah Lopez, a transgender youth precluded from dressing as a female in the foster care system, was subjected to discrimination based on disability. Lopez has been diagnosed with gender identity disorder and is undergoing hormone replacement therapy, with the hopes to complete her transition to female by 2004. The judge found the foster care facility, run by the Administration for Children's Services, refused to accommodate her needs in violation of the New York State Human Rights Law, and ordered the agency to allow Lopez to dress as a female. *Doe v. Bell*, Supreme Court of the State of New York, County of New York, Part 61, Index No. 112508/02.

HATE CRIMES

Cincinnati City Council Adds Sexual Orientation to Hate Crimes Ordinance. The Cincinnati City Council voted 7-2 on Feb. 5 to add sexual orientation to the city's hate crimes ordinance. Mayor Charlie Luken is expected to sign the measure into law. The move was motivated in part by the December murder of Gregory Beauchamp, a 21-year-old African-American gay man. According to witnesses, a car full of men yelling anti-gay epithets pulled alongside Beauchamp and his friends as they walked toward a nightclub on New Year's Eve. Shots were fired, killing Beauchamp. The council's vote is considered particularly important given Cincinnati's history of defending its anti-gay rights provision, Article XII, which passed in 1993 with the support of 63 percent of Cincinnati voters.

South Beach Shooting Denounced By GLBT and Civil Rights Advocacy Groups. Earnest Robinson, 23, of Hollywood, was heading home after spending New Year's Eve at the nightclub, Twist, when he was approached by two men, one of whom tried to pick him up. Apparently mistaken for a woman, Robinson said, "Leave me alone. I'm a man." Following this, one of the men became upset with his friend's evident amusement at the misunderstanding and shot Robinson. Police arrested Adrian Miller and Billy Ledan, both 19, shortly after the shooting. Both are charged with attempted murder-hate crimes and are

jailed without bond. South Beach officials say the shooting is an aberration in a city that prides itself on tolerance.

FBI Hate Crimes Report for 2001 Released. The FBI Hate Crimes Report for 2001, released Nov. 25, 2002, cited an increase in hate crimes motivated by the victim's sexual orientation from 1,299 in 2000 to 1,393 in 2001. Skepticism regarding these statistics is prevalent among human rights groups, including those representing GLBT persons, because many states' laws do not recognize sexual orientation or gender identity as hate crimes categories and, therefore, many states don't track or report the incidents. Moreover, state and local officials are not required to report their hate crime statistics to federal officials, resulting in federal data full of "false zero" reports. Additionally, perceived police indifference and fear may preclude victims from reporting crimes.

Philadelphia Police Investigation Continues Regarding Death of Transgender Person. Nizah Morris, a 47-year-old transgender woman, received a ride home from police after drinking heavily and falling asleep in the street. A few minutes later, passers-by found her lying unconscious in the street a block away. Morris, a popular member of the transgender community, was born with the legal name Robert, but had been living as a woman for more than 20 years. While the medical examiner's office has ruled the death a homicide, police are awaiting results of further medical tests before deciding the cause.

Jury Convicts Man Who Unsuccessfully Claimed "Homosexual Defense." James Talmadge West Jr., 37, claimed self defense in the Aug. 17, 2001, stabbing and mutilation of 43-year-old Brian Bullock, claiming Bullock attempted to rape him. West used household tools, including a portable drill, to mutilate Bullock after stabbing him to death. He was sentenced Jan. 30 to life in prison.

Family of Murdered Man Settles Wrongful Death Suit. The family of hate crimes victim J.R. Warren settled a wrongful death lawsuit against his admitted killers. Warren, a 26-year-old African-American gay man, was beaten and crushed under a car in July 2000 by two men. Warren's parents filed a civil action in June alleging the killers inaccurately portrayed their son as a sexual predator. One of the teens convicted of first-degree murder in the attack apparently believed that Warren told others of a long-standing sexual relationship the two shared. The amount of the financial settlement was not released.

MILITARY

Moskos: "Don't Ask, Don't Tell" Policy Should Be Scrapped with Draft. Following a proposal to restart the draft by Reps. Charles Rangel, D-N.Y., and John Conyers, D-Mich., Charles Moskos, the primary architect of the Pentagon's "don't ask, don't tell" policy, stated the policy should be abandoned in the event of a draft. Moskos, an influential military sociologist behind much of the drafting of the current ban, stated it should be abolished if there is a draft due to mandatory service representing a "higher virtue" than the privacy considerations of heterosexual soldiers. Furthermore, Moskos commented that the policy could act as a loophole, making it easy for people to avoid service.

RELIGION

Bush Administration's Faith-Based Initiative. The Human Rights Campaign is responding to seven policy documents issued by the Bush administration on their faith-based initiative. President Bush signed two executive orders on Dec. 12, 2002. The first orders federal agencies to follow a set of "charitable choice" principles that actively encourage the distribution of federal grants to religious organizations. The second orders the opening of offices of faith-based initiatives at the Department of Agriculture and the U.S. Agency for International Development (USAID), and orders them to increase the participation of religious organizations in the programs administered by the agencies. The administration also issued four sets of proposed regulations (for federal grant programs) that HRC argues do not ensure that people will not be discriminated against based on their sexual orientation and/or gender identity. HRC is submitting

detailed comments on those proposed regulations. Finally, the administration issued two sets of “guidance” – one on the faith-based initiative in general and the other related to supplemental educational services. Although they acknowledge that religious organizations receiving federal funds may be required to comply with state and local civil rights laws, they are non-binding. The administration’s position with the initiative is that religious organizations receiving federal funding can discriminate in hiring and employment practices based on religion. HRC also remains opposed to allowing religious organizations to discriminate based on religion in providing these federally funded secular services, because that rationale has been used in the past to discriminate based on sexual orientation. HRC maintains that federal money should never be used to support discrimination against any citizen

Vatican Rules “Transgender” Doesn’t Exist. The Catholic News Service released a confidential document instructing bishops not to alter baptismal records to change the sex listed under any circumstances, ruling that transgender “does not exist” and, according to the Roman Catholic Church, one cannot change one’s sex. The document also states that those who have undergone sex change procedures aren’t eligible to marry or to be ordained as a priest.

INTERNATIONAL

Britain’s Proposal for Same-Sex Partnership Benefits Well Received. Britain’s government announced plans for officially recognized civil partnerships that would give same-sex couples property and inheritance rights. Although the partnerships would not afford same-sex couples the legal status of marriage itself, the partnerships are intended to place same-sex partners on similar legal footing. Even opposition Conservatives, who typically resist GLBT civil rights initiatives, publicly supported the proposal. Plans to codify this proposal into legislation will proceed, but not for at least a year.

Tasmania’s Proposed Non-Discrimination Act Provides GLBT Protections. Tasmania’s proposed non-discrimination act broadly prohibits discrimination against same-sex couples and is free of exemptions typically found in such laws. For example, under the law, even the Catholic Church would not be allowed to exclude gay men from priesthood and blood banks could not prohibit gay men from donating. Furthermore, the proposed changes are unprecedented because they apply to all “significant personal relationships,” including older companions and extended Aboriginal families. This proposal represents a stark shift from the environment just seven years ago when GLBT films were banned, and 14 years ago when GLBT activists were regularly arrested during public demonstrations. GLBT advocacy groups relate the transformation in government policies to social change based on persistent and prevalent debate in Tasmania surrounding GLBT issues.

South African Parents Await Ruling. The Constitutional Court of South Africa will determine if two lesbian women must be recognized legally as parents. The women from Durban, who may not be identified by order of the Durban High Court, are being referred to as J and B. B, with the assistance of one of Johannesburg’s most well known gynecologists, became pregnant with one of J’s eggs fertilized by sperm from an anonymous donor. B gave birth to healthy twins at the end of 2001. When registering the births, the women indicated B as the mother and, where forms required information about the father, they wrote in “parent,” indicating J. The Department of Home Affairs refused to approve the registration because the women are unmarried. J and B then asked the Durban High Court to rule them both as parents with the same rights afforded heterosexual couples. The Durban High Court ruled in their favor, a ruling J and B seek to have ratified by the Constitutional Court.

Armenia Removes Law Banning Sex between Men from Criminal Code. The Armenian National Assembly voted to adopt an updated criminal code, removing a provision banning sex between men. The country repealed Article 116 of its criminal code that punished sex between men with up to five years in prison. Seven men were sentenced in Armenia for sex in 1996, four in 1997, and four in 1999.

European Parliament Approves Report Extending Marriage Rights to Same-Sex Couples. The European Parliament's Gay and Lesbian Intergroup issued a report proposing that live-in same-sex and heterosexual couples be afforded the same legal rights that married couples enjoy. The Parliament narrowly approved the report, following a previous vote opposing it. This vote isn't binding on member states, but it does constitute a legal point of reference for them. The European Parliament, which attaches great importance to protecting human rights, traditionally uses its power of assent as a way of promoting respect for human rights. Their public approval of the report is expected to influence member states' approaches to same-sex couples' rights in the family law context.

Cape Town South Africa Massage Parlor Murders Could Be Hate Crime. Nine men at a Cape Town all-male massage parlor were killed and one wounded. The victims were bound and shot execution style with their throats slit. Politicians, sex workers and GLBT advocacy groups are outraged as police explore leads that suggest four male killers. The Lesbian and Gay Equality Project indicated their concern about threats issued by various fringe groups over recent months showing an intention to perpetrate violence against GLBT people. Police suspect links to gang activity.

Acknowledgments/Sources. In addition to primary court and legislative materials, sources for the above summaries include Prof. Arthur S. Leonard's invaluable *Lesbian/Gay Law Notes*, and materials from the American Civil Liberties Union, Gay & Lesbian Advocates & Defenders, GenderPAC, Lambda Legal and the National Center for Lesbian Rights. We thank these valued allies for their helpful review of, and contributions to, *LAW briefs*. **Writers/Editors:** Melinda Slusser, Law Fellow/Author; Sharon Debbage Alexander, Staff Counsel/Editor; Cheryl Henson, Paralegal.

2003 by the Human Rights Campaign ©. All rights reserved. HRC grants permission for the reproduction and redistribution of this publication only when reproduced in its entirety and distributed free of charge. The Human Rights Campaign name and the Equality logo are trademarks of The Human Rights Campaign.