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Doni Gewirtzman

New York Law School, doni.gewirtzman@nyls.edu

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**CIVIL RIGHTS LAW IN TRANSITION:
THE FORTY-FIFTH ANNIVERSARY OF THE
NEW YORK CITY COMMISSION ON
HUMAN RIGHTS**

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New York City Commission on Human Rights
and the
Fordham Urban Law Journal*

LIST OF PARTICIPANTS

MICHAEL BERTTY
Director, ADR Program
U.S. EEOC, N.Y. District Office

LUCIA DAVIS-RAIFORD
N.Y.C. Police Department,
Domestic Violence Unit

JOHN D. FEERICK
Dean
Fordham University School of Law

ALFRED G. FELIU, ESQ.
Vandenberg & Feliu, LLP

DONI GEWIRTZMAN, ESQ.
Lambda Legal Defense and
Education Fund

JULIE GOLDSCHIED, ESQ.
NOW Legal Defense and
Education Fund

LOUIS GRAZIANO, ESQ.
U.S. EEOC, N.Y. District Office

JOHN P. HERRION, ESQ.
Assistant Program Counsel
Eastern Paralyzed
Veterans Association

CHERYL R. HOWARD, ESQ.
General Counsel
N.Y.C. Commission on
Human Rights

JAMES B. JACOBS
Professor
New York University School of Law

ALBERT KOSTELNY, ESQ.
N.Y.S. Division of Human Rights

FREDERICK M. LAWRENCE
Professor
Boston University School of Law

GINA M. LOPEZ, ESQ.
General Counsel
N.Y.S. Division of Human Rights

SUSAN T. MACKENZIE, ESQ.
Arbitrator and Mediator
Susan T. MacKenzie, P.C.

WAYNE N. OUTTEN, ESQ.
Outten & Golden, LLP

RUSSELL PEARCE
Professor
Fordham University School of Law

NADINE STROSSEN
Professor
New York Law School

MARTA B. VARELA, ESQ.
Commission Chair
N.Y.C. Commission on
Human Rights

RANDOLPH E. WILLS, ESQ.
Deputy Commissioner,
Law Enforcement Bureau
N.Y.C. Commission on
Human Rights

DEVELOPMENTS IN SEXUAL ORIENTATION LAW

MR. WILLIS: We are going to begin our last panel of the day. By way of brief introduction, in April of 1986, New York City became one of the first political jurisdictions in the United States to enact a law prohibiting discrimination on the basis of sexual orientation in employment, housing, and public accommodations.²³⁰ Now nearly fourteen years old, the law has proven to be an important means of securing equal opportunity not only for members of the gay and lesbian community, but also members of many other communities because it defines sexual orientation as heterosexuality, homosexuality, or bisexuality.²³¹ The importance of this law is evident in light of the fact that only eleven states,²³² not New York State, afford such protection, and that efforts to pass the Employment Non-discrimination Act,²³³ which would prohibit employment discrimination on the basis of sexual orientation, have proven unsuccessful. Similarly, efforts to litigate sexual orientation discrimination claims based on Title VII sexual harassment law²³⁴ have generally met discouraging ends.

Nevertheless, we are not going to end on that discouraging note. I am very pleased that we are joined today by Doni Gewirtzman, who is a staff attorney at the New York Headquarters of Lambda Legal Defense and Education Fund, the nation's oldest and largest legal organization dedicated to the full recognition of civil rights of lesbians, gay men and persons with HIV/AIDS. Since joining Lambda in 1998, Mr. Gewirtzman has represented a Salt Lake City High School Gay/Straight Alliance in their lawsuit against their school district, which banned all extracurricular student groups in order to prevent the club from meeting.²³⁵ Mr. Gewirtzman also authored Lambda's brief in *Arzig v. Benkendorf*²³⁶ and has coordinated Lambda's efforts on behalf of older lesbians and gay men, as well as the regulations concerning reproductive technologies.

230. N.Y.C. ADMIN. CODE § 8-107.

231. *See id.* at § 8-102.

232. The eleven states are California, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont and Wisconsin.

233. S. 2238, 103d Cong. (1994).

234. *See* Civil Rights Act of 1964, 42 U.S.C. § 2000e (1999).

235. *East High Gay/Straight Alliance v. Board of Educ.*, 30 F. Supp. 2d 1356 (D. Utah 1998).

236. Brief for LAMBDA, *Estate of Carl Benkendorf v. Arzig*, No. A-005469-97T5 (N.J. Super. Ct. App. Div. filed 1998).

Mr. Gewirtzman graduated from the University of California at Berkeley School of Law in 1998. He was the Senior Notes and Comments Editor of the *California Law Review*.

MR. GEWIRTZMAN:²³⁷ Thank you all for waiting around. It is really delightful to speak with you today.

As many of you know, federal and New York State law provide no explicit statutory remedies for discrimination based on sexual orientation. Consequently, the New York City Commission Human Rights (the “Commission”) is often the sole resource available to victims of sexual orientation discrimination — particularly poor victims — within New York City. The Commission does tremendous work and I just want to express our appreciation.

Randy asked me initially to talk a little bit about whatever progress has been made on federal or state anti-discrimination legislation. Upon hearing this request, I had a flashback to a “Simpsons” episode. You may know this one. It is the one where Lisa becomes a finalist for a magazine-sponsored essay contest about “Why I Love America.” She flies down to D.C. with Homer, Marge, and Bart. Right after arriving, she discovers with horror that Washington is awash in corrupt, high-priced lobbyists. Instead of giving her inspirational speech on diversity, “Bubble On, Oh Melting Pot,” she gets up to the podium and delivers a series of extemporaneous remarks, entitled “Cesspool on the Potomac.”²³⁸ I promised myself that I was not going to engage in this sort of diatribe, so I am going to briefly touch on the current status of state and federal anti-discrimination legislation, and then I am going to talk about recent developments in equal protection law, specifically in the area of public employment.

The bill in Washington is known as the Employment Non-Discrimination Act (“ENDA”).²³⁹ If passed, this bill would provide federal protections against employment discrimination based on sexual orientation.²⁴⁰ I would note that this bill will not amend Title VII, which is not limited to employment. Instead, ENDA will be a separate universe unto itself, largely for political reasons.

ENDA is obviously very important to the thirty-nine states, including New York, that do not provide any legal remedies for em-

237. The panelist wishes to thank David Buckel and Robert Schonberg for their assistance and insights in preparing these remarks.

238. For a complete list of episodes, scripts and other “Simpsoniana,” see <www.snpp.com>.

239. S. 2238.

240. *See id.* § 3.

ployment discrimination based on sexual orientation. I also want to note that this bill is not a panacea for anti-gay discrimination. ENDA only covers employment.²⁴¹ It does not cover housing, public accommodations, or employment benefits.²⁴² Furthermore, ENDA has a large exemption for religious organizations.²⁴³ Senator Jeffords introduced ENDA again in the past legislative session,²⁴⁴ but the Republican leadership prevented it from getting to the floor in either the House or the Senate for a vote. My sense is that ENDA has taken a back seat to hate crimes legislation, but that did not seem to go anywhere this year either.

On the State level, the State Assembly once again passed the State anti-discrimination bill, but Republican leadership in the State Senate has refused to allow the bill to go for a vote in the State Senate. It is believed that, if passed, the Governor would sign the bill, but who knows? For consolation, I personally take great strength in knowing that, outside of my immediate family, the New York State Legislature is the single most dysfunctional group of people I have ever interacted with.

Hence, given the current lack of federal and state remedies in New York State, the main thrust of my remarks, given the transitional theme of today's Symposium, will be on how recent developments in constitutional theory, specifically the Equal Protection Clause²⁴⁵ and the First Amendment,²⁴⁶ are allowing us to break new ground in the fight against anti-gay discrimination in public employment. There is a huge legal framework that is relevant in public employment cases, including collective bargaining agreements, state law, etc. This framework is outside the scope of my remarks.

What I am going to do is focus on four recent cases. Along with giving you a sense of the way that sexual orientation discrimination plays itself out in a public employment context, two major themes I hope will emerge. First, we have reached the dawn of a new day with regard to sexual orientation discrimination in public employment outside of the military. With solid facts and with good lawyering, cases that would have been lost as recently as five years ago are now able to go forward, and some are actually obtaining sub-

241. *See id.*

242. *See id.* § 4.

243. *See id.* § 7.

244. *See* 145 CONG. REC. S. 7596 (1999).

245. U.S. CONST. amend. XIV, § 1.

246. U.S. CONST. amend. I.

stantial damage awards. Second, as litigators, we no longer have to run in fear from the “rational basis” test in equal protection doctrine. We have received repeated indications from lower courts in the area of public employment law that the Supreme Court’s decision in *Romer v. Evans*, overturning Colorado’s discriminatory Amendment 2,²⁴⁷ was a real watershed in this area, and it is helping to finally turn the tide.

The first case is *Quinn v. Nassau County Police Department*,²⁴⁸ which was decided this past June by a federal district court out on Long Island. James Quinn joined the Nassau County Police Department in 1986 and a year later his fellow officers found out he is gay.²⁴⁹ From 1987 to when he left the force in 1996, Quinn’s fellow officers subjected Quinn to a steady stream of harassment and abuse and Quinn’s supervisors did nothing to stop the harassment.²⁵⁰ For example, Quinn introduced at trial nineteen cartoons that were posted on the precinct bulletin board depicting him as, “a homosexual, a child molester, a transvestite, and a sado-masochist” among other things.²⁵¹ His fellow officers also put rocks in the hubcaps of his car so that when Quinn pursued criminals, the rocks would make noise and the criminals would escape.²⁵² On one occasion, Quinn found his nightstick in his patrol car with the words “P.O. Quinn’s dildo” carved into it.²⁵³ Eventually, the Police Department transferred Quinn to a precinct far from his home.²⁵⁴

Had Officer Quinn walked into your law office five years ago, you probably would not have agreed to take this case. Why not? The first thing you would have done is run to your statute book and look up Title VII,²⁵⁵ and the New York State anti-discrimination law, only to discover that they provide no legal protections against sexual orientation discrimination. Depressing. Then, all of a sudden, a big red sign would begin flashing above your head. You would think to yourself, “Okay, this is a public employer. Maybe I have a constitutional claim here. Why don’t I take this research a step further?” At that point, you would have another weird flashback to the nightmare that was your first-year constitutional law

247. 517 U.S. 620 (1996).

248. 53 F. Supp. 2d 347 (E.D.N.Y. 1999).

249. *See id.* at 351.

250. *See id.*

251. *Id.*

252. *See id.*

253. *See id.*

254. *See id.* at 352.

255. *See* Civil Rights Act of 1964, 42 U.S.C. § 2000e (1994).

class. You begin to recall, in horror, your professor talking about the “rational basis” test and using the Socratic Method to torture your classmate into demonstrating something along the lines of “you have to show that the state legislature was legally insane in order to win an equal protection case where the rational basis standard applies.” This throws you into fits of depression, and you promptly show Officer Quinn the door.

Nevertheless, the district court in this case ruled in Officer Quinn’s favor on the Equal Protection claim.²⁵⁶ This is huge. Why is this huge? For the first time that we are aware of, a court specifically found that a hostile work environment based on sexual orientation harassment can rise to the level of a constitutional violation.²⁵⁷ In public employment context, this case partially fills the gap in Title VII protection.²⁵⁸ Although the Supreme Court recently held that same-sex sexual harassment is actionable under Title VII in *Oncale v. Sundowner Offshore Services, Inc.*,²⁵⁹ the Court also held that the harassment has to be based on sex.²⁶⁰ Beyond this hostile work environment issue, the *Quinn* court also said that, under *Romer*,²⁶¹ this sort of harassment cannot even pass rational basis review.²⁶² This is not the insanity test anymore. You can actually win an Equal Protection claim in a sexual orientation discrimination case where the rational basis test applies.

The court let stand a jury award of \$360,000 in compensatory and punitive damages.²⁶³ This decision, along with two others I am going to talk about, would have been impossible without *Romer*,²⁶⁴ and collectively they demonstrate the potentially tremendous impact that *Romer*²⁶⁵ could have as it is applied in more and more lower courts.

The second case, *Weaver v. Nebo School District*,²⁶⁶ was decided last year by a federal district court in Utah. Wendy Weaver was a public school teacher at an Utah high school who also coached the

256. *See id.* at 357.

257. *See id.* at 358-59.

258. *See* Civil Rights Act of 1964, 42 U.S.C. § 2000e (1999).

259. 523 U.S. 75 (1998).

260. *See id.* at 1002. Query whether or not calling somebody a “faggot” every day for eight years is based on sex, which is actionable under Title VII, or sexual orientation, which is not.

261. 517 U.S. 620 (1996)

262. *See Quinn*, 53 F. Supp. 2d at 356-58.

263. *See id.* at 353, 363.

264. 517 U.S. at 620.

265. *Id.*

266. 29 F. Supp. 2d 1279 (D. Utah 1998).

girls' volleyball team.²⁶⁷ As coach of the volleyball team, she organized a summer volleyball camp for the team, and she called up all the team members to let them know when the camp was to start. During one of these calls, one of the team members asked her, "Are you gay?" Ms. Weaver responded, "Yes." This set off a whole series of meetings,²⁶⁸ and eventually the school district removed Weaver as volleyball coach.²⁶⁹ Later, the Directors of the Nebo School District gave Weaver a letter stating that she was "not to make any comments, announcements, or statements to students, staff members, or parents of students regarding [her] homosexual orientation or lifestyle. If students, staff members, or parents of students ask about [her] sexual orientation, [she was to] tell them that the subject is private and personal and inappropriate to discuss with them."²⁷⁰ This letter was placed in Weaver's personal file.²⁷¹ As a consequence, Weaver filed a suit based on a First Amendment and an Equal Protection claim, and she won on both.²⁷²

I want to talk about the First Amendment claim here for a second. Because Weaver was a public employee, the court used *Pickering v. Board of Education of Township High School*²⁷³ to deal with the First Amendment claim. Under *Pickering*, the court had to determine whether the employee's speech is on a matter of public concern, and whether the employee's interest in speaking outweighs the employer's interest in regulating the speech.²⁷⁴

I want to focus on the first element, speaking on a matter of public concern. After noting that the issue in the case was speech that occurred outside the classroom,²⁷⁵ this court did a groundbreaking thing. The court found that Weaver's speech about her sexual orientation was a matter of public concern and was pro-

267. *See id.* at 1280.

268. *See id.* at 1281. Actually, school officials had been discussing her sexual orientation for some time in response to phone calls from a number of people, including her ex-husband. *See id.*

269. *See id.* at 1282.

270. *Id.*

271. *See id.* Among other things, it appears that the school officials in Utah were worried that Weaver might see students in public places, like the supermarket, and suddenly and spontaneously blurt out that she is a lesbian. In the district's defense, we have to acknowledge that this has long been a problem with heterosexuals, who compulsively blurt out their sexual orientation in all sorts of public places, particularly supermarkets.

272. *See Weaver*, 29 F. Supp. 2d at 1291.

273. 391 U.S. 563 (1968).

274. *See id.*

275. *See Weaver*, 29 F. Supp. 2d at 1284. If she was getting up and saying "I am a lesbian" in the middle of class, there would be different concerns.

tected under the First Amendment.²⁷⁶ The court did so first because “coming out” necessarily involves you in a larger public debate about gay people.²⁷⁷ This is amazing. It is as if somebody paid attention during their queer theory course and then became a federal judge. The court also found constitutional liability because internal discussions within the school district about the case had elevated this issue out of the realm of the private into a matter of public concern.²⁷⁸

On the Equal Protection claim, after referencing Matthew Shepard,²⁷⁹ the court did the same thing as the *Quinn* court:²⁸⁰ it relied upon *Romer*²⁸¹ to hold that anti-gay bias can never be a legitimate basis for a state action.²⁸² The judge then ordered the district to remove the nasty letters they had placed in Wendy Weaver’s file, gave her the volleyball job back, and gave her \$1500 in damages, the stipend she lost for coaching the team.²⁸³ Piece of good news number two.

Case number three, another teacher case decided by a federal district court in Ohio, is *Glover v. Williamsburg School District*.²⁸⁴ Bruce Glover was a teacher at an elementary school in Ohio.²⁸⁵ He received above-average performance evaluations during his first semester teaching at the school.²⁸⁶ In the middle of the school year, however, the district superintendent received a call reporting that Glover had been seen holding hands with his male partner at a Christmas party for sixth graders.²⁸⁷ As it turned out, this rumor was totally and entirely false.²⁸⁸ But who cares?

276. *See id.* (“Indeed, the public reaction in the Nebo School District to rumors about Ms. Weaver’s sexual orientation clearly is evidence of public concern over her sexual orientation.”).

277. *See id.* at 1284 n.3.

278. *See id.* As for the second element, because the defendants could not “point to any actual disruptive events” since the situation began, the court found that Weaver’s interests outweighed those of the defendants. *Id.* at 1284-85.

279. *See id.* at 1287.

280. 53 F. Supp. 2d 347, 356-58 (E.D.N.Y. 1999)

281. 517 U.S. 620 (1996).

282. *See id.* at 1287-89.

283. *See id.* at 1291.

284. 20 F. Supp. 2d 1160 (S.D. Ohio 1998).

285. *See id.* at 1162.

286. *See id.* at 1163-64.

287. *See id.* at 1164.

288. *See id.* at 1164-65.

Glover's performance reviews for the second semester were significantly worse.²⁸⁹ Instead of getting observed two times, which was the legal requirement, the principal visited his class six times.²⁹⁰ Glover claimed the lower ratings and these increased visits were due to discrimination,²⁹¹ but the Board chose not to investigate his claims and decided not to renew his contract, claiming that Glover had problems with classroom management.²⁹² After, Glover brought an Equal Protection claim in this case and was successful.²⁹³

What I want to emphasize here, for those practitioners out there, is how good lawyering was able to convince the judge that the defendant's stated explanation for not renewing the contract was pretext for sexual orientation discrimination. Glover's attorney did four really smart things here. First, he showed that the defendants had renewed the contract of another new teacher whose ratings were lower than Glover's for behavior management.²⁹⁴ As a result, Glover established a benchmark, a similarly situated individual by which the judge can assess the differential treatment. That is key. Second, the attorney had teachers in neighboring classrooms testify that there were no disturbances overheard from Glover's classroom, but they heard screaming kids or chaos or a ruckus from the renewed teacher's classroom.²⁹⁵ Third, an expert witness testified that classroom management is a common problem for new teachers and there was no reason to treat Glover differently for renewal purposes than any other teacher.²⁹⁶ Finally, Glover showed that the district's rationale for not renewing the contract had shifted over time and used this shifting to establish pretext.²⁹⁷ After rejecting the defendant's explanation, the court, like the court in *Quinn*,²⁹⁸ used *Romer* to show that sexual orientation can never be a legitimate government purpose,²⁹⁹ reinstated Glover, and gave

289. See *Glover v. Williamsburg School Dist.*, 20 F. Supp. 2d 1160, 1166 (S.D. Ohio 1998).

290. See *id.* at 1165.

291. See *id.* at 1166.

292. See *id.* at 1167.

293. See *id.* at 1174.

294. See *Glover v. Williamsburg School Dist.*, 20 F. Supp. 2d 1160, 1171 (S.D. Ohio 1998).

295. See *id.* at 1172.

296. See *id.*

297. See *id.* at 1172-73.

298. 53 F. Supp. 2d 347, 356-58 (E.D.N.Y. 1999)

299. See *id.* at 1169.

him back pay, emotional distress damages, and attorney's fees and costs.³⁰⁰ Yes, take these cases.

Thus far, smooth sailing, right? I want to put one final case on your radar screen. It is an Eleventh Circuit case called *Shahar v. Bowers*.³⁰¹ Robin Shahar clerked for the Georgia State Attorney General's Office while she was a law student and was offered a job as an Assistant Attorney General after graduation.³⁰² Before starting her job, Shahar got engaged to her female partner and they planned a marriage ceremony.³⁰³ The Attorney General at the time, Michael Bowers, of *Bowers v. Hardwick*,³⁰⁴ found out about her engagement plans and revoked the job offer.³⁰⁵ Shahar sued the state for violating her First Amendment and Equal Protection rights.³⁰⁶

The Eleventh Circuit's decision was a setback on both counts. On the First Amendment claim, the decision turned on that balancing part of the *Pickering* test.³⁰⁷ The court agreed with the Attorney General's argument that he could not carry out the mission of his office to uphold the law if he had an attorney on staff who holds herself out as married when Georgia law does not allow gay people to get married.³⁰⁸

With regards to the Equal Protection claim, the Eleventh Circuit, unsurprisingly, was totally dismissive of *Romer*, holding that *Romer* was not an employment case and did not apply, and that this case is about conduct, a commitment ceremony, and not an across-the-board denial of rights the way *Romer* was.³⁰⁹ Note, though, that the court ignored the differential treatment with regard to conduct, namely, partners in opposite-sex couples can have as many commitment ceremonies as they want and not get their job offers revoked, but partners in same-sex couples cannot. The best thing to do with this case is to argue that the case is limited to the government lawyer setting, where the mission of the organization

300. *See id.* at 1175-76.

301. 114 F.3d 1097 (11th Cir. 1997).

302. *See id.* at 1100.

303. *See id.*

304. 478 U.S. 1039 (1986).

305. *See Shahar*, 114 F.3d at 1100-01.

306. *See id.*

307. *See id.* at 1110

308. *See id.* Adultery is illegal within the State of Georgia, and three days after the Eleventh Circuit rendered its decision, Michael Bowers held a press conference and admitted that he had a ten-year adulterous affair while he was the Attorney General. The adultery must also have cramped his ability to carry out the mission of his office.

309. *See Shahar*, 114 F.3d at 1110.

is to uphold the law. Nevertheless, it is important to keep in mind that *Shahar* could have an impact on other public employment cases.

This concludes the update on the equal protection front, but I am happy to take questions on any number of issues that we are dealing with, including marriage, talking about how sexual orientation discrimination can be sex discrimination, for those of you that are stuck with litigating under federal and state laws, or anything else that comes to mind.

Thanks so much.

QUESTIONS AND ANSWERS

AUDIENCE: Some of the issues that have come up in the last couple of years have involved the New York State education law. These have been the cases where people, who have applied to teach in New York City or New York State public schools, have had sodomy convictions in other jurisdictions. Because that is a criminal conviction, they have not been permitted to teach in the State of New York or have not been permitted to have licenses. I am wondering whether that issue has come up at Lambda and what your strategies are?

MR. GEWIRTZMAN: I am not aware of any case that we have litigated on this issue. Many states have passed these sex offender reporting statutes, and very often these poor guys who were picked up forty years ago in a parking lot and given some sort of lewd conduct arrest now have "sex offender" stamped all over every public record they have. Very often, this information ends up getting exposed to employers and can really be disastrous for some of them. We have, at times, been able to get in at the right time and added our input to the drafting process. In deciding which offenses should be reported, you might want to exclude these.

AUDIENCE: Can you give us an example of sexual orientation brought as a sex discrimination case?

MR. GEWIRTZMAN: That is a great question because I get to talk about our marriage work, which is terrific. As you know, Lambda has been involved in a number of cases trying to ensure that lesbians and gay men are able to enjoy the freedom to marry. The success, to the extent that we have had success in this area, has come from making sex discrimination arguments under state constitutional provisions.

We brought a lawsuit in Hawaii.³¹⁰ We believed that the Hawaii Supreme Court was poised at any moment to rule in our favor and accept our argument that depriving same-sex couples the right to marry constitutes sex discrimination because the denial was entirely based on the sex of the partner. If the couple suing was of different sexes, there would not be any problem. During this time, the Mormon Church and a number of other religious organizations dropped a ton of money into a ballot initiative in Hawaii, and last November the initiative passed.³¹¹ The initiative was worded so that the Hawaii State Constitution is amended to say that the Hawaii State Legislature has the power to define marriage as being between a man and a woman.³¹² Thus far, the Hawaii State Legislature, for whatever reason, bad legal advice; who knows, has not acted. So this case is continuing to go on. We could get a ruling from the Hawaii Supreme Court any day.³¹³

At the same time, there is another case currently being litigated in front of the Vermont Supreme Court called *Baker v. State of Vermont*. This is not our case, but we filed an *amicus* in this case on the same sort of state constitutional principles. The Vermont Supreme Court could rule any day.³¹⁴ I saw a tape of the oral argument there. It was really exciting, because the State's attorney is in there arguing that they are not allowing the marriage because none of the other forty-nine states and no country in the world allows these kind of marriages and they should not either. One of the five Vermont Supreme Court justices looks at him and says, "Well, somebody has to be first." I thought that was an exciting possibility. At any rate, that is where we have been most successful.

But in terms of thinking about this in the context of Title VII, look at *Price Waterhouse*³¹⁵ and what it has to say about gender stereotyping. If you are firing somebody because they are not living up to the employer's expectations about what a man or a wo-

310. See *Baehr v. Miike*, No. 91-1394-05, slip op. (Haw. 1999).

311. See Gustav Neibuhr, Religious Coalition Plans Gay Rights Strategy, N.Y. TIMES, Aug. 24, 1999, at A10. The coalition included Protestants, Roman Catholics, Jews, and Muslims. See *id.*

312. See *Baehr*, No. 91-1394-05, slip op. at 1.

313. Shortly after this Symposium, the Hawaii Supreme Court issued its decision in *Baehr v. Miike*. See *infra* App. A for the unpublished opinion.

314. Shortly after this Symposium, the Vermont Supreme Court issued its historic decision in *Baker v. State of Vermont*. See No. 98-032, 1999 WL 1211709 (Vt. Dec. 20, 1999).

315. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

man is supposed to behave like, it is possible that you could construe a Title VII claim under gender stereotyping.³¹⁶

MR. WILLS: This, however, is extraordinarily difficult. In fact, there are several recent decisions, very disappointing ones for plaintiffs, where it has been attempted.³¹⁷ In one, the court actually, this was bringing a sexual orientation claim basically under the guise of, if you will, sexual harassment law and trying to bring it in under sex. Nevertheless, it has been extraordinarily difficult to bring those claims pursuant to Title VII, given the very narrow construction the courts give to sex, as opposed to even gender. In fact, some courts make that distinction and say, "Title VII uses the word 'sex' for a reason; it is not gender and it does not encompass an area as broad as gender." So it is quite difficult, but not impossible.

AUDIENCE: Looking to the future, say you win one of these cases and Vermont recognizes marriage between same-sex couples; what happens when they move out of state? Have you projected a strategy of how you are going to deal with that?

MR. GEWIRTZMAN: Massive unprecedented civil litigation. What will happen, I would imagine, is that couples, some working with legal organizations, some not, will immediately fly to Vermont from all over the country, get married, go home, and try to have their marriages enforced within the state. Thirty-some-odd states already have anti-marriage legislation; some do not. So there will likely be litigation on this issue in the other forty-nine states on a variety of different issues. It is very, very complicated. There are giant workbooks that we have about this stuff, looking at different states and what is promising and what is not. But there are so many different variables involved, who knows what is going to happen. It will be exciting, though.

I just wanted to leave with one note. If you have cases involving sexual orientation discrimination, please call us. This is what we do for a living. The law in this area is not easy. It really requires creative approaches and risk taking, and often it is helpful to work with attorneys with experience in this area.

AUDIENCE: Do you also litigate transgender cases?

MR. GEWIRTZMAN: That is a phenomenal question. The answer is yes, we do litigate transgender cases. At the same time, our

316. *See id.* at 250.

317. *See, e.g.,* *Simonton v. Runyon*, No. CV 96-4334, 1999 WL 345956 (E.D.N.Y. May 26, 1999); *Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252 (1st Cir. 1999).

mission statement does not specifically include transgender which upsets some. We have, however, always given a broad reading to our mission – we have been involved in all sorts of civil rights cases, including reproductive rights and race related cases. So within the organization, we don't see our mission to further the civil rights of lesbians, gay men, and persons with HIV/AIDS as limiting us from taking transgender cases.

Thanks.

MR. WILLS: Thank you all very much.