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## GLAD Breaks New Ground for Students

**O**n October 11, Superior Court Judge Linda Giles ruled that a middle school may not prohibit a transgender student from expressing her female gender identity. GLAD obtained a landmark ruling in the first reported decision ever in a case brought by a transgender student, that disciplining a biologically male student for wearing girls' clothing violates her First Amendment rights of free expression and constitutes sex discrimination. The decision confirms that a school may not exert its authority over a student simply to enforce stereotyped ideas of how boys and girls should look, a ruling that has significant impact for all gay, lesbian, bisexual and transgender students. Neither can a school's discomfort with the fact that a biologically male student has a female gender identity justify enforcing a dress code in a discriminatory way.

GLAD brought the case against the Brockton School Department when the school prohibited our client, known in court documents only as Pat Doe, from attending wearing what the principal considered to be girls' clothing. This exclusion from school followed nearly two years of disciplinary action against Pat for wearing girls' clothing, starting from the time she began to identify as transgender near the end of her seventh grade year. Despite acknowledging that girls who wore the same clothes Pat did were not prevented from attending or otherwise disciplined, the school tried to justify its exclusion of Pat based on other students' discomfort. The court rejected this argument, holding that a school may not take action resulting in "the stifling of plaintiff's selfhood merely because it causes some members of the community discomfort."

In strikingly homophobic language, the school has sought to justify its actions arguing that Pat should be prohibited from wearing girls' clothing because it is disruptive to the educational environment to have a biologically male student interacting with other students in female-gendered ways. For

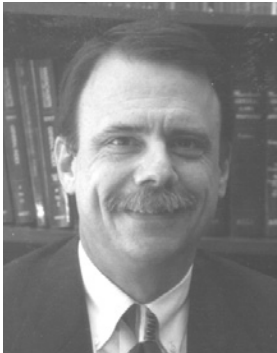
example, the school characterized as disruptive times when Pat had "flirted in class with boys," told a male classmate that "he was cute," and posted her attraction to a male student on an internet site. Because one can safely assume that similar flirtations in a different-sex context are commonplace at a middle school, it would seem that the alleged misconduct was objectionable when engaged in by Pat only because the school viewed it as involving same-sex flirtations. It was also particularly troubling to note that some instances of alleged misconduct were examples where, in fact, Pat had been the victim of hostility or harassment from other students (in two examples, the school said Pat was disruptive because she "caused another student to threaten her with violence" and others not to want to sit next to her in class).

The school appealed the trial court's order that permits Pat to return to classes and prohibits the discriminatory discipline Pat had repeatedly faced. On November 6, a single justice for the Appeals Court heard the case; we await the decision.

*continued on page 4*

# GLAD'S Vision: A United States Where There is Equality and Justice Regardless of Sexual Orientation or Gender Identity

GLAD Moves In The Courts On All Fronts To See This Vision Become A Reality.



GLAD's Executive Director  
Gary Buseck, Esq.

**A**s we all take a breath after the dramatic 2000 election cycle with both seemingly positive and negative repercussions for our community and as we prepare to move into the new year of 2001, where do we stand when we look at our movement for civil rights?

Everywhere around us we see signs of success. The signs may be dramatically positive (and capture the attention of the entire country) like GLAD's freedom-to-marry victory in the Vermont Supreme Court and the subsequent civil union law. Other signs may be equally dramatic and positive (and yet somewhat less attention-grabbing) such as the victories GLAD worked for in Massachusetts and Rhode Island for the recognition of non-biological parents. There also may be losses that nonetheless become the sparks of future victories. Certainly, the Boy Scouts' "victory" in the United States Supreme Court has led to much country-wide soul-searching on the appropriateness of supporting an avowedly discriminatory organization. GLAD is working on one such soul-searching venture as Connecticut determines whether the Boy Scouts can properly be part of the state's workplace campaign to raise money for charities.

**Bottom line** – we have a vision of equality that is strongly taking root in the fertile soil of America's tradition of a commitment to individual dignity and freedom. Our founding vision that all people "are created equal and endowed with certain inalienable rights" is beginning to become reality for our community.

**Plan of action** – move forward at an even faster pace. It is time to accelerate our efforts; it is not time to slow down. We have the momentum, and we must build on it.

So, as we move forward, where do we move? First, two points are critical: (1) we must ask for what we want; and (2) we must not leave anyone behind.

We have come too far to be content with half measures. Alexis de Tocqueville noted, "The mere fact that certain abuses have been remedied draws attention to others, and they now appear more galling; people may suffer less, but their sensibility is exacerbated." Some abuses against lgbt people have been remedied – in some places – but many abuses remain. And it is time for us to demand that they all be remedied.

We also want to be sure that we do not leave anyone behind. And so we work for recognition and support for all family configurations, whether seeking the freedom to choose to marry if we wish or the freedom to arrange our households in less "traditional" ways without having to bear risks not faced by "traditional" families.

Similarly, we work to reform all sex laws that target people based on nothing more than their sexual orientation or gender expression, seeking the end of sodomy laws as well as unfair sex offender registry statutes.

We also recognize those places where we share common ground with the trans-

*continued on page 4*

# The Truth Will Out...

## Rhode Island Rules In Favor of Non-Biological Parents

*In a surprising victory, the Rhode Island Supreme Court ruled in Rubano v. DiCenzo that a lesbian has the right to seek custody and visitation with the child she had helped raise with her former partner in the state Family Courts. The 3-2 ruling delivered on Sept. 25 allows same-sex couples who have separated to seek the assistance of the courts in deciding child custody, visitation and support issues and to ensure decisions are made based upon the best interests of the child standard.*

This case, like others from around the country, came about because one of the former partners denied the “family” relationship that existed and asserted a sole right to custody based on biology or legal adoption. The Rhode Island Supreme Court rejected that anti-gay position and cleared the way for Maureen Rubano of Millfield, Massachusetts to secure court-ordered parental rights and responsibilities with her son Brian, whom she raised with her former partner, Concetta DiCenzo, for Brian’s first 3 1/2 years until the couple separated in 1996.

Rubano and DiCenzo lived in Massachusetts for several years, and then decided to have a child together. Their son was conceived with anonymous donor sperm, and DiCenzo gave birth in 1992. He was joyfully named Brian Rubano-DiCenzo and both women were listed as his parents in his communion records and on birth announcements. Even after the women separated and DiCenzo moved to Rhode Island, the two worked out a visitation arrangement. Eventually, DiCenzo reneged and Rubano went to court. In response, DiCenzo agreed to a visitation schedule, and the Chief Justice of the Rhode Island Family Court, Judge Jeremiah, entered the agreement as a court order.

But DiCenzo reneged on her second agreement, too, forcing Rubano back to court. At that point, DiCenzo made the argument which transformed the case from a private dispute to a matter of concern for the entire lesbian and gay community; she argued that our families are not within the protection of existing laws and therefore no court has the power to order her to share custody and visitation of “her” child.

Judge Jeremiah, recognizing this was a matter of first impression under Rhode Island law, referred the case with specific questions to be answered by the Rhode Island Supreme Court.

That court ruled that the existing Family Court laws confer jurisdiction to determine “the existence of a mother-child relationship” as well as to address matters involving adults involved with the paternity of a child born out of wedlock. With the court’s power secure, the only remaining issue was whether or not Rubano was a proper person to seek relief from the courts. Building on the landmark 1999 Massachusetts Supreme Judicial Court ruling in *E.N.O. v. L.M.M.* (a GLAD victory), as well as recent cases from New Jersey and Maryland, the court set out guidelines for which persons qualify as “defacto” parents. As in the other cases, the legal parent must have consented to and fostered the relationship between the child and defacto parent, the defacto parent and child must have lived together and enjoy a parent-child bond, and the defacto parent must have performed significant parenting functions. Rubano met those standards.

GLAD filed a friend of the court brief on behalf of itself and nine other child welfare, civil rights and gay and lesbian organizations, including RI Chapter of National Ass’n of Social Workers, Jewish Family Service, Children’s Friend and Service, RI State Council of Churches, RI Coalition Against Domestic Violence, RI Alliance for Gay and Lesbian Civil Rights, ACLU of RI, Ocean State Action, YWCA of Northern RI, and Youth Pride, Inc., and worked with Rubano’s attorneys on appeal. Joining GLAD on the brief were cooperating attorneys David Hobbie of Bingham & Dana in Boston and Rhode Island attorney Donna Nesselbush. Rubano was represented at the trial level by Cherrie Perkins, and on appeal by Attorney Perkins and Cynthia Gifford of Wakefield.

This ruling adds to the momentum making New England the safest area for gay and lesbian families in the country. Appellate rulings from Massachusetts (*E.N.O.*) and Rhode Island (*Rubano*) provide protections for separated parents. In Vermont, couples can join in civil unions and thus have access to the child custody and visitation mechanisms accompanying divorce. Trial courts in New Hampshire have ruled in favor of non-biological parents on several occasions (*P.B. v. P.D.R.*). Connecticut has a specific law protecting families in these circumstances. And, in a case filed just as these Briefs were going to press, GLAD represents a Maine woman (known as C.E.W.) seeking parental rights and responsibilities with respect to her child J.E.W. in a case of first impression in Maine. Joining GLAD in this effort is cooperating attorney Patricia Peard of Portland and attorney Kenneth Altshuler. ▼

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## Notes from the Executive Director

*continued from page 2*

gender community and can advance the rights of the lesbian and gay community and the transgender community. To the extent that the law creates “gender outlaws” (because you love a person of the wrong gender; because you don’t quite fit society’s gender stereotypes; because you are transgendered), we want to fully attack the notion that there is only one model for how people express their gender identity.

Asking for what we want without compromise and without exclusion, where can we make progress? The recent past tells us that we get incredible return for our investment when we concentrate on reforming the law through the courts. The courts are by no means the only fertile ground, but they are surely one place where we could quadruple our resources to very good ends.

As noted above, GLAD and the other legal organizations in the country are seeing wonderful legal victories – which in a single case involving one plaintiff can establish rights for every gay and lesbian person in a particular state or the country. More than that, lawsuits simply engender media attention, which generates talk and discussion. That talk and discussion, in turn, leads to knowl-

edge and understanding. And in our information age, that knowledge and understanding can reach every corner of our society and beyond.

As we change the law – piece by piece – we are effectively dismantling – step by step – the legal regime under which we all live and which has the impact of making each of us a second-class citizen. Each of us is diminished by the existence of sodomy laws, which label us criminals (and GLAD is currently challenging the Mass. sodomy laws). Each of us is diminished when the law creates privileged spaces from which a person can be excluded because of sexual orientation such as marriage and the military. Each of us is diminished when someone suffers discrimination and has no legal recourse because the law fails to protect them.

Dignity and equality will only be real when the legal regime reflects and supports our claims for that dignity and equality. We have made great strides, and we are continuing to move. The momentum is with us.

GLAD is determined to push forward on every front in every New England state where there is an opportunity to advance our cause. Thank you for your support, which makes all this work possible. ▼

## GLAD Breaks New Ground for Students

*continued from page 1*

The themes raised by this case are familiar ones to GLAD. In advocating for GLB and perceived GLB students, we have often heard schools complain that the simple presence of an openly gay student makes other students uncomfortable and that the burden should be on the gay kid not to “flaunt it.” We similarly hear that gay kids “bring harassment on themselves” by being out about their sexuality and “deserve what they get.” These types of comments, like those arguments made by Brockton in this case, reveal fundamental misunderstandings about sexuality and gender identity. Neither sexuality nor gender identity is something, like a t-shirt, that can be put on and taken off, in response to the discomfort or ignorance of others. The long road ahead for us will involve doing the educational work necessary to ensure a safe space in schools for all youth.

As Judge Giles affirmed, transgender students, like GLB ones, need the same support and protection for their safety that schools typically provide other students. In some cases this may require expanding the diversity education provided to administrators and teachers, as well as other students, to include information about the realities of transgender people’s

lives. As the court recognized, “exposing children to diversity at an early age serves the important social goals of increasing their ability to tolerate differences” and teaches “respect for everyone’s unique personal experience.”

It is noteworthy to mention that, as an initial matter, Brockton sought to have Judge Linda Giles recuse herself from hearing the case because of her affiliation with gay legal organizations. In a somewhat surprising move, the school argued that because Judge Giles belongs to the Massachusetts Lesbian and Gay Bar Association and the International Association of Lesbian and Gay Judges, she could not impartially judge the case. In other words, because she is a lesbian, she would be unfair. Judge Giles declined to recuse herself, noting that many distinguished jurists across the Commonwealth are members of minority bar associations, a credential which has not caused them to be unfair or impartial in hearing cases involving minority litigants. The school also appealed that portion of Judge Giles’ ruling. Attorney Andrea Kramer authored an amicus brief on the recusal issue to which the Women’s Bar Association, the Massachusetts Lesbian and Gay Bar Association, and the ACLU of Massachusetts signed on. ▼

# The Elections

**N**ow that the elections are over, we know that the news is largely good. All of the state-wide races went to civil union supporters, and the Senate remains strongly pro-civil union. In the hotly contested gubernatorial race, Governor Howard Dean won re-election with more than 50% of the vote, and the pro-marriage challenger to his left picked up another 10%, suggesting that over 60% of the State wants to move beyond the controversy. The Republican “Take Back Vermont” candidate, Ruth Dwyer, garnered 3% less of the electorate than she did two years ago, despite having more money, more media and the civil unions issue to run on. The House has converted to a majority which opposes civil unions, thereby ensuring attempts to repeal or gut the law in the next two-year session.

The civil unions issue was the spark for the actual defining issue in the Vermont elections: do we accept or reject that gay people are part of our community and entitled to equal treatment from the government? Make no mistake. The electorate understood they were not just voting on civil unions, but the civil rights of gay people. Intricacies of the law did not come close to dominating the debate in Vermont. Instead, it turned on the familiar issues of our equality movement: the morality of loving someone of the same sex; the nature versus nurture debate; teaching about gay people in schools; fears of recruitment; and, of course, the poll-tested “special rights” canard.

Vermont’s present Congressional delegation of Sen. Patrick Leahy (Dem.), Sen. James Jeffords (Rep.) and Rep. Bernie Sanders (Ind.) all came together to seek civility in the campaign. In the words of Sen. Jeffords, they were united in concern about:

*a new and offensive tone of intolerance and hate, especially when it involves ... love and a willingness and desire of people to express love, even though it might not be in ways we would prefer to see.*

The election results demonstrate what we long suspected: the majority of Vermonters understand that gay people are part of the fabric of the Vermont community. An Associated Press exit poll showed over one half of voters support the civil unions law. Part of the reason must be that anti-civil union forces could not and cannot answer the questions asked repeatedly by Governor Dean and others during the campaigns: “Who is harmed by this law? Who is harmed by Vermont’s respect for love and commitment?”

The losses of some our supporters in the Vermont House and Senate is difficult, and we salute them for doing the right thing and defending their votes to their constituents. We take comfort in knowing that their historic votes and the legacy of those votes cannot be undone. We know the Vermont court decision set a new standard for equality. We know that the legislature’s enactment of the civil unions law provides enormous protection for families and has revitalized a national discussion about the civil rights of gay and lesbian people. The most lasting legacy of Vermont may be in its showing us that equality is within reach, and what that realization will inspire others to do in seeking equality and freedom for gay people and our families in communities all across the country in the years to come.

## Who’s Joining in Civil Union?

By now, nearly everyone has heard of the “Take Back Vermont” movement which symbolizes opposition to Vermont’s first-in-the-nation civil unions law. What people have not heard about as much is the warmth and generosity of the



Mary Bonauto, Civil Rights Project Director.

**“MAKE NO MISTAKE. THE ELECTORATE [OF VERMONT] UNDERSTOOD THEY WERE NOT JUST VOTING ON CIVIL UNIONS, BUT THE CIVIL RIGHTS OF GAY PEOPLE.”**



Vermont Co-counsel Beth Robinson, Esq. & Susan Murray, Esq.

*continued on page 11*



# **Courts, The Perception of Risk, and the Civil Rights of People with HIV**



AIDS Law  
Project Director,  
Bennett H. Klein, Esq.

**“...WE CONTINUE  
TO SEE MISINFORMATION  
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HIV TRANSMISSION  
DICTATING THE  
DECISIONS OF  
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AND JUDGES.”**

**H**ow much progress have we made eradicating myths about HIV transmission? According to a 1997 nation-wide survey conducted by Dr. Gregory Hereck, a research psychologist at the University of California at Davis, 55% of the respondents believed that it was possible to contract AIDS from using the same drinking glass as a person with AIDS, 41% believed that AIDS might be spread from a public toilet, and 54% believed that AIDS might be transmitted through a cough or sneeze.

Although there has been undeniable progress in fighting discrimination against people with HIV, we continue to see misinformation and fear about HIV transmission dictating the decisions of public officials and judges. A recent prosecution by Middlesex County (Mass.) District Attorney Martha Coakley provides an example.

## **Criminalization of HIV Case**

On November 8, District Attorney Coakley prosecuted a man with HIV for assault with intent to murder for two incidents in which the defendant is alleged to have thrown feces at his probation officer and bitten a corrections officer while being restrained. Throwing feces and biting are obviously intolerable. The defendant should have been prosecuted for his actions. But these acts are not modes of HIV transmission and should not have been grounds for bringing more serious charges based solely on the defendant’s HIV status.

The harm here is not only to the defendant. The prosecution of cases based on acts which are not modes of HIV transmission undermines AIDS education efforts and increases the fear and stigma associated with HIV. In a criminal case, the dissemination of false information is particularly harmful because the entire authority of the state and the judiciary stands behind the message. Moreover, public health officials agree that the stigma associated with HIV, which is increased by the type of unwarranted HIV-specific charges brought by District Attorney Coakley, are major deterrents to HIV testing and other strategies to control the epidemic.

In this case, the defendant, under pressure from a judge who incorrectly believed that HIV could be transmitted by saliva, agreed to plead guilty and was sentenced to three years in prison — a significantly longer sentence than if the case had been prosecuted as an assault without elevated charges based on HIV. GLAD wrote a “friend of the court” brief on behalf of AIDS Action Committee; Harold Cox, M.S.W., M.P.H., Chief Public Health Officer of City of Cambridge; Gerard Coste, M.D., Medical Director of the HIV Clinic at Cambridge Hospital; and the Massachusetts Public Health Association. Although District Attorney Coakley initially refused to meet with us about this issue, GLAD is working on strategies to ensure that these types of prosecutions do not continue.

## **Continued Issues About the Definition of “Direct Threat” Under the ADA**

The perceived risk of HIV transmission continues to be a key factor in a variety of discrimination cases across the country where defendants raise the “direct threat” defense under the Americans with Disabilities Act (ADA), a legal argument that the discrimination is justified because a person with HIV presents a “direct threat to the health or safety of others.” GLAD recently filed a case with the New Hampshire Commission for Human Rights on behalf of a Nashua, N.H. man who was refused treatment in a urologist’s office. Remarkably, in his response to GLAD’s complaint, the urologist told the N.H. Commission for Human Rights that he had been using

the equipment necessary to treat our client for several months, but was “unsure” about whether the disinfection/sterilization protocol for the new equipment “was sufficient to eliminate the risk of HIV transmission to subsequent patients.”

Under the ADA’s “direct threat” defense, courts are supposed to ensure that myths and stereotypes about any health condition – whether HIV, epilepsy, or mental illness – are not used to deny health care, employment, or other opportunities to people with disabilities, while at the same time ensuring that people are not subjected to truly significant dangers. Under the law, a theoretical, remote, or infinitesimally small risk is not sufficient to justify discrimination under the “direct threat” defense. In *Bragdon v. Abbott*, GLAD’s 1998 Supreme Court victory against a dentist who refused to treat a woman with HIV because of the risk of HIV transmission, the Supreme Court stated that “because few, if any, activities are risk free ... the ADA [does] not ask whether a risk exists, but whether it is significant.”

The most recent battle in the courts has been the insistence by some judges that, in spite of the *Bragdon* decision, a zero risk standard can be applied to HIV. These judges have claimed that the Supreme Court in *Bragdon* did not definitively state that an extremely low probability of a risk should be the controlling factor when the occurrence of the risk would be catastrophic.

For example, in *Oneisha v. Hopper*, a 1999 decision from the U.S. Court of Appeals for the Eleventh Circuit, the court

ruled that HIV-positive prisoners could be denied participation in educational and religious programs that non-HIV-positive prisoners participated in, because of the purely theoretical risk that prisoners could get into a fight or even, according to the court, engage in rape out of the view of corrections officers. And in *Doe v. County of Centre*, a federal trial court judge in Pennsylvania upheld a policy of prohibiting the placement of a foster child in any home in which there was a child living with HIV.

Because of the critical debate in the federal courts about the scope of the “direct threat” defense after *Bragdon*, GLAD, along with the Whitman-Walker Clinic in Washington, D.C., is filing a “friend of the court” brief in the U.S. Court of Appeals for the Eleventh Circuit on behalf of an HIV-positive dental hygienist who was fired from his job. The case is *Spencer Waddell v. Valley Forge Dental Associates*. Experts in the case testified that HIV transmission from a dental hygienist to a patient has never occurred. Moreover, according to plaintiff’s experts, the type of procedures which the hygienist performed did not create an identifiable risk of HIV transmission to patients because the hygienist’s fingers and sharp instruments were never in the patient’s mouth at the same time. Nevertheless, the court upheld the hygienist’s termination on the grounds that the experts could not say that the risk was absolutely zero, a standard which, if allowed to stand, would even permit the exclusion of HIV-positive children from school. ▼

## PUBLIC EDUCATION DEPARTMENT

# More On Our Website Than Ever Before

### WE’VE FOUND A NEW WAY TO SERVE YOU!

Over the past several months GLAD’s website has been significantly expanded to include answers to a wide range of questions about sexual orientation, gender identity, HIV/AIDS and the law.

Wondering whether ‘second parent adoption’ is available in your state? Want to know how to file civil rights charges in New Hampshire? Interested in ways the laws in each state include or exclude anti-discrimination protections for transgender people?

Visit [www.glad.org](http://www.glad.org) and click on Laws by State. Browse the information using the helpful topic menu for a summary of each state’s glbt and HIV-related laws. It’s the best way to get questions answered or do some research on the legal issues that affect our communities.

Also... Did you know GLAD has over 60 different publications that go into even greater depth on each of

these legal issues? Now you can download many of these documents directly over the web through the Publications page on our site. You’ll find pieces on family law, employment discrimination, immigration issues, prisoner’s rights, HIV-related privacy and confidentiality statutes, transgender protections and much more, all available at the click of a mouse.

As always, you can phone our Legal Information Hotline 1:30-4:30 p.m., Monday through Friday and speak to someone in either English or Spanish. People with legal questions or who need referrals to sensitive and experienced attorneys should call us directly during these hours. Trained volunteers help hundreds of people each month learn more about their rights and find the legal assistance they need. Call from anywhere in New England (800) 455-GLAD. ▼

# Boy Scouts Draw Public Ire

## GLAD Works On Connecticut Challenge To Scouts' Inclusion In State Employee Campaign

In a delightfully ironic twist, the Boy Scouts' recent Supreme Court victory may in fact be the beginning of the end of the organization's discriminatory practice of excluding gay youth and adult members. As the Scouts have been busily defending their anti-gay policy, the public's support for their programs, which many people mistakenly had thought were open to all boys, has been declining. Withdrawal of public support for the scouts has been taking place across the country and has been particularly apparent in New England.

In Connecticut, GLAD has been involved in an important case in which the state's employee campaign for charitable giving has sought to exclude the Scouts from inclusion because of the Boy Scouts' anti-gay policies. The basis for the exclusion is the Connecticut Gay Rights Law which prohibits any discriminatory organization from having access to or use of state facilities. While GLAD would agree that despite the Scouts' discriminatory practices, they may use public facilities, like a meeting hall or auditorium in a public school, on equal terms to those offered any other group, we do not believe they may any longer enjoy the types of "special" privileges they have had in the past. In particular, the Boy Scouts, like every other group that participates in the campaign, must endorse a policy of non-discrimination in order to be able to receive funds either directly or as a member agency of the United Way. Failure to do so should render any group ineligible for inclusion.

In May, 2000, the Connecticut Commission on Human Rights and Opportunities (CHRO) issued a ruling agreeing with the position GLAD took in its petition to intervene as an interested party in the case. Following the CHRO's ruling, the employee charitable campaign advised the Boy Scouts that it would be ineligible to participate in future campaigns. The Boy Scouts, in turn, filed a federal lawsuit against the charitable campaign, a case in which GLAD also sought to intervene and over which GLAD continues to keep a watchful eye.

As of the date of this publication, the matter remains unsettled. After the CHRO issued its first ruling and the Boy Scouts brought their federal suit, the United States Supreme Court issued its decision in the case of *James Dale v. Boy Scouts of America*. In *Dale*, the Supreme Court held that the Scouts have a First Amendment right of free association that permits them to exclude gay adult members from leadership positions despite a state non-discrimination law to the contrary.

Because of the possibility that the *Dale* case would affect the outcome in the Connecticut matter, the federal court is waiting to take any further steps until the CHRO has an opportunity to revisit its earlier decision. In a supplemental brief to the CHRO, GLAD argued that the Supreme Court's analysis in *Dale* is inapplicable to this matter because no organization has an unfettered right to come into even a government workplace to solicit charitable donations. Excluding the Scouts from the campaign does not hinder their association rights. If anything, it strengthens the Boy Scouts' discriminatory message. GLAD argues that the state charitable campaign, consistent with the Gay Rights Law, may enforce a neutral non-discrimination policy and nothing in *Dale* is to the contrary. As the matter stands, we are optimistic that the CHRO will affirm its earlier ruling that including the Scouts in the charitable campaign violates state law and that the federal court will dismiss the Boy Scouts' retaliatory lawsuit.

In any case, as the Connecticut charitable campaign matters wend their way through

*continued on page 15*





# Civil Rights Docket

## **GLAD et al. v. Attorney General Thomas Reilly, et al.**

In July, 2000, GLAD filed suit on behalf of itself and several individual gay and non-gay plaintiffs, challenging the constitutionality of the Massachusetts sodomy laws, the only such laws remaining in New England. Our complaint alleges that the sodomy laws (including a 20-year felony for anal sex and 5-year felony for oral and anal sex) violate Massachusetts constitutional guarantees of privacy, equal protection, free speech, and freedom from cruel and unusual punishment. The case was filed in the Supreme Judicial Court of Suffolk County rather than Superior Court with the hope of this matter proceeding in a streamlined way. This case comes after many failed attempts to repeal archaic sex laws in the Massachusetts Legislature and on the heels of legislative repeals and judicial decisions striking down sodomy laws throughout the country. Scott Pomfret and Harvey Wolkoff of Ropes & Gray are cooperating attorneys.



Civil Rights Project  
Director  
Mary Bonauto,  
Esq.

## **Boy Scouts of America v. Nancy Wyman, Comptroller of the State of Connecticut, et al.**

With New Haven attorney Maureen Murphy, GLAD sought to intervene on behalf of itself, the Connecticut Coalition for LGBT Civil Rights and the Connecticut Women's Education and Legal Fund in a suit filed by the Boy Scouts against the State of Connecticut Comptroller. This case was brought after GLAD, along with the other groups, successfully obtained a ruling from the Connecticut Commission on Human Rights and Opportunities (CHRO) that including the Boy Scouts in the state employee charitable campaign violated Connecticut nondiscrimination laws concerning the use of state facilities. After the CHRO issued its ruling, the campaign informed the Boy Scouts that it could not receive any funds from the 1999 or future campaigns. In the Boy Scouts' suit, the federal district judge has ruled that no money may be distributed to the Boy Scouts before this matter is resolved.



Staff Attorney  
Jennifer Levi, Esq.

Following the United States Supreme Court's reversal in *Dale v. BSA*, the New Jersey decision that the Boy Scouts may not exclude a gay scout from an adult leadership position, the CHRO is revisiting its earlier determination of whether the Boy Scouts must be excluded from the state charitable campaign. GLAD argued to the Connecticut federal court and the CHRO that *Dale* has no bearing on whether the state must exclude an anti-gay organization like the Boy Scouts from the charitable campaign. In a sign hopefully of positive things to come, on November 9, the CHRO issued a ruling, on a question brought on its own initiative, that the Boy Scouts' discriminatory employment policy violates state law, an issue not addressed in the *Dale* decision. (See article on p. 8).

## **Leslie Brett et al. v. Town of West Hartford**

The Town of West Hartford municipal pool, also known as the Cornerstone Aquatics Center, offers family discounts to married couples only, or parents which are defined to include step-, legal and adoptive parents but which excludes gay and lesbian co-parents or someone who parents a child of their non-marital heterosexual partner. For most unmarried families, the difference in rate is several hundred dollars.

Together with New Haven Attorney Maureen Murphy, GLAD sued and won a reasonable cause finding at the CHRO that the town's policy discriminates on the basis of sexual orientation and marital status in a place of public accommodation. This case is proceeding concurrently at the CHRO and in Connecticut Superior Court in order to most expeditiously resolve the legal and factual matters in the case.

*continued on page 10*

### **T.T v. Jay Roper, DDS**

GLAD represents a woman in New Hampshire who was denied treatment by her dentist because she is a lesbian. Our client had been treated by this dentist for nearly three years without incident. Prior to a recent visit, she was asked to fill out a standard office form. On it she put the name of her female partner above the line marked “spouse.” When she arrived for her appointment, the dentist said that had he known she had a female partner, he never would have treated her in the past and now refused to provide her with dental care. To our knowledge, this case is one of first impression regarding sexual orientation discrimination in a public accommodation under New Hampshire’s state non-discrimination law. It is currently pending before the New Hampshire Human Rights Commission.

### **Doe v. Massachusetts State Police**

GLAD’s case against the Massachusetts State Police for the practice of some Troopers of rousting gay men from public areas may soon come to conclusion. GLAD pursued an internal complaint of discrimination with the Massachusetts State Police on behalf of a Cape Cod resident who has been harassed at rest areas since the 1990’s. Threats against Mr. Doe by one particular Trooper increased to the point where our client was not allowed to visit a public rest area. The internal complaint process failed, with the State Police commending that Trooper and exonerating him and his behavior. GLAD then went to court, and in October, 1999, a Superior Court judge granted a preliminary injunction stating that Mr. Doe has the right to be in public areas as long as he is not violating the law.

In the meantime, the State Police have developed two instructional bulletins for Troopers about how to handle alleged sexual activity in public areas, and have begun training new recruits on the intricacies of Massachusetts’ arcane sex laws. A comprehensive settlement will be reached as these briefs go to press, or the case will be tried in court seeking a permanent injunction and changes in training procedures.

### **In re John/Jane Doe (declaratory ruling)**

On November 9, 2000, the CHRO issued a landmark ruling stating that all transgender people are protected by Connecticut’s sex discrimination prohibitions. Citing the cases of *Price-Waterhouse*, *Schwenk v. Hartford*, *Rosa v. Park West Bank*, and *Doe v. Yunits*, (two of which were brought by GLAD), the CHRO stated that the analysis in those cases, unlike earlier ones which rejected claims brought by trans people, were “more in keeping with the letter and spirit” of

Connecticut antidiscrimination law. Finding also that the laws cover all gender-nonconforming people, a position articulated in GLAD’s brief, the CHRO stated that “our intent is to see that justice is done for each individual – transsexual or non-transsexual, male or female, straight or gay, black or white, rich or poor – so as to recognize each person as a unique and valued member of our great human family.”

The request for declaratory ruling was initially brought by Stamford attorney Bruce Goldberg. GLAD authored briefs filed on behalf of itself, the Connecticut Coalition for LGBT Civil Rights, the Connecticut Women’s Education and Legal Fund, the Human Rights Campaign, National Center for Lesbian Rights, FTM International and Gender PAC.

### **Pat Doe v. Brockton Schools**

GLAD has sued on behalf of a transgender student excluded from middle school and has won an injunction against the Brockton Schools. (See article at p. 1).

### **Commonwealth v. Clerk of the Boston Juvenile Court**

GLAD submitted an amicus brief in the appeal of a case in which a clerk-magistrate refused to either grant or deny a hate crime complaint but rather held it “open” for a period of over a year. The initial complaint was brought by an Orthodox Jewish man who was accosted by several individuals as he was walking with his children to religious services. Over the objection of the complainant, the clerk-magistrate, rather than taking any action on the complaint, imposed conditions on the perpetrator of the alleged hate crime (including, for example, requiring him to issue an apology and complete a diversity awareness program) which, if met, would result in the “dismissal” of the victim’s hate-crime complaint. GLAD has heard of similar examples where a clerk-magistrate informally dissuaded a victim of an anti-gay hate-crime from bringing forth a complaint and filed this amicus to ensure that every hate-crime complaint brought to a clerk-magistrate is acted on in a timely way.

### **Ayer v. Sommi & Keller**

GLAD is still waiting for an oral argument date in this case which is the first same-sex domestic violence case to reach appellate courts in Massachusetts. The case involves a man who appears to be the victim of domestic violence but who is subject to a mutual restraining order. In addition to setting out some of the basics on the issue, GLAD’s amicus curiae brief analyzes the factors which make same-sex domestic violence different from opposite-sex domestic violence. Joining on the brief as amici are The Network for Battered Lesbians and Bisexual Women, Gay Men’s Domestic Violence Project, Fenway Violence Recovery Program, The Domestic Violence Council, Jane Doe, Inc, Massachusetts Law Reform Institute and Mass Lesbian and Gay Bar Association. ▼

## Vermont Update

*continued from page 5*

many Vermonters - gay and non-gay - who have welcomed those couples from 46 states and several foreign countries seeking to be joined in civil union. Many town clerks and justices of the peace are working hard to make the civil union ceremony a solemn and celebratory occasion, with some asking visitors to talk with them first, or to join them at their homes so they can get to know each other better before the ceremony.

Between July 1, 2000, when the law came into effect, and early October 2000, over 800 couples from 46 states have joined in civil union. The average age of same-sex couples is 40 whereas the average age for marrying couples is 31. So far, about 60% are women and 40% are men. Most civil union licenses have gone to Vermonters. Residents of Massachusetts, New York and California predominate among the “flatlanders” joining in civil union.

### Beyond Vermont

Voters in Nebraska and Nevada approved constitutional amendments defining marriage as the union of one man and one woman, although Nebraska’s Initiative 416 went further than any to date: “The uniting of two persons of the same sex in a civil union, domestic partnership or other similar same-sex relationship shall not be valid or recognized in Nebraska.” With the roughly 70-30 margin of support on these measures, there is certainly room for gloom. But it is also undeniable that these measures provide a teach-in of sorts on gay and lesbian people and families which inexorably moves us forward. Far from putting the issue to rest, the anti-gay, anti-marriage measures place gay people and our families at the center of public policy debates. We may have lost the debate for equality in November 2000 in Nebraska and Nevada, but that snapshot in time will soon look dated and yellowed by the incalculable benefits of revealing ourselves and our allies, dressed in the mantle of equality and justice for all.

### New Terrain for Equality Issues

GLAD and the other gay and lesbian legal organizations believe that civil unions deserve legal respect. A civil union is unlike any domestic partner ordinance or program anywhere in the country. Joining in civil union is a legal commitment akin to marriage and should be treated as such for purposes of state-law-based rights, protections and responsibilities.

As the chart at the top of the next column demonstrates, marriage and civil unions are parallel with respect to how one enters into the institution; the rights one has as a spouse in a civil union or a spouse in a marriage; and how one exits the civil union or marriage (i.e., divorce). The fact that a couple has joined in civil union provides a feast of new questions for others who deal with the couple. We also have a tremendous opportunity to educate the non-gay world about our lives and the legal commitment involved in civil unions.

## Vermont’s Civil Unions Law

QUALIFICATION	CIVIL UNIONS	MARRIAGE
• Age 18 and Over	✓	✓
• Consanguinity Provisions Apply	✓	✓
• Mental Competency Required	✓	✓
STATE CERTIFICATION	CIVIL UNIONS	MARRIAGE
• Couple Must Apply for State License	✓	✓
• License Certified by Judge, Justice of the Peace, or Clergy	✓	✓
• State Marriage or Civil Union Certificate Issued	✓	✓
• \$20 Fee	✓	✓
RIGHTS OF PARTIES AFTER CERTIFICATION	CIVIL UNIONS	MARRIAGE
• Under State Law, Couples Are Considered...		
• “Spouses”	✓	✓
• Family / Immediate Family	✓	✓
• Next of Kin	✓	✓
• Dependents	✓	✓
• A Legal Status	✓	✓
• Divorce / Annulment Necessary to End Relationship	✓	✓
• Prenuptial Agreements Permitted	✓	✓
• Causes of Action Related to Spousal Status, including Wrongful Death, Loss of Consortium	✓	✓
• Access to Family Health Insurance	✓	✓
• Family Leave Benefits	✓	✓
• Worker’s Compensation Benefit	✓	✓
• Taxed as Spouses / Family Unit	✓	✓
• Presumption of Parentage for Children Born During Relationship; Parental Rights & Responsibilities of Such Children	✓	✓
• Marital Privilege Regarding Compelled Testimony	✓	✓

### Getting Respect for Civil Unions

You don’t have to be a rocket scientist to figure out how to respect civil unions. Very few people, businesses and other organizations won’t be affected. Opportunities abound for cities and towns, businesses, employers, insurers, lenders, and service providers to respect the legal commitment and status of a civil union. It can often be done in a few simple steps:

- ▲ Inquire if the person/entity knows what a civil union is, i.e., a legal institution and status for same-sex couples parallel to civil marriage for purposes of state laws and benefits;
- ▲ Ask the person/entity to examine its existing rules about how families and spouses are treated under its policies and programs;
- ▲ Ask the person/entity to eliminate any distinctions between couples joined in marriage and couples joined in civil union.

### For example:

- A. An employer could honor the legal commitment made by its employee who has joined in civil union and allow the individual to name his or her civil union “spouse” as a dependent for purposes of employee benefits. Or an employer with a domestic partnership plan may want to consider the option of having couples joined in civil union sign up for benefits for their civil union spouses under the rules governing spouses rather than

*continued on page 15*



# Spirit of Justice Dinner



Mary Bonauto,  
The Spirit of Justice  
Award recipient.



Martin Tannenbaum & Lee Ellenberg table members.

The featured speaker for the event,  
The Honorable Gerry Studds, and  
his partner Dean Hara, who lovingly  
introduced the congressman.



Kate Kendell, Executive Director of the National Center for  
Lesbian Rights and Spirit of Justice Award presenter, GLAD's  
Civil Rights Director and award recipient Mary Bonauto,  
GLAD's Board President Margaret Williams and GLAD's  
Executive Director, Gary Buseck.



The Honorable Gerry Studds talking  
about "A.M." and "P.M." — "After Mary"  
and "Pre-Mary".



Lotus  
an IBM Company  
table members



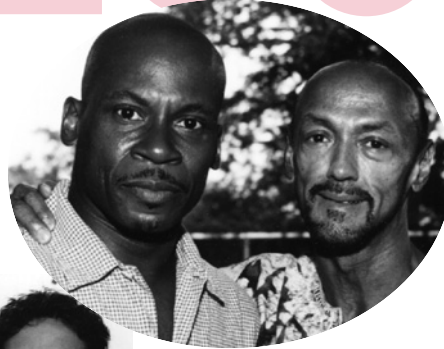
Wainwright  
Bank and Trust  
table members



# 2000 Summer Party



Ken Stilwell, Harry Harkins, Billy Bean (former Major League Baseball Player) and Andrew Tobias



Gary Bailey and Gerald Thorne



Christine Sparich, Bernice Steisel, Lyne Cloutier, and Marjorie Levin



Mark C. Kelley, John Murray, Alan Schwartz, Kurt Weidman, Ron Doby and Ken



Michael Goldrosen, Steven Littlehale, David Powers and Marc Boech



Barry Field, Margaret Williams and Christian Draz



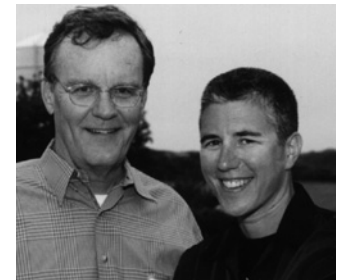
Alice Lowenstein and Rebecca Bumstead



Al Gordon, Hannah, Mark Berryhill, Amanda, Suzanne Farnam and Wendy Garland



Kate Keegan and Joyce Kauffman



David Mills and Jennifer Levi, GLAD Staff Attorney

## Boy Scouts

*continued from page 8*

the judicial and administrative agency processes, we can expect to see support for the Boy Scouts continue to dwindle and public opposition increase. In addition to many private employers removing the Boy Scouts from their list of charitable foundations including CVS Corporation and the Providence Journal, numerous United Way Chapters have also voluntarily withdrawn their support. Examples include those in Massachusetts Bay, MA, Portland, ME, Southwestern New Hampshire, Southeastern New England (RI and parts of MA and CT), New Haven, CT, Merrimack County, NH, and Seacoast, NH. Some local Boy Scouts councils, including the Minuteman Council in Boston, MA and the Narragansett Council in Providence, RI, have publicly stated their opposition to the policy and their intent to disregard it.

In Hanover, NH, a former Eagle Scout and well-respected adult leader was dismissed from the Boy Scouts when he authored an editorial published in a local paper stating his opposition to the scouting policy. He has appealed BSA's decision and received significant support from parents and scouts in the community who were distressed by the way in which he was summarily dismissed.

The United States Supreme Court ruling in favor of the Boy Scouts may, in the end, serve as an educational vehicle for the country about the pervasiveness of anti-gay discrimination and the harm that results from teaching intolerance and disrespect to our youth. For many people, the Boy Scouts' articulation and defense of its exclusion of gay youth and adult members was surprising. Many supporters of and participants in the Boy Scouts long ignored the anti-gay policy staked out by the organization's national office, believing that local councils and troops either did not follow or would not embrace the anti-gay mission of scouting. Unfortunately, for the most part, that did not happen. Rather than retreating from their discriminatory position, the Boy Scouts took steps to widely broadcast and enforce it. Hopefully, the widespread withdrawal of support for the Scouts in the wake of the *Dale* decision will bring about an end to this organization's discriminatory policy and send a message to any others who would similarly integrate into their mission a policy that harms all of us – young and old, gay or not. ▼

## Elections

*continued from page 11*

the rules governing domestic partners. Either way, because of the federal "Defense of Marriage Act," the employee will still have to pay income tax on the value of the benefit to the spouse. But treating civil union spouses as spouses is consistent with their legal status and may well pave the way for greater legal security in the civil union status as well as for changes in federal laws down the line.

- B.** An insurer can change its plan definitions and terms to include spouses joined in civil union as spouses. An insurer can make available joint policies of insurance to the pair joined in civil union on the same terms as it does to spouses.
- C.** Businesses offering family discounts, incentives or waivers can extend those to couples joined in civil union. For example, the common rental car policy of charging for an extra driver who is not your spouse can be extended to include spouses joined in civil union.

Setting aside the more difficult issues of federal laws and programs, for the most part, there is no or little impediment in the New England states to recognizing the commitment of a pair joined in civil union.

Please call or write GLAD if you need more information. If you are one of the New England area couples who has joined in civil union, please tell us your story on our website ([www.glad.org](http://www.glad.org)). Please keep us informed about good news and bad and let us know if we can share it with others (anonymously or otherwise). And of course, please call us if you are even beginning to think about litigating any issue. We have a carefully planned legal strategy and welcome opportunities to work with you! ▼

## There are many ways to support GLAD including

- ▲ Hosting a House Party
- ▲ Volunteering at Events
- ▲ Donating Office Furniture and Equipment
- ▲ Asking Your Employer About Matching Gifts
- ▲ Transferring Appreciated Stock (with added benefits to you)
- ▲ Becoming An Ongoing Monthly Donor
- ▲ Making A Planned Gift To GLAD
- ▲ Becoming A GLAD Partner or Associate

For more information on how you can help support GLAD please contact **Mark Enselman**, Development & Finance Director at **617.426.1350** or e-mail us at [gladlaw@glad.org](mailto:gladlaw@glad.org).

## GLAD Happenings!

### Thanks!

GLAD would like to thank those who attended the following events and especially the individuals whose names follow for hosting the events:

**Lawlapalooza** ~ A benefit concert for GLAD held at The Milky Way/Bella Luna in Jamaica Plain, MA, on Thursday, August 10th. Thanks to Pamela Means, Meghan Toohey, Jane LeCroy, Adrienne Gonzalez and MC Jaclyn Friedman for donating their time!

**The Rhode Island Party** ~ Held at the home of Barry Field and Kurt Weidman in North Kingstown, RI, on Sunday, August 20th, and co-hosted by Barry Field and Marc Paige, GLAD's Rhode Island board members. GLAD was proud to honor the students and faculty advisors of the Gay/Straight Alliance (GSA) of South Kingstown High School.

**The Ogunquit Party** ~ The beautiful gardens and grounds of The Black Boar Inn of Ogunquit, ME, served as the location for this event on Thursday, August 24th. Wayne Fette and Tim Stein, owners of the inn, hosted the party.

**The North Central Massachusetts Party** ~ This second annual party was hosted by Diane Lincoln and Cherylann Richards at their country home in Royalston on September 9th.

**GLAD's Spirit of Justice Dinner** ~ GLAD honored Civil Rights Director Mary Bonauto for her 10 years of exceptional service to GLAD and her impact on our community in New England and nationally at the inaugural Spirit of Justice Dinner, which was held in the scenic Skyline Suites and Ballroom at the Royal Sonesta Hotel in Cambridge, MA, on Friday, September 22nd.

**The 11th Annual Western Massachusetts Party** ~ Held in Williamsburg on October 10th at the home of Jason Heffner & John Davis and co-hosted by Debbie Etlinger & Ruth Leuenberger.

**The Merrimack River Valley Party** ~ Held at December Farm, the home and Christmas Tree farm of Lane Bourn and Stuart Wells on November 11th.

**The 1st Annual New Hampshire Party** ~ Held at the Walnut Hill Conference Center in Raymond on November 19th with special assistance from Marlene Lein and Fritz Bell.

**Thanks to Susan Symonds of Maineframe Photographics, Inc.**, for donating her time, talents and materials to work as a photographer at The Winter Party, The Summer Party and The Spirit of Justice Dinner!

## Mark your calendars! -----> Upcoming GLAD Events

**Coming Attractions: GLAD's Winter Party** ~ March 2001 (date to be announced)!

**Coming soon to a neighborhood near you** ~ GLAD is planning events throughout New England for 2001. Please visit our website at [www.glad.org](http://www.glad.org) for exact dates and times and look for an invite in your mail.

If you don't think we have your mailing address, please contact our Development Office at **(617) 426-1350** or e-mail us at [events@glad.org](mailto:events@glad.org).

If you would like to get involved or volunteer in some way for our events, have interest in hosting a GLAD party or have any questions about our events, call our Development Office at **(617) 426-1350**. You can also visit our website at [www.glad.org](http://www.glad.org)



**GLAD**  
equal justice under law

### GAY & LESBIAN ADVOCATES & DEFENDERS

294 Washington Street, Suite 740

Boston, MA 02108

(617) 426-1350

(800) 455-GLAD

[www.glad.org](http://www.glad.org)

[gladlaw@glad.org](mailto:gladlaw@glad.org)