



The logo of the American Civil Liberties Union.

Encyclopedia Copyright © 2015, glbtq, Inc.
Entry Copyright © 2009 glbtq, Inc.
Reprinted from <http://www.glbtq.com>

The American Civil Liberties Union (ACLU) has for more than four decades been at the forefront of litigation designed to secure glbtq rights on a variety of fronts, dealing with such issues as employment discrimination, entrapment and unequal enforcement of the law against public and private sexual expression, family law and marriage equality, AIDS discrimination, gender identity discrimination, and the rights of school children to be free of bullying and harassment.

Lawyers associated with the ACLU have been either counsel or co-counsel in many of the significant cases that have helped define the constitutional rights of glbtq individuals and families.

Since 1986, the ACLU's efforts in the area of glbtq rights have been coordinated by the Gay Rights Project (later renamed LGBT & AIDS Project).

Organization and Mission

The ACLU was founded in 1920 with the mission of defending "the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States." It is widely regarded as the nation's premier public interest law firm and its foremost protector of individual rights.

Supported by over 500,000 members, the ACLU has provided legal counsel in thousands of cases and has appeared before the U. S. Supreme Court more times than any other organization except the U. S. Department of Justice.

The ACLU maintains national headquarters in New York City and Washington, D. C. , but most of the litigation and educational work of the organization is performed by its 52 locally-based affiliates and chapters. Although staff from the national headquarters work with the affiliates to set priorities and formulate strategies, the affiliates exercise a great deal of autonomy in accepting cases and launching educational campaigns.

In addition to litigating "high impact" cases, the ACLU also lobbies legislators at the local, state, and federal levels about civil liberty issues. It also attempts to educate the general public about individual rights and liberties.

History

Despite its current reputation as a fierce defender of glbtq rights, the ACLU was slow to join the battle for equal rights for sexual minorities. Although the ACLU website dates its earliest defense of gay rights to 1936, when it fought the censorship of Lillian Hellman's lesbian-themed play, *The Children's Hour*, most of its early efforts that intersected with assaults on the rights of glbtq people actually had little to do with protecting homosexuals as such, but were in defense of free speech or the right of assembly.

In 1951, in his influential book *The Homosexual in America*, Donald Webster Cory (pseudonym of Edward Sagarin) lamented that liberal groups such as the ACLU had shown indifference to the plight of homosexuals, who were then experiencing vicious oppression in the McCarthy-era of purges and widespread arrests for homosexual activity.

Indeed, in January 1957, the Board of Directors of the ACLU adopted a national policy upholding the constitutionality of state sodomy laws, under some of which individuals could be imprisoned for life, as well as federal security statutes that banned the employment of homosexuals. Chillingly, the policy declared that "It is not within the province of the [ACLU] to evaluate the social validity of the laws aimed at the suppression or elimination of homosexuals."

The organization most concerned with American civil liberties shamefully abandoned the very group that most needed its protection at the time.

Although the ACLU did nothing to halt the government purges, psychiatric incarcerations, entrapments, and bar raids that made gay life in the 1950s so dangerous, during the 1960s individual affiliates of the ACLU began hesitantly to take up the cause of gay rights.

On New Year's Eve 1965, for example, when San Francisco police raided a fundraiser for the Council on Religion and the Homosexual, a newly organized group opposed to police harassment of gay bars, the ACLU came to the defense of those arrested (including young lawyer Herb Donaldson, who was later to become the first openly gay man appointed to a judgeship in California).

By the late 1960s and early 1970s, as the gay liberation movement emerged, the ACLU became increasingly involved in helping to protect the civil liberties of homosexuals. For example, it challenged state laws, city ordinances, and liquor board regulations that prohibited bars from serving homosexual patrons or for performers to impersonate a person of the opposite sex. During this period, the ACLU also contested state sodomy laws, federal security regulations that discriminated against homosexuals, and the firing of federal employees on the basis of their real or perceived sexual orientation.

In the 1970s, the ACLU also defended teachers who had been fired, as in *Gaylord v. Tacoma* (1973); and sued to force recognition of student groups at universities, as in *Mississippi Gay Alliance v. Mississippi State University* (1977). Also in the 1970s, the ACLU began to litigate on behalf of gay and lesbian parents who had been denied custody or visitation rights, as in *Voeller v. Voeller* (1976), and it even filed the first lawsuits challenging the policy against homosexuals serving in the U. S. military (*Schlegel v. U. S.*, 1970) and the laws that denied marriage equality (*Baker v. Nelson*, 1972).

It also encouraged gay men who were entrapped in cruising areas to contest their arrests rather than meekly plead guilty to charges of solicitation or lewd conduct.

Many--indeed most--of the suits filed on behalf of gay and lesbian rights in the 1960s and 1970s were unsuccessful. Nevertheless, they were significant in that they announced that glbtq people and their allies were increasingly willing to stand up for their rights. Moreover, the suits helped to transform the glbtq movement from a struggle for sexual freedom into a struggle for equal rights under the law.

The 1980s and *Bowers v. Hardwick*

In the 1980s, despite a spectacular setback, the ACLU achieved a number of significant breakthroughs in protecting the rights of glbtq individuals and of those living with HIV and AIDS.

The decade began with a significant victory that invalidated New York's sodomy law (*People v. Onofre*, 1980) and included several crucially important victories that protected AIDS patients from discrimination. For example, in 1987 the Supreme Court of the United States ruled that disability discrimination laws apply to contagious diseases, including AIDS (*Schoolboard v. Arline*), a principle further clarified when other federal courts ruled the following year that people with AIDS are protected from discrimination by federal law (*Chalk v. District Court*; *Doe v. Centinella Hospital*).

During the decade, the U. S. Supreme Court, on a 4-4 vote, upheld an appellate court ruling striking down

an Oklahoma law that allowed the firing of teachers who expressed support for gay rights (*NGLTF v. Oklahoma*, 1984). The ACLU also scored a victory in 1987 when a court required Georgetown University to recognize a student group despite its status as a Roman Catholic institution (*Gay Rights Coalition v. Georgetown University*, 1987) since it received municipal benefits.

Still, these victories were overshadowed by the stunning loss in 1986 when the U. S. Supreme Court in *Bowers v. Hardwick* upheld, on a 5-4 vote, Georgia's sodomy law, ruling that nothing in the Constitution extends a right to homosexuals to engage in consensual sexual acts even in the privacy of their homes.

The ruling in *Bowers* was a stinging blow to the aspirations of gay men and lesbians to equality under the law at a time when they felt beleaguered not only by the AIDS epidemic but also by the hatred regularly espoused by members of the resurgent New Right.

The bitter disappointment and anger that the decision engendered in glbtq people, however, fueled a new wave of activism, and moved the battle for equality under the law from the U. S. Supreme Court to state legislatures and courts, a battleground that the ACLU with its affiliates in every state was well-positioned to lead.

Gay Rights Project

It was at this time that the ACLU, with support from philanthropist and law professor James C. Hormel and legal scholar Arthur Leonard among others, formed its Gay Rights Project (later renamed LGBT & AIDS Project). The creation of the Project was to underline the significance of glbtq issues to the ACLU's mission and to bring together experts in constitutional law and civil rights to coordinate a strategy to secure equality and fairness in sexual orientation, gender identity, and AIDS law.

Chastened by the loss in *Bowers v. Hardwick*, ACLU lawyers felt the need to develop a strategy that would avoid precedent-setting rulings that could stymie the quest for equality for a generation.

Nan Hunter, then a young lawyer with ACLU's Reproductive Freedom Project, was selected as the first director of the LGBT & AIDS Project. She is credited with developing the successful effort to establish AIDS as a protected disability.

In 1993, she joined the Clinton administration to work on health care policy and law. She has taught at Brooklyn Law School and is now Professor of Law at Georgetown Law School.

When Hunter received an Award of Courage from the American Foundation for AIDS Research (AmFar) in 2000, she reminisced about the challenges that confronted her as she assumed the helm of the LGBT & AIDS Project at a very "scary time": "There was a tremendous amount of loose and easy talk about quarantine, forced testing, mandatory reporting, and those sorts of draconian measures, and it was completely up in the air whether laws like that might simply roll through Congress and many of the state legislatures. It was a time of crisis." Thanks to the Project's success in court and in educating the public about AIDS, the most extreme measures were defeated.

Since its modest beginnings, the Project has grown to include more than 25 staffmembers, including several full-time attorneys who monitor legal work across the country; a litigation director; a federal legislative director who lobbies Congress; an education team that informs the public of the Project's litigation and legislative campaigns; and a senior strategist who coordinates the Project's efforts and makes long-range plans.

Matt Coles has served as Executive Director of the LGBT & AIDS Project since 1995. A 1973 graduate of Yale University and a 1977 graduate of the University of California's Hastings College of Law, Coles practiced law

in San Francisco for ten years before joining the ACLU of Northern California as a staff lawyer. He has become one of the country's leading experts on glbtq legal issues, ranging from employment discrimination and AIDS law to marriage equality advocacy and litigation.

Coles has helped draft several significant gay rights laws, including San Francisco's statute banning discrimination on the basis of sexual orientation, California's law banning discrimination in employment, and the first domestic partnership law that allowed couples to register their relationship.

Perhaps Coles's greatest triumph in the courtroom was as one of the principal attorneys in the challenge to Colorado's Amendment 2, which resulted in the landmark ruling by the U. S. Supreme Court in *Romer v. Evans* (1996), which established the principle that laws cannot be enacted simply because of hostility to glbtq people. He was also the lead attorney in several significant AIDS cases and in a challenge to "Don't Ask, Don't Tell."

The 1990s

Despite the disheartening ruling in *Bowers v. Hardwick*, the ACLU and its new Project soldiered on in defense of glbtq rights, enjoying some surprising successes in both state and federal courts during the 1990s.

For example, a federal lawsuit led to the agreement by the CIA to no longer discriminate against gay and lesbian employees (*Dubbs v. CIA*, 1990); a federal court struck down an Alabama law that forbade gay and lesbian groups at state colleges and universities (*GLBA v. Alabama*, 1997); and the U. S. Supreme Court declared unconstitutional a law restricting gay materials on the Internet (*ACLU v. Reno*, 1997); while the highest state courts in Kentucky and Maryland, respectively, struck down sodomy laws (*Wasson v. Commonwealth*, 1990; *Williams v. Glendenning*, 1999).

Another state court that struck down a sodomy law was the Georgia Supreme Court, which in 1998 declared unconstitutional the same law that the U. S. Supreme Court had upheld in *Bowers*. It may or may not be relevant that the 1998 Georgia case, *Powell v. State*, involved charges of heterosexual sodomy.

In the 1990s, there were also significant victories in the area of family law as several states approved more humane custody and visitation arrangements and New Jersey became the first state to authorize joint adoption by gay and lesbian couples as a matter of right (*Gallucio v. New Jersey*, 1997).

In an important employment discrimination case, a federal court ordered the reinstatement of a lesbian high school teacher in Utah (*Weaver v. Nebo School District*, 1998).

But by far the greatest victory of the 1990s was *Romer v. Evans* (1996). In this case, the Court ruled that Colorado's Amendment 2 attempted to "classify homosexuals not to further a proper legislative end but to make them unequal to everyone else," adding: "This Colorado cannot do." The decision helped stem the tide of anti-gay initiatives that were sweeping across the South and West at the time, and it helped pave the way for the historic ruling in *Lawrence v. Texas*, which in 2003 reversed *Bowers v. Hardwick*.

The New Century

In the first decade of the new century, the ACLU finally helped accomplish its long-cherished dream of having the Supreme Court void laws that criminalize private, consensual sexual activity.

When the U. S. Supreme Court reversed *Bowers v. Hardwick* in *Lawrence v. Texas* (2003), it did more than simply strike down seldom-enforced laws against sexual activity in 13 reactionary states. It also affirmed

the full citizenship of glbtq Americans.

Although the lead attorneys in the appeal to the Supreme Court were Lambda Legal's Ruth Harlow and Paul M. Smith, the ACLU LGBT & AIDS Project participated in planning the suit. James Esseks, litigation director of the Project, also filed an amicus brief urging that the Court overturn *Bowers v. Hardwick*.

Justice Anthony M. Kennedy, writing for the Court's majority as he had in *Romer v. Evans*, declared that gay men and lesbians are "entitled to respect for their private lives. . . . The state cannot demean their existence or control their destiny by making their private sexual conduct a crime." Moreover, he implied that the relationships entered into by glbtq people are themselves worthy of respect when he added that "The liberty protected by the Constitution allows homosexual persons the right to choose to enter upon relationships in the confines of their homes and their own private lives and still retain their dignity as free persons."

The ACLU successfully used this landmark ruling to secure the release of a young man, Matthew Limon, who in 2000 at the age of 18 had been convicted of performing consensual oral sex on a 15-year-old male in Kansas and sentenced to 17 years and two months in prison. Had the 15-year-old male been a female, the sentence would have been a maximum of 15 months for the same offense.

Finally, in *Kansas v. Limon*, in 2005, after Limon had served over five years in prison, the Kansas Supreme Court, relying on *Lawrence v. Texas*, declared unconstitutional the Kansas law under which he was convicted as violating the equal protection provisions of the U. S. and Kansas Constitutions and ordered him released.

Since then, the ACLU and other litigators on behalf of glbtq issues have attempted to use *Lawrence* to secure other rights and protections for gay and lesbian people, especially in challenging "Don't Ask, Don't Tell," restrictions on adoption and custody arrangements, and in asking states to recognize same-sex relationships.

The ruling in *Lawrence* has also been beneficial to lobbying efforts on behalf of anti-discrimination laws and other legislation. No longer are homosexuals status criminals in the United States.

In recent years, the ACLU LGBT & AIDS Project has been particularly active in cases involving same-sex marriage, transgender law, and students' rights.

The Project has been particularly aggressive in compelling high schools to protect glbtq students from harassment and discrimination, sometimes winning large damages from school boards that turn a blind eye to the bullying of students perceived to be gay or lesbian.

The ACLU has also been insistent that school boards enforce established court rulings that require them to recognize gay-straight alliances on the same basis that other non-curricular clubs are recognized. It also recently threatened suit against the Nashville school district to force it to end censorship of gay educational websites.

In *Schroer v. Library of Congress*, the ACLU has recently won a major victory for transgender rights. The case involved a highly decorated Special Forces officer who had begun the process of transitioning from male to female after retiring as a Colonel in the U. S. Army. She was offered a position as a terrorism research analyst at the Library of Congress, but when she told her future supervisor of her plans to transition, the job offer was abruptly rescinded.

In 2008 a federal district court judge ruled that the Library of Congress had illegally discriminated against Schroer, holding that discriminating against someone for changing genders is against federal law. In 2009, the same judge ordered the government to pay Schroer almost \$500,000 in compensation. The Obama

administration has announced that it will not appeal this judgment.

The Project has also been involved, either directly or indirectly, in most of the lawsuits seeking relationship recognition and marriage equality, including in California's historic "*In re Marriage*" case and in the attempt to overturn Proposition 8, the initiative that ended marriage equality in the Golden State. It has also litigated to overturn the bans on adoption by gay men and lesbians in Florida (*In re Gill*) and Arkansas (*Cole v. Arkansas*).

In May 2009, the Project joined Lambda Legal, Gay & Lesbian Advocates & Defenders (GLAD), National Center for Lesbian Rights, the Human Rights Campaign, and other groups to oppose the suit announced and then filed by Republican former Solicitor General Theodore Olson and Democratic attorney David Boies that seeks to overturn Proposition 8 in federal court (*Perry v. Schwarzenegger*).

Arguing that the Olson-Boies strategy was risky and that a loss at the U. S. Supreme Court may have long-term negative effects for the quest to achieve marriage equality, these groups counseled that a more limited challenge to the Defense of Marriage Act and a return to the ballot box in California were likely to be more successful than a federal lawsuit challenging Proposition 8. However, these groups later reversed this position when it became apparent that Olson and Boies had a carefully considered strategy that may prove successful in restoring marriage equality to California and perhaps lead to a landmark Supreme Court ruling.

As apparent from the joint declaration about the Proposition 8 lawsuit, the Project works closely with the other public interest legal organizations concerned with glbtq rights, especially Lambda Legal Defense and Education Fund, Gay & Lesbian Advocates & Defenders, and the National Center for Lesbian Rights. Even when it is not directly involved in litigating with them, it frequently submits amicus curiae briefs in cases brought by these groups.

In addition to the national Project, which is headquartered in New York City, several ACLU affiliates also have glbtq projects or at least attorneys who focus on glbtq legal issues and educational efforts.

Conclusion

Over the last four decades, the ACLU has grown from a timid defender of gay rights to an organization that regards glbtq rights as central to its mission as the nation's leading public interest law firm and foremost defender of civil liberties. Not only has it been at the forefront of the legal battle for glbtq rights, but it has lobbied legislators and the public on behalf of fairness and equal rights.

Many of the advances that glbtq people have made over the past decades are attributable at least in part to the advocacy of the ACLU and its insistence that institutions and governments and individuals recognize the rights of others.

Since 2001, the ACLU has been led by Anthony D. Romero, who is the organization's first Latino and first openly gay Executive Director. Under his leadership the ACLU has greatly expanded its budget and doubled its national staff. Romero describes the fight for glbtq rights as "a core civil liberties issue." He knows that the struggle will not be easy and will take years to win, but adds, "the ACLU is used to long battles. We'll be in this one until it is over, and we will certainly celebrate the day that the constitution's promises to LGBT people are kept. Until then, our work lies ahead."

Bibliography

American Civil Liberties Union website: www.aclu.org

Eisenbach, David. *Gay Power: An American Revolution*. New York: Carroll & Graf, 2006.

Get Busy, Get Equal website: <http://gbge.aclu.org/>

Hunter, Nan D. "Awards of Courage: Honoring with Pride 2000 Awardee." *AmFar.org Spotlight* (2002): <http://www.amfar.org/spotlight/article.aspx?id=4544>

_____. "Proportional Equality: Readings of Romer." *Kentucky Law Journal* 89 (2001): 885-910.

Murdoch, Joyce, and Deb Price. *Courting Justice: Gay Men and Lesbians v. the Supreme Court*. New York: Basic Books, 2001.

Miller, Neil. *Out of the Past: Gay and Lesbian History from 1869 to the Present*. Rev. ed. New York: Alyson, 2006.

Nakatani, Robert. "The ACLU and the Gay Rights Movement." *Perspectives: Annual Update of the ACLU's Nationwide Work on LGBT Rights and HIV/AIDS*. New York: ACLU Foundation, 2006. 11-13. http://www.aclu.org/images/asset_upload_file401_26559.pdf

Romero, Anthony D. "LGBT Rights: A Core ACLU Issue." *Perspectives: Annual Update of the ACLU's Nationwide Work on LGBT Rights and HIV/AIDS*. New York: ACLU Foundation, 2006. 7-8. http://www.aclu.org/images/asset_upload_file401_26559.pdf

About the Author

Claude J. Summers is William E. Stirton Professor Emeritus in the Humanities and Professor Emeritus of English at the University of Michigan-Dearborn. He has published widely on seventeenth- and twentieth-century English literature, including book-length studies of E. M. Forster and Christopher Isherwood, as well as *Gay Fictions: Wilde to Stonewall* and *Homosexuality in Renaissance and Enlightenment England: Literary Representations in Historical Context*. He is General Editor of www.glbtc.com. In 2008, he received a Monette-Horwitz Trust Award for his efforts in combatting homophobia.