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Sexual Orientation and the Law: A Research Bibliography Selectively Annotating Legal Literature through 2005

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SEXUAL ORIENTATION AND THE LAW:
A RESEARCH BIBLIOGRAPHY
SELECTIVELY ANNOTATING LEGAL LITERATURE THROUGH 2005

Standing Committee on Lesbian and Gay Issues
Social Responsibilities Special Interest Section
American Association of Law Libraries

Introduction by
Brad Sears

Williams Institute on Sexual Orientation Law and Public Policy

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PREFACE

Sexual Orientation and the Law: A Research Bibliography represents the collaborative efforts of the Standing Committee on Lesbian and Gay Issues, or the "SC." The editors would like to acknowledge the invaluable assistance of all who participated in this sizeable undertaking, helping to bring to completion a long-desired goal of the group. Special thanks are offered to Brad Sears, Executive Director of the Williams Institute on Sexual Orientation Law and Public Policy, for contributing an insightfully provocative introduction that surveys the state of this literature as it stands today. Our hope is that the combination will prove useful to anyone researching the nuances of the numerous points of contact between gay, lesbian, bisexual and transgender citizens and their respective legal systems.

Background of the Standing Committee

The SC is a permanent organization within the American Association of Law Libraries [AALL], housed under the umbrella of the Social Responsibilities Special Interest Section [SR-SIS].

The SC was first called to order in 1985 under the leadership of Carol Alpert.¹ Its eight founding members would grow to more than 160 over the next twenty years. From its inception the SC has worked to raise awareness of law-related problems of gay men and lesbians both within the law librarian profession and among their patrons and the community at large, in keeping with its organizational charge

to provide an avenue to members for interaction and discussion of issues within the group, but also within the larger American Association of Law Libraries ("AALL"), to

¹ This overview of the SC's history follows that given by Elvira Embser-Herbert, *Why the Heck Is There a Standing Committee for Lesbian and Gay Issues Anyway?*, 10(4) AALL SPECTRUM 18 (Feb. 2006).

the extent of making all members aware of and react to the needs of lesbians and gays within the law library community. The Committee is also intended to serve as a vehicle for dissemination of information, including but not limited to the provision of programs for AALL and other such groups.

Toward these ends the SC has sponsored successful AALL resolutions

- supporting a “policy of equal employment opportunities for lesbian and gay people in all types of libraries”;
- opposing discrimination against “all persons who have acquired AIDS or who test positive for the human immunodeficiency virus—HIV”;
- opposing “federal and state constitutional amendments defining marriage as only between a man and a woman”; and
- urging “libraries to acquire legal materials on the role of lesbian and gay people in society.”

Although this bibliography and its predecessors follow directly from the SC’s broader mission to advance the availability of legal information impacting the lives of gay men and lesbians, it was this last resolution that compelled the group to undertake the task of compiling and organizing the legal literature on gay-themed topics.

History of the Bibliography

Camille Broussard, past chair of the SC and project participant in the earlier iterations of the bibliography, shares her memories of the project’s original plan and execution:

“The 1994 bibliography was the result of a project begun in 1987—just two years after the Standing Committee was created. The third update of the bibliography (1969–1992) was accepted for publication in *Law Library Journal* in early Spring 1993. The fourth update (1969–1993) was completed for the Winter 1994 publication.

"We began the bibliography project to provide guidance to all of our librarian colleagues in both developing a core collection of relevant material and in providing research assistance to all law library patrons—professors, students, attorneys and judges. As the introduction in the *Law Library Journal* indicates, 'the Standing Committee began preparing the bibliography in 1987 after the AALL membership passed the resolution, presented by the Contemporary Social Problems SIS [CSP; predecessor to the SR-SIS], urging libraries to acquire legal materials on the role of lesbian and gay people in society.' The resolution helped many librarians justify the use of funds to purchase materials on sexual orientation issues and to begin a collection in the area. Many members of AALL had never had any contact with that body of literature. It was also true that many members of AALL did not know that they knew—much less worked with—any lesbian and gay librarians. They did not realize how many young people had grown up using public or school libraries where the only entry in the card catalog for homosexuality was a card saying, 'Please see the librarian for materials on this subject.' (And that assumes that many young people knew the word to look for was 'homosexuality'!) This was one important issue among the many that CSP brought to the attention of our law library colleagues.

"The first bibliography was distributed from the CSP table in the activities area at the 1988 AALL Annual Meeting in Atlanta. I arranged for Lewis & Clark Law School in Portland, Oregon to contribute to our efforts by copying and shipping the bibliography to the convention hotel. The original 200 copies 'disappeared' very quickly during the first two days of the convention. (According to the 1989 minutes from the CSP business meeting, the Standing Committee had but 88 names on its mailing list—so it was not just our members who took copies of the bibliography.)

"After the convention, Karen Edwards, the Standing Committee Chair, filled approximately 12 requests for the bibliography. Paul George served as the contact for Standing Committee members requesting copies. In each of the subsequent

years, the Standing Committee Chair made copies of the bibliography for the CSP activities table.

"Many Standing Committee members contributed to the various editions of the bibliography. To promote visibility of all lesbian and gay members within AALL, the Standing Committee decided to publish the bibliography as a group listing the Standing Committee as the author. We did not list or recognize individual contributors. This was an important decision for us for a number of reasons: many folks could not be out at work, many chose not to; it was still a time when we did not publicly announce or advertise the location of the annual reception; we had only just begun to fully comprehend the impact AIDS would have on our community.

"It was James Duggan, with lots of help from Ruth Parlin, who guided the final publication stretch in 1994, but they stood on the shoulders of many. At the risk of forgetting valuable contributions, I have listed a few of the contributors below. I coordinated the first edition along with Paul George. Carol Alpert, Jennifer Rish, George Jackson, James Duggan worked on the various sections. Paul continued as Chair of the bibliography committee the following year and completed the 2nd update. Many of the original contributors updated their sections. (I still remember my section: Discrimination in Employment). And now, a wonderful (and, of course, fresh) group of bibliographers have accepted the lead in taking the publication to a new level. Thank you and congratulations!"

The Present Bibliography

This volume of the *Sexual Orientation and the Law* bibliography reprints that earlier edition which was published as the lead article in the Winter 1994 issue of *Law Library Journal*, the official research organ of the AALL. That version covered material through September 1, 1993. This original document is followed by a new bibliography describing materials published between September 1, 1993, and December 31, 2005.

While some users may wish the two publications had been integrated, several considerations mitigated against that reasonable expectation. First, incorporating the earlier citations into the current bibliography would have required creating annotations for this older material, an enormous undertaking this committee prudently chose to avoid. Second, the subject categories of the two works are not completely identical, precluding any easy attachment of one to the other. And while it would have been helpful to the reader to incorporate the entries of the earlier bibliography into the index, the original publisher was unable to provide an editable version of the text that would allow insertion of the citation numbers used for indexing. In the end, therefore, the 1994 bibliography is presented exactly as it was originally published.

The later bibliography was conceived as an update to the 1994 original rather than as a wholly new work. For that reason its design follows closely the topical outline of its predecessor. Alterations to that outline provide suggestive indicators of the extent to which legal realities have changed in the interim: Whereas AIDS was a separate topic consuming almost half of the 1994 bibliography, in the current version very few AIDS articles have been included. AIDS is no longer viewed as a "gay" disease, and thus selection required that an article deal explicitly with the impact of AIDS on the lives of gay men and lesbians. Surprisingly few satisfied that criterion.

On the other hand, categories receiving little development in 1994 have blossomed extraordinarily, requiring extensive elaboration of the impacted topical headings. Predominant here are the family-related areas. This version also features an attention to foreign and international aspects of sexual orientation law that were missing in the prior documents.

Perhaps the most significant addition to the 1994 bibliography, however, is the inclusion of a separate "Gender Identity" subject heading. On the one hand, because gender identity is not technically a "sexual orientation," it was not felt by the editors that these materials could be simply folded into the existing sections;

on the other, these discussions were clearly germane to the purpose of the project and therefore merited inclusion. While the SC's charge (given above) is formally limited to "the needs of lesbians and gays within the law library community," as I write this introduction changes to that directive—and correspondingly, the name of the SC—are being contemplated that will expand that language to include the transgender and bisexual members of the law library community as well. Brad Sears spoke better than he may have known when, in his introduction, he suggests that the next edition of the bibliography will need to bear a different name.

Another deviation from the inherited format occurs in the arrangement of citations within each heading. Rather than adopting a strictly alphabetical organization, the editors opted for a chronological arrangement. We wanted to allow for the possibility that some users will wish to consult the bibliography not only to obtain information about a specific cite, but also to glean a sense of the historical trends within a category. Reading the annotations sequentially, we hope, will offer a hint of the development of arguments and issues as they appear and disappear from the academic discourse.

Perhaps to the horror of purists, citation format within the bibliography does not conform to any established format, including the *Bluebook* (the standard style guide for legal writing). The editors found all such rules to be too minimal to provide easy use of the entries by the full range of intended users, from high school students to senior legal scholars. Titles of journals are therefore offered without confusing abbreviations, and with full indication of all terms, easing the transition by the user from citation to library catalog to find the resource. Another feature has been the inclusion of the full page run of an article, rather than the traditional first page only. Our reasoning here was that this expanded information would assist the researcher in choosing which materials were best suited to her present needs.

The annotations themselves, clearly the major innovation in this edition, have been designed to be self-contained. Each case

mentioned includes a complete citation. While this method necessitates a certain amount of repetition, one scenario we hoped this format would prevent was the user who has copied a section of the book for later referencing, finding herself without access to a separate index of case names and citations.

The index of case names, therefore, does not include citations. More noticeably, it is not an exhaustive itemization of all relevant cases on sexual orientation issues that occurred during the review period of 1993–2005. This decision was made after a tentative list was run of all cases with some discernible impact on sexual orientation and gender identity issues, with a result numbering in the hundreds. To compile and annotate such a corpus is no longer feasible. The compromise we offer in this book is to highlight those cases discussed within the cited literature, under the presumption that the most significant cases will be accessible to the user through this method. Once an on-point case has been identified, the researcher should consider Shepardizing the citation to identify subsequent cases that cite to the first. Those interested in a more detailed case law overview should consult the excellent updates provided by *Lesbian/Gay Law Notes*, originally published by the New York Law School's Labor and Employment Law Program, and now sponsored by the school's Justice Action Center <<http://www.nyls.edu/jac>>. This title "tracks significant new legislation, reports on new court decisions, administrative rulings, and executive actions, and highlights new publications of interest." The existence of this valuable resource—with complete online archives going back to 2000, and summaries to even earlier—removed the need for this bibliography to provide an exhaustive accounting of relevant case law.

An additional word about the annotations is warranted. The SC is an organization which, by design, exists to advance the interests of its membership. The user should not be surprised then that the annotators favor articles that believe gay men and lesbians should enjoy the full panoply of civil liberties, and criticize those arguing that we should be satisfied with less. Brad's introduction

makes an intriguing argument concerning whether such negative literature should be included at all. While sympathetic to his view, we can perhaps suggest that, as librarians, we are more ethically obliged to present the full scope of the literature than are other specialists. But while bound to acknowledge its existence, that same professional duty does not require of us a pretense of objectivity concerning works arguing against our collective self-interest. In other words, because the SC has a discernible viewpoint on the topic of the rights of sexual minorities, this bibliography—sponsored by the SC and annotated by SC members—unsurprisingly reflects that same viewpoint. While we do not believe our perspective results in unfair treatment of any cited works, users requiring the façade of an “objective” overview of the gay rights literature may need to look elsewhere.

Despite its length, this bibliography is far from complete. Excluded from inclusion are the less substantial, more ephemeral pieces such as appear in bar journals and legal newspapers. Even so, room only allowed for pieces whose relevance to the organizing topic was direct and easily discernible. Anyone well-versed in the field will perhaps readily identify important citations that have been overlooked. For this we apologize, and can only plead that the slight was not intentional but only pragmatic.

Updating the Bibliography

The incomplete list of citations was tolerable to the editors because it was always the plan to reorganize the bibliography into a constantly updated project of the SC, rather than a decennial-plus publication. In addition to tracking the emerging literature as it appears, updates posted on the internet would allow the team to include retrospectively those earlier items that had been missed. Users of this bibliography are therefore invited to consult the SR-SIS homepage <<http://www.aallnet.org/sis/srsis/>> for links to new bibliography contents. These additions may, publisher willing, be incorporated into future editions of the hardcopy bibliography,

putting the full scope of this important literature into the hands of an ever-broader audience.

James M. Donovan, Editor-in-Chief