

NLWJC-Sotomayor-Box0009-Folder00005

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Wilfredo Ferrer to Cabinet Affairs at 16:21:58.00. Subject: Weekly Report - March 11, 1998 (12 pages)	06/23/1998	P5
002. email	Triana D'Orazio to Triana D'Orazio at 09:28:54.00. Subject: MALDEF Concerned about Ashcroft-statement. [partial] (1 page)	01/09/2001	P6/b(6)
003. email	lgbt-politics@egroups.com to lgbt-politics@egroups.com at 17:57:34.00. Subject: (lgbt-politics) Digest Number 255. [partial] (3 pages)	01/13/2001	P6/b(6)

CLINTON LIBRARY PHOTOCOPY

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
Default ([Sotomayor])
OA/Box Number: 1100000

FOLDER TITLE:

[06/23/1998 - 10/07/1999]

2009-1007-F
ab697

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: newsdesk@usnewswire.com (newsdesk@usnewswire.com [UNKNOWN])

CREATION DATE/TIME: 25-JUN-1997 19:35:47.00

SUBJECT: USN Recap for Wed., 06/25

TO: recap@po.databack.com (recap@po.databack.com [UNKNOWN])

READ: UNKNOWN

TEXT:

U.S. Newswire Washington Recap -- Wednesday, June 25, 1997

To: Assignment Desk

Contact: U.S. Newswire, 202-347-2770

RECAP:

Following is a recap of U.S. Newswire's Washington file for Wednesday, June 25, 1997 as of 7:30 p.m. EST:

DALLAS -- IPI Says Clinton's Child Tax Credit Also 'Targeted Against Poor'

WASHINGTON -- CPSC, Evenflo Announce Recall of Happy Camper Portable Play Yards

WASHINGTON -- Arctic Clouds to Help Predict Climate Change

WASHINGTON -- American Farmland Trust to Open Farmer's Market in District July 6

WASHINGTON -- Gingrich Introduces Attendant Services Act for Disabled Americans

WASHINGTON -- Disabled Americans Demand Meeting with DOT Secretary

ADVANCE -- Census: Three in Ten Households Were Maintained by Women in 1996

WASHINGTON -- Letter Carriers' Food Drive Collects Record Donations

WASHINGTON -- Religious Action Center Calls Supreme Court Ruling a Blow to Religious Liberty

WASHINGTON -- HHS Agency Announces 12 Evidence-Based Practice Centers

WASHINGTON -- Leahy Reaction to Starr's Investigation of Clinton Private Life

WASHINGTON -- Labor Department to Hold Hearing on Burmese Forced Labor Allegations

WASHINGTON -- Coalition Opposes Proposed Tax Increases; 2 PM Press Conference Set

WASHINGTON -- Secretary Babbitt Forced to Sign Four More

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Mining Patents

WASHINGTON -- APTA Says House Panel Recommendation Shows Strong Support for Public Transit

WASHINGTON -- NIF Reports Provide Public Perspective on Critical Issues

CHICAGO -- AMA Mourns Death of Former Executive Vice President James Todd

CHICAGO -- Utah's John C. Nelson Re-elected to AMA Board of Trustees

NASHVILLE -- Gore Announces Efforts to Re-Connect Students, Teachers, Parents

CHICAGO -- Timothy T. Flaherty Re-elected to AMA Board of Trustees

CHICAGO -- Yank D. Coble Re-elected to AMA Board of Trustees

CHICAGO -- Herman I. Abromowitz Elected to AMA Board of Trustees

WASHINGTON -- Common Cause Asks Clinton to Appoint FEC Commissioners Who Will Ban Soft Money

CHICAGO -- William H. Mahood Re-elected to AMA Board of Trustees

ADVISORY -- Harkin, Others to Launch New Medical Information On-line Service

NEW YORK -- ADL Disappointed by Supreme Court Ruling on Religious Freedom Restoration Act

WASHINGTON -- DOL Awards Three New Grants to Serve Out-of-School Youth in High-Poverty Areas

WASHINGTON -- NPCA: Land Sovereignty, Antiquities Bills Threaten Public Lands

ADVISORY -- President Clinton to Address League of United Latin American Citizens Friday

WASHINGTON -- CSE Blasts Clinton Endorsement of EPA Proposed Air Quality Standards

ADVISORY -- Christie's to Auction Diana's Gowns

WASHINGTON -- Statement by Vice President Gore on Death of Jacques Cousteau

WASHINGTON -- Tobacco-Free Kids Statement on Funding for FDA Tobacco Rule

ADVISORY -- First Lady Hillary Rodham Clinton's Schedule for Thursday, June 26

ADVISORY -- Press Schedule for Vice President Gore for Thursday

ADVISORY -- AMA to React to Supreme Court Decision on Physician-Assisted Suicide

WASHINGTON -- SBA Seeks Nominees for Tibbetts Award

WASHINGTON -- Clinton Statement on the Death of Jacques Cousteau

WASHINGTON -- Reaction of Sen. Patrick Leahy to Clinton Decision on Air Standards

WASHINGTON -- Statement by HHS Secretary on Death of AMA Executive Vice President

WASHINGTON -- Tobacco-Free Kids Campaign Sounds June Alarm on House Subcommittee

WASHINGTON -- Gore Statement on the Environment

WASHINGTON -- Seniors Coalition: Senate Medicare Bill Delivers One-Two Punch to Older Americans

ADIRONDACK PARK -- Defenders Takes Step Toward Adirondack Park Wolf Reintroduction

SAN DIEGO -- Free Electronic Filing Beneficial for Consumers, Government Says Intuit

WASHINGTON -- NSBU Outraged at White House Support for EPA Air Quality Proposal

WASHINGTON -- President Clinton Nominates de Leon as Under Secretary of Defense for Personnel and Readiness

WASHINGTON -- NFIB Says Administration Ignores Small Business Concerns on EPA Standards

WASHINGTON -- Physicians Applaud Clinton 'Courage' On Tough Air Standards

WASHINGTON -- President Clinton Nominates Sotomayor to Federal Bench

ADVISORY -- National Recognition Week Activities Tonight Through June 28

WASHINGTON -- Committee Says Senate Breaks Faith with Seniors and Budget Plan Agreements

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RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: "Richard N. Kellett" <rich.kellett@GSA.GOV> ("Richard N. Kellett" <rich.ke

CREATION DATE/TIME: 7-OCT-1999 09:40:39.00

SUBJECT: Mishpat Update #29

TO: FEDWEB-ANNOUNCE@WWW.GSA.GOV (FEDWEB-ANNOUNCE@WWW.GSA.GOV [UNKNOWN])
READ:UNKNOWN

TEXT:

Below as an attachment to this email is a free newsletter on significant legal issues in the web environment. It does have a mix of substantive content intermixed with some product announcements. I think this issue was particularly good and you might want to consider subscribing. I do not know the company or editor directly or indirectly. This is just something I stumbled upon. I would be interested in people posting other interesting listservs to the fedweb-announce listserv if you also know of some good ones. The news letter is contained in the attachment labled, "TextItem.txt" for my email system (Lotus Notes).

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----- Forwarded by Richard N. Kellett/MKE/CO/GSA/GOV on
10/07/99 09:30 AM -----

From: <editor@mishpat.net> AT internet on 10/04/99 04:10 PM

To: Richard N. Kellett/MKE/CO/GSA/GOV
cc:

Subject: Mishpat Update #29

- TextItem.txt===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Welcome to the twenty ninth issue of the weekly Mishpat Update,
Law on the net newsletter from <http://mishpat.net>

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In this issue:

1. Introduction
 2. Victory for freelancers
 3. NSI and ICANN reach an agreement
 4. Cyberlaw resource of the week
 5. Cyberlaw news and updates
-

1. Introduction
#####

I would like to welcome the 22 new subscribers who joined the list this week.

Starting this week, Mishpat Update will feature a new regular section called "Cyberlaw resource of the week". The new section features one law related web site, book or Ezine every week. If you want to recommend resources of any kind, just send an email with a short description to <mailto:editor@mishpat.net>

This issue has two feature articles. The first takes a look at a recent ruling that clarifies freelance writers' rights over their work. The second brings the background and details of a new agreement that will shape the future of domain name registration. As usual, the last section of this newsletter is packed with cyberlaw news and updates.

I hope you enjoy reading this newsletter, don't forget to send your comments to <mailto:editor@mishpat.net>

The Mishpat Update archive (issues 1-28) is available at:
<http://mishpat.net/mailling-lists/update>

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<http://mishpat.net/ads/legalseeker>

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2. Victory for freelancers
#####

Freelance writers whose material is republished without permission by The New York Times and other publishers on electronic databases have won a major victory with a ruling by the U.S. Court of Appeals for the Second Circuit.

The Second Circuit found in *Tasini v. The New York Times Co.*, that the Times and other publishers are not protected by the privilege against copyright infringement, afforded to publishers of "collective works".

The Second Circuit U.S. Court of Appeals sided with six freelance writers who claimed that The NY Times Co. and other major media had infringed on their copyrighted articles by making them available on commercial databases (such as Lexis-Nexis and CD-ROMs) without providing additional compensation.

The newspapers had argued that they owned the copyright to the "collective works" (the entire periodical in which the stories were published) and, therefore, were allowed to reproduce the individual works in a "revision" of the collective work.

U.S. District Judge Sonia Sotomayor, of the Southern District of New York, had agreed with the publishers. But the Second Circuit reversed.

Chief Judge Ralph K. Winter, writing for the court, said "there is no feature peculiar to the databases at issue in this appeal that would cause us to view them as 'revisions.' NEXIS is a database comprising thousands or millions of individually retrievable articles, taken from hundreds of thousands of periodicals. It can hardly be deemed a 'revision' of each edition of every periodical that it contains."

Judge Winter reasoned that "Even if a NEXIS user so desired, he or she would have a hard time recapturing much of 'the material contributed by the author of such collective work ... In this context it is significant that neither the publishers nor NEXIS evince any intent to compel, or even to permit, an end user to retrieve an individual work only in connection with other works from the edition in which it ran. Quite the contrary, The New York Times actually forbids NEXIS from producing 'facsimile reproductions' of particular editions."

Therefore, Judge Winter concludes, the NY Times and other newspapers can not claim that the freelancers' work was used as part of "collective works".

Although the ruling has widespread implications on writers' rights, the scope of the decision is limited to the default provisions of the U.S. copyright act. As Judge Winter wrote: "We emphasize that the only issue we address is whether, in the absence of a transfer of copyright or any rights thereunder, collective work authors may

re-license individual works in which they own no rights". This means that parties can negotiate around that default provision, and decide explicitly what rights the authors are giving the publisher and what compensation the author will get for the permission to use his work in other media.

The full text of the opinion is available at:
<http://www.tourolaw.edu/2ndCircuit/September99/97-9181.html>

Comments and recommendations following the case, by the National Writers Union:
<http://www.nwu.org/>

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3. NSI and ICANN reach an agreement
#####

The U.S. Department of Commerce has resolved the legal issues needed to migrate management of the Internet domain name system from Network Solutions Inc. (NSI), a government contractor, to the nonprofit organization ICANN (Internet Council for assigned names and Numbers).

The Commerce Department, NSI and ICANN announced that they have reached a series of agreements designed to privatize the registration of .com, .net and .org domain names. The agreements are expected to be signed in November, after ICANN's membership approves them.

For the past six years, NSI has had an exclusive agreement with the Commerce Department to register .com, .net and .org domain names, and to collect fees for the use of those names. NSI also maintains a central database of assigned names called WHOIS as the sole registrar of domain names.

On July 1, 1997, President Clinton issued A Framework for Global Electronic Commerce and directed the Secretary of Commerce to privatize the management of the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management. On June 8, 1998, the Department of Commerce issued a Statement of Policy entitled Management of Internet Names and Addresses (the "White Paper"). The White Paper called upon the private sector to create a new non profit corporation to assume responsibility, over time, for the management of certain aspects of the domain name system. In November 1998, the Department of Commerce entered into a Memorandum of Understanding with the non-profit organization ICANN, for collaborative development and testing of the mechanisms, methods, and procedures necessary to transition management responsibility for specific DNS functions to the private sector.

Under the new agreement. For the first time, NSI agreed to recognize the authority of ICANN to regulate aspects of the domain name system, and agreed to grant public rights to certain features of its domain name database. This was a major change in NSI strategy.

The agreements give a boost to ICANN, which has been struggling to create an organizational process and a steady method of funding. Upon signing the agreement, NSI will pay ICANN 1.25 million USD towards its share of annual registrar fees. NSI has agreed that it will approve an ICANN registrar fee policy as long as its share of the registrar fees does not exceed 2 million USD.

With certain limitations, the deal guarantees public access to NSI's Whois queries that identify the owner of a domain name, as well as bulk access for a fee. NSI got a three year extension on the contract of running the Whois database, and will now operate it until 2004. NSI was also given a financial incentive to spin off its registration business within the next 18 months. If it does so, NSI's contract to maintain WHOIS will be extended until 2008.

NSI will also give up it's right to use the name "Internic". Within six months, the InterNIC website (as well as the internic.com, internic.org, and internic.net domain names) will be transferred to the Department of Commerce. Within nine months, NSI will modify all of its registration templates and otherwise migrate from the use of the term "InterNIC," or Internet addresses that reflect the term "InterNIC."

For its part, NSI also won some important concessions. The company will be paid 6 USD (down from 9 USD) for each domain name registered in the .com, .org, and .net top-level domains. NSI will also continue to manage the authoritative root server in accordance with the direction of the Department of Commerce. This management responsibility may be transferred to ICANN at some point in the future.

ICANN's board must approve the agreements and will take up the issue at its next meeting on November 4. The agreements are posted for a 30 day comment period at ICANN's site:
<http://www.icann.org/agreements.htm>

4. Cyberlaw resource of the week
#####

This week Mishpat Update starts featuring selected cyberlaw and law on the Internet resources. In each issue I will review one resource: a web site, a book available online or an electronic magazine (Ezine).

I want this new section to be interactive, and based mostly on your experience and knowledge. So please send any tip or recommendation to <mailto:editor@mishpat.net>

This week we take a look at an incredible international law project.

Did you ever want to read the Chinese constitution, download Yemen's constitution, take a look at the New Zealand Human Rights Act, or learn about Finland's constitution?

Now all these constitutional resources, along with many other, are available from the International Constitutional Law (ICL) project at <http://www.uni-wuerzburg.de/law/home.html>

ICL provides English translations of world constitutions and other textual material related to constitutional documents. It cross references those documents for quick comparison of constitutional provisions.

For anyone involved in international comparative law, constitutional law, or simply interested in international law and law of other nations, this site is extremely helpful

Highly recommended:
<http://www.uni-wuerzburg.de/law/home.html>

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5. Cyberlaw news and updates
#####

Each week Mishpat-Update brings you the latest news about online and computer law, with links to the full reports available on the web.

*** eBay stops marijuana auction ***

Online auction giant eBay Inc. said it pulled an auction for 500 pounds of marijuana, although it had no way of knowing whether the sale was a hoax. The auction had described the merchandise as "the best marijuana Holland has to offer". Seven bids, for amounts as high as million, had been made before the auction was canceled. Kevin Pursglove, A spokesman for eBay, said that while it can be hard to tell whether sellers are serious about such auctions, the company will usually play it safe and cancel any sales involving illegal goods. Earlier this month, in separate incidents, eBay executives shut down auctions that claimed to be selling a human kidney and an unborn baby.
<http://news.cnet.com/news/0-1007-200-123002.html>

*** Maryland fights out of state alcohol sales ***

A new law in Maryland (U.S.) raises the penalty from misdemeanor to felony for any out of state liquor or wine dealer that ships alcoholic beverages into that state. It is part of a backlash against the escalating number of Internet and catalog merchants skirting state beverage taxes and sales restrictions. To operate on the Internet or via catalog, out of state liquor sellers must negotiate state by state agreements to sell alcoholic beverages. Most hurt by these state laws and restrictions are smaller breweries and vineyards that don't have the resources to negotiate such agreements.
<http://www.computerworld.com/home/news.nsf/CWFlash/9909293mdlaw>

*** Sony's Walkman will be able to play pirated MP3 files ***

Sony Electronics announced that a new version of its popular Walkman personal stereo will be capable of playing music distributed in the MP3 file format (a popular digital music format). Although the new product is designed to play files coupled with piracy protection technology, it is also capable of playing any MP3 songs, including illegally copied tunes. The Sony device will of course be able to play illegally copied songs by Sony Entertainment artists, a situation Sony has been trying to avoid in lobbying for tighter controls over the distribution of digital music.
<http://news.cnet.com/news/0-1006-200-352067.html>

*** Hackers plead guilty ***

Three hackers, involved in one of the biggest computer security breaches ever, pleaded guilty. The group's action caused damages of approximately 1.85 million dollars. The hackers were sentenced to 24-41 months in prison. A full report, including details about FBI tactics was published on ZDNet:
<http://www.zdnet.com/filters/printerfriendly/0,6061,2345639-2,00.html>
Thanks to Mishpat Update reader, Boaz Guttmann, for pointing out this story.

* Haiti shuts down largest ISP *

Telecommunications d'Haiti (Teleco) Haiti's telephone monopoly, and the National Telecommunications Council (Conatel), the government communications regulator, charged Alpha Communications Network (ACN), the largest Internet service provider (ISP) in Haiti, with violating the Teleco monopoly by selling international telephone cards and providing international telephone service. Saying the illegal activity cost it million in revenues per month, the government regulators and Teleco took over and closed ACN's operating center. Among customers that found themselves without service yesterday was the Haiti government.

<http://news.cnet.com/news/0-1004-200-265862.html>

* French army v. Apple's iBook *

Researchers from France's National Center for Scientific Research warned that French buyers of Apple's new iBook notebook computer could be in for a nasty surprise if they use the machine's AirPort wireless transmitter for accessing the Internet. The device uses the same 2.4 GHz wave band reserved by the French military, meaning an iBook user surfing the Web near an army unit could end up scrambling defense force communications, and thus risk a 29,000 euro fine and six months in jail. Apple France's marketing director, said that since the transmitting range between the iBook and AirPort is only 50 meters, there should be no trouble getting permission from the French authorities to use that frequency.

<http://www.zdnet.com/zdnn/stories/news/0,4586,2343332,00.html>

* Yahoo faces legal problems in China *

Yahoo founder Jerry Yang said that there are still a number of "gray areas" to be worked out with the Beijing government on the legality of the company's new Internet venture in China. Yang said Yahoo is talking to the Ministry of Information Industry and other regulators to ensure that its mainland based Web site complies with all regulations. China's laws bar foreign investment in Internet service providers (ISP), but such investment in Internet content providers (ICP) was regarded as a gray area until last week. Minister of Information Industry Wu Jichuan was quoted then as saying ICP investment is also banned.

<http://news.cnet.com/news/0-1005-200-351899.html>

* Utah plans access fees *

Utah and other states plan to charge access fees from companies laying cable for Internet and other telecommunications services along interstate highways. Utah's Rights of Way Task Force recommended a one time 500 dollar per mile charge. But Utah governor Michael Leavitt has rejected the recommendation and has publicly suggested an annual fee of 1,000 dollar per mile. While telecom execs view the above cost fees as a tax, other observers believe governments should charge for the right to use public property.

<http://www.zdnet.com/zdnn/stories/news/0,4586,2341710,00.html>

* Ninth Circuit to reconsider Bernstein crypto case *

The Ninth Circuit U.S. Court of Appeals ordered that the three judge opinion in Bernstein v. U.S. Department of Justice be reconsidered by the 11 judges of the court. As reported in Mishpat Update #10, in May, the panel held by a 2-1 vote that computer source code is speech

protected by the First Amendment, and thus can be posted on the Internet without government approval. The ruling found unconstitutional U.S. Department of Commerce regulations requiring encryption software makers to get a license to distribute encrypted material.
<http://www.lawnewsnetwork.com/stories/A6794-1999Sep30.html>

*** Charges against alleged net child sex offender dropped ***

California prosecutors dropped charges against an alleged Internet child sex predator citing a "lack of sufficient evidence." According to John Forsyth, the defense attorney in People vs. Costello, the case involved a sting operation in which a police officer posing as a minor agreed to meet an adult, purportedly for sex. Under a California state law, it is illegal for a person to knowingly transmit material over the Internet to arouse or seduce a minor. Forsyth said the decision to drop the case underscores deep flaws not only in this case but also in the statute under which it was brought. According to Forsyth, the law is barred by the Commerce Clause and the First Amendment. Nancy O'Malley, Alameda Chief Assistant District Attorney, denied that the case had been dropped because of doubts within the office about the validity of the law.

<http://news.cnet.com/news/0-1005-200-205495.html>

*** Barbie manufacturer sues porn web site ***

Mattel, the world's largest toy maker, is asking a federal judge in New York to shut down the pornographic web site Barbiesplaypen.com. Mattel is accusing the porn site of using Barbie's trademark name and damaging her image. Mattel, the maker of the real Barbie doll said it wants to preserve the wholesome image it has cultivated for Barbie.

<http://www.usatoday.com:80/life/cyber/tech/ctg267.htm>

*** Illinois passed anti spam law ***

Illinois has passed the Electronic Mail Act, aimed at fighting unsolicited email. The act sets statutory damages at a minimum of 10 dollar per spam message received, up to a maximum of 25,00 dollars per day. The new law also fights spamming software, the Electronic Mail Act makes it unlawful to distribute or possess software which enables falsification of electronic mail transmission information or other routing information. The full text of the law s available at:

<http://www.legis.state.il.us/publicacts/pubact91/acts/91-0233.html>

If you know of any cyberlaw updates, please send them to
<mailto:editor@mishpat.net>

That's all for this time,
see you next week

Yedidya M. Melchior
Editor

~~~~~  
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===== END ATTACHMENT 1 =====

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Declan McCullagh <declan@well.com> ( Declan McCullagh <declan@well.com> [ U

CREATION DATE/TIME: 8-OCT-1999 11:25:39.00

SUBJECT: FC: Writers' electronic rights and Tasini v. NYTimes judgment

TO: politech@vorlon.mit.edu ( politech@vorlon.mit.edu [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

[I was camping in the Grand Tetons, not Yellowstone, about 50 miles southwest. --DBM]

\*\*\*\*\*

Date: Thu, 7 Oct 1999 19:15:11 -0700

To: declan@well.com

From: hedlund@forests.com (Patric Hedlund)

Subject: NWU TASINI V. NYTIMES JUDGEMENT

Hi Declan,

While you were swatting mosquitos in the outback of Yellowstone (?) the ruling about independent writer's electronic rights was reversed on appeal in favor of writers. I see this as part of a much larger picture for all online content creators. I sent you a summary of that info. It is an important intellectual property issue core to the convergence of formerly discrete media, and could have positive reverbs in many sectors of contract law related to the internet IF writers exercise their rights under this victory.

I would think that the CATO circuit would realize this is an important ruling for independent business people who happen to make their livings creating content for the net.

Please circulate info about the ruling to this list.

Patric Hedlund,  
Computers, Freedom & Privacy Video Library Project

[PREVIOUS TRANSMISSION ATTACHED]

You may have noticed that the legal battle waged by independent writers to maintain our right to be paid for republication of our print stories in electronic form has finally been resolved. The National Writer's Union suit "Tasini v The New York Times" appeal victory is an important event, which confirms that Web rights are separate from print rights and must be licensed separately.

The National Writers' Union is sending out an appeal for writers to USE this opportunity, because most certainly if we don't use it, we WILL lose it.

NWU worked on this case for 5 years. The issues are explained below. Perhaps it is still early enough within this new online economy for creators of content to assert our right to be remunerated for the ongoing use of our work. Yes, we may be underdogs vs consolidated corporate media...but we are still business people, and our talent and creativity is the capital which we are investing. Return on that investment is what pays

the mortgage and helps pay our kids' tuition. We have a responsibility to manage it well.

If you have been confronted with agreements such as the L.A. Times' standard contract, which seeks to strip freelancers' right to payment for republication online, you will recognize that if we agree to "go along to get along" we can quickly nullify the impact of this important ruling.

Whether you choose to join NWU or not, you might want to consider using its standard freelancers contract in your business dealings with editors. I'll be happy to fax a copy to any of you who request it (be sure to include your fax # with your reply).

I also urge those of you who are currently in corporate staff positions to consider how this issue affects your personal options should you become an independent tomorrow.

I hope you'll find this information useful, and I invite your comments.

>  
>TASINI V. THE NEW YORK TIMES RULING - WHAT DOES IT MEAN FOR WRITERS?  
>  
>On September 24, 1999, the Second Circuit Court of Appeals reversed a  
>federal district court decision against the plaintiffs in Tasini et al. v.  
>New York Times et al. The appeals court ruled that the reuse of freelance  
>work on databases and CD-ROMs without the authors' express permission  
>constitutes copyright infringement. This is a major victory for all  
>independent creators.  
>  
>The purpose of this document is to explain the ruling and to suggest what  
>writers should do next both collectively and in our individual contract  
>negotiations.  
>  
>WHAT THE DECISION SAYS:  
>  
>Q. In a nutshell, what did the ruling say?  
>A. The judges ruled that, even when there is no contract relating to  
>electronic rights, a print publisher may not put the writings of  
>freelancers on databases (such as Nexis) and CD-ROMs that include the  
>entire textual content of the print publication.  
>  
>Q. Does this mean that freelancers automatically retain electronic rights  
>to their printed work?  
>A. Yes, under the Copyright Act of 1976, the writer, in the absence of a  
>written contract, transfers only First North American Serial Rights and  
>retains all other rights. The right to electronically reproduce freelance  
>articles is not included in the transfer of First North American Serial  
>Rights. The judges also affirmed the lower court's ruling on publishers'  
>efforts to acquire rights by stamping a statement on the back of checks.  
>Writers do not transfer rights to an article by simply endorsing such a  
>check.  
>  
>Q. Why did the district court rule in favor of the publishers?  
>A. Judge Sotomayor based her conclusion on an interpretation of Section  
>201(c) of the Copyright Act of 1976, which deals with the copyright in  
>"collective works." She focused on the language in Section 201(c) that  
>gives the holder of the copyright in the collective work the limited  
>privilege of reproducing and distributing revisions of the compilation.

The

>judge came to the bizarre conclusion that certain kinds of electronic  
>databases amount to nothing more than a "revision." As the appeals court  
>pointed out, reading "revision" that broadly causes "the exception to  
>swallow the rule."

>

>Q. How do my individual electronic rights in an article relate to the  
>publisher's collective electronic rights in all of the articles it has  
>published?

>A. If you have not expressly transferred to the publisher the right to  
>reproduce your work electronically, the publisher cannot legally license  
>your articles to databases. The publisher only has the right to license  
>database rights to articles that were written by employees and articles  
>written under contracts that transfer electronic rights.

>

>Q. What about other kinds of electronic rights?

>A. This decision reaffirms the NWU's position on websites. Publishers do  
>not automatically have the right to put your work on their own website.  
Web

>rights are separate from print rights and must be licensed separately. See  
>the NWU Web-rights Policy.

>

>Q. What does the ruling mean for the NWU's Publication Rights  
Clearinghouse

>(PRC)?

>A. It means that publishers now have more reason than ever before to  
>negotiate collective licensing agreements with the PRC. As long as writers  
>stand together and refuse to sign electronic rights over to publishers in  
>their individual contracts, the PRC will be in a strong position to  
>negotiate additional fees for these rights. And that means that writers  
>will be able to share in the revenue generated by the use of their work in  
>new media.

>

>FOR MORE INFORMATION ABOUT THE "TASINI V. THE NEW YORK TIMES" RULING  
PLEASE

>VISIT THE NATIONAL WRITERS UNION WEB SITE: <<http://www.nwu.org>>

>

>

>Date: Wed, 29 Sep 1999 15:59:16 -0700

>To: [nwu@nwu.org](mailto:nwu@nwu.org)

>From: National Writers Union <[nwu@nwu.org](mailto:nwu@nwu.org)>

>Subject: NWU: Building on Victory - Your Union Needs You

>Dear NWU member:

>

>Our recent victory in the landmark lawsuit Tasini v. The New York Times is  
>a very important step forward in our ongoing fight to guarantee that  
>writers are treated with dignity and respect.

>

>But all writers must understand that this is only one small step. If  
>writers do not, today, join the National Writers Union, we will be no  
>better off a few years from now.

>

>The growing power of the media industry, its consolidation across borders  
>and its use of its vast resources to force us to sign away our rights and  
>refuse to give us our fair share poses a great threat to writers. A threat  
>to our very survival.

>

>Every writer must see this threat clearly. And he or she must understand  
>that the only way to take this victory and hammer it home, to build on it,

So, what IS a Dendrite Forest? See <[www.forests.com](http://www.forests.com)>

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Co-founder Ethical Standards & Practices Committee of the AIP

POLITECH -- the moderated mailing list of politics and technology  
To subscribe: send a message to majordomo@vorlon.mit.edu with this text:  
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More information is at <http://www.well.com/~declan/politech/>

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SUBJECT: McBride Baker & Coles December 1999 ITEC Law Alert

TO: Itec <ItecMail@mbc.com> ( Itec <ItecMail@mbc.com> [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

Attached is the December 1999 issue of the ITEC Law Alert. We hope you find it enjoyable and valuable. Please direct all questions, comments, or change of addresses to Christie Irvine at irvine@mbc.com, or to itec@mbc.com.

The current and prior issues of the newsletter are also available on our Web site at <http://www.mbc.com/newsletters/newsinfo.html>

Larry Zanger  
McBride Baker & Coles

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ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

McBride Baker & Coles  
ITEC LAW ALERT

From the Information Technology & Electronic Commerce (ITEC) Law Department  
Vol. 9, No. 4, December 1999

In This Issue:

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Cybersquatting Update

Where We're Going, What We're Doing

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SUPREME COURT PROTECTS DIGITAL RIGHTS OF FREELANCERS  
TASINI V. THE NEW YORK TIMES CO. INC.

The U.S. Court of Appeals for the Second Circuit recently ruled in favor of six freelance writers who claimed their copyrights were infringed when their articles were posted online and on CD-Roms by publishers.

The freelance writers authored articles for publication in the publishers' periodicals. Each author personally owned a registered copyright to his or her individual article. The publishers, on the other hand, owned registered copyrights over the periodical containing the individual article as a collective work. The point giving rise to this suit was whether the publishers, when granted the right to publish the articles in print form, were also authorized to post the articles in on-line databases and on CD-Roms.

When this case arrived in district court Judge Sotomayor's courtroom, not only were the publishers arguing that they had rights to post the articles in online databases under Section 201(c) of the Copyright Act, one publisher even contended that the legend on the checks it issued to freelance authors represented, once endorsed, express transfers of copyright pursuant to 17 U.S.C.

204(a). While the district court rejected the check transfer argument, it entered a judgment for the defendant publishers, holding that under Section 201(c) of the Copyright Act, the publishers are protected by the privilege extended to publishers of "collective works" and did not infringe the authors' copyrights in their individual articles.

This was an acceptance of the publishers' claim that the online posting was merely a "revision," of their collective work, permissible under Section 201(c) of the Copyright Act.

The Second Circuit, however, ruled in favor of the writers, holding that the revision of collective works privilege of Section 201(c) does not give the publishers the right to license the individually copyrighted works to electronic databases absent an express agreement by the writers. The court rejected the publishers' arguments, reasoning that there was no particular feature of the databases that supported the contention that online posting constituted a revision under Section 201(c). To the contrary, the court reasoned that NEXIS, for example, was a database "comprising thousands or millions of individually retrievable articles taken from hundreds or thousands of periodicals. It can hardly be deemed a 'revision' of . . . every periodical that it contains." The court rejected the arguments from other publisher databases that were slightly different in format (e.g., containing articles from only one publisher or containing image-based, rather than text-based files). The court held that those particular circumstances also did not constitute revisions within the meaning of Section 201(c), and thus the privilege was not triggered in any of those instances.

While this decision is a major victory for freelance writers, it is important to note that publishers and authors are free to contract around the statutory framework present in this case. Here, there were no express transfers to the publisher.

ishers of copyrights in the individual works. Therefore, this case ought to provide a warning to publishers to execute clear contracts with authors defining ownership of copyrights to articles submitted for publication, any transfer of rights thereof, and all forms of media in which the article might appear. Absent an agreement to the contrary, courts will look to the default allocation of rights provided by the Copyright Act.

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#### NEW SECURITY AND PRIVACY REGULATIONS FOR PERSONAL HEALTH INFORMATION

President Clinton recently unveiled a landmark set of privacy protections for medical information stored or transmitted electronically. These new regulations, announced on October 29, 1999, which the President and Health and Human Services (HHS) Secretary Shalala are proposing, would apply to all health plans and many health care providers, as well as to health care clearinghouses such as billing companies. The new regulations would: (1) limit the non-consensual use and release of private health information; (2) inform consumers about their right to access their records and to know who else has accessed them; (3) restrict the disclosure of protected health information to the minimum necessary; (4) establish new disclosure requirements for researchers and others seeking access to health records; and (5) establish new criminal and civil sanctions for the improper use or disclosure of such information.

Acknowledging his limited regulatory authority, the President urged Congress to provide comprehensively broader privacy protections. Under the current loose patchwork of state laws, personal health information can, in some instances, be distributed without consent or other screening procedures for reasons that have nothing to do with a patient's medical care. Regulations already in existence, for example, do not cover all paper records, including facsimile transmissions, and do not directly regulate many entities, including employers, other insurers, or public health agencies. Therefore, the risks associated with allowing unregulated retransmission and use of information by such entities still exists. However, the new regulations will provide a framework for secure and responsible use of personal health information.

#### Covered Information

The new standards defined "health information" as any information, whether oral or recorded in any form or medium, that is created or received by a covered entity, such as a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual. However, protection of personal privacy is primarily a concern for a subset of health information, called "individually identifiable health information," defined in Section 1171(6) of the Social Security Act. While the definition does not expand on the statutory definition, the new standards recognize that the issue of how the identifying characteristics can be removed from such information (de-identification) presents difficult operational issues and accordingly, the rule proposes an approach for de-identifying identifiable information, along with restrictions designed to ensure that de-identified information is not misused.

The privacy standards would apply to "individually identifiable health information," and not necessarily to information that does not identify an individual. However, even after removing obvious identifiers, there is always some probability or risk, however remote, that any information about an individual can be attributed. It is not always obvious when information identifies the subject. If

the name and identifying numbers (e.g., SSN, insurance number, etc.) are removed, a person could still be identified by the address. With the address removed, the subject of a medical record could be identified based on health and demographic characteristics (e.g., age, race, diagnosis), particularly if the individual has age, race, gender, diagnosis, and other attributes that are numerically disproportionate to the demographic scale. For example, a type 2 diabetic 20-year old female living in Los Angeles would be among many others within the same demographic grouping. However, there may only be one such person in a small town or rural county. This raises the issue of using random numbers or encrypted codes to replace obvious identifiers on health information. Such procedures can prevent a person using the record from identifying the subject, but still allow the person holding the code to re-identify the information.

For these reasons, the new regulations propose that there be a presumption that if specified identifying information is removed and if the holder has no reason to believe that the remaining information can be used by the anticipated recipients alone or in combination with other information to identify an individual, then the covered entity is presumed to have created de-identified information. In addition, the rules include a "reasonableness" standard so that entities with sufficient statistical experience and expertise could remove or code a different combination of information, so long as the result is still a low probability of identification. Therefore, the rules propose to define "individually identifiable health information" to mean health information created or received by a covered entity, that could be used directly or indirectly to identify the individual who is the subject of the information.

#### Written consent, notice, and copies for patients

Under the proposed standards, doctors, hospitals or health plans would have to obtain written consent from a patient whose information is being released, particularly if the release is not directly associated with the patient's direct medical care. The new rules would require health care providers to send patients a notice describing how they intend to use electronic medical information and advise patients in advance of any changes. HMO's would also have to establish internal procedures to protect patient records, including limiting access to information and training employees to keep patient information private during their business operations.

In addition, patients would have access to their own personal health records, currently a requirement in only a few states. Patients would also be given the right to request additional information and the right to correct any errors in their medical records.

#### Penalties

The proposed regulations would create new civil and criminal penalties for improperly disclosing patient information. Intentionally releasing information would be punishable by a fine of up to \$50,000 and one year imprisonment. Someone trying to sell information illegally could face a \$250,000 fine and 10 years in prison. Under the new rules, law enforcement organizations would be prohibited from obtaining medical records without legal authorization, such as a warrant or court order. This is in contrast to the administration's previous position of allowing law enforcement near unlimited access to health records.

Stay tuned and visit our <http://www.mbc.com/telemedicine> web site for the latest developments.

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FTC LIMITS ABILITY TO COLLECT INFORMATION FROM CHILDREN ONLINE

CLINTON LIBRARY PHOTOCOPY

A new rule issued by the Federal Trade Commission may force owners of Web sites targeted to children to rework those sites. On Friday, October 20, 1999, the Federal Trade Commission issued its Children's Online Privacy Protection Rule ("Children's Privacy Rule") which will go into effect on April 21, 2000. As a result, firms that are collecting information from children online have six months to put into place the necessary disclosure statements as well as implement the mechanisms for obtaining verifiable parental consent related to their collection and use of such information.

The Children's Privacy Rule implements the Children's Online Privacy Protection Act of 1998 ("COPPA"). Overall, COPPA and the Children's Privacy Rule are designed to ensure that parents are controlling the type of information collected from their children on Web sites "directed to children." The Children's Privacy Rule seeks to achieve this result by mandating that firms collecting information online from children disclose their information collection practices, obtain parental consent before collecting or using information obtained from children, and give parents the option of preventing the disclosure of such collected information to third parties. The Rule also prevents Web sites from refusing a child's access to activities on a Web site because a parent refuses to consent to the disclosure of information not reasonably necessary to that activity.

COPPA and the Children's Privacy Rule cover children under the age of 13. The Children's Privacy Rule, however, does not contain a bright line rule describing the Web sites that fall under its scope. Instead, the FTC will consider a number of factors in order to determine if a Web site is "directed to children." Further, the FTC will require, at least temporarily, different forms of parental consent depending on the information collected and its intended use.

The FTC is authorized by COPPA to obtain civil penalties against persons or firms that violate the Children's Privacy Rule.

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#### DOMAIN NAME AGREEMENT REACHED BY ICANN, NSI AND DEPARTMENT OF COMMERCE

In the September issue of the ITEC Law Alert, we reported on the various disputes between Network Solutions, Inc., the Internet Corporation for Assigned Names and Numbers (ICANN), and the Department of Commerce over how to handle the registration of domain names. On September 28, 1999, these three bodies finally reached a tentative agreement, which was finalized and signed by the parties on November 10, 1999. The agreements include the following provisions:

NSI will continue to operate the .com, .net and .org registry pursuant to a Registry Agreement with ICANN.

NSI will receive \$6 per name per year for domains registered by competing registrars, starting January 15, 2000 (the fee will remain at \$9 until then).

NSI will be an ICANN-accredited registrar, overseen by ICANN along with other accredited registrars and subject to the same rules.

NSI's Registry Agreement with ICANN will have a term of 4 years, which will be extended an additional 4 years if NSI separates its registry and registrar operations within 18 months.

The WHOIS database will be left in NSI's control for at least 4 years, with incentives to NSI to split off its registry duties from its domain name registration business. NSI will allow other accredited registrars access to the database as long as it is not used for spamming.

ICANN also adopted a uniform domain name dispute policy on October 24, 1999, which all registrars, including NSI will be required to follow. The dispute resolution policy includes a mandatory administration procedure to be followed in cases of "bad faith" domain registrations, including registrations made for purposes of extorting payment, disrupting a competitor's business, or attracting Internet users by creating confusion with another's name or site. The new dispute resolution mechanism is to be available December 1, 1999, for registrars other than NSI, and January 3, 2000, for NSI.

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#### FTC TACKLES TECHNOLOGICAL DIRTY TRICKS

The Federal Trade Commission recently obtained a preliminary injunction against several individuals and firms that will prohibit them from engaging in any further "pagejacking" and "mouse trapping" pending a full trial on the FTC's complaint. See, Federal Trade Commission Press Release, FTC Halts Internet Highjacking Scam, Sept. 22, 1999. In its complaint, the FTC alleged that the defendants copied millions of legitimate Web pages and then linked those pages to pornographic Web sites. For example, the defendants would copy a site that contained movie reviews. If an individual conducted a search for Web sites containing movie reviews through a search engine, the copied Web page would appear along with other legitimate Web sites containing movie reviews. Individuals, including children, who went to view the copied Web page were automatically transferred from the copied page to a commercial Web site containing pornographic images. This conduct represented the hijacking portion of the defendants' scheme.

Moreover, once at the pornographic Web site, the defendants created special coding that would disable the individual's browser commands. This coding would disable the movement and exit commands on the individual's computer. If the individual tried to leave the Web site, the defendants' codes would automatically send the individual to another commercial pornographic Web site. To escape, some individuals would have to turn off their computers entirely. This is the so-called mouse trapping portion of defendants' scheme.

The FTC argued that the defendants' conduct constituted both a deceptive trade practice and an unfair trade practice. See, Memorandum In Support Of Plaintiffs Federal Trade Commission's Motion For And Ex Parte Temporary Restraining Order, FTC v. Carlos Pereira (Sept. 14, 1999 E.D. Va.). Deceptive and unfair practices are not the same. A practice is deceptive if it detrimentally misleads consumers about a material fact. Unfair practices, however, are limited to situations in which the challenged conduct causes a substantial injury to consumers that is not outweighed by any countervailing benefits and that is not reasonably avoidable. With respect to unfairness, the FTC argued, in part, that the defendants' scheme misdirected children to pornographic Web sites. The district court hearing the matter was convinced that sufficient evidence existed to allow the issuance of a preliminary injunction.

While the defendants' alleged conduct is extreme, the theories underlying the FTC's case have much broader potential application. This is particularly true with respect to the FTC's claim that misdirection constitutes a deceptive practice under Section 5 of the FTC Act. For example, the FTC argued:

"defendants' pagejacking creates deceptive 'door openers' on the Internet. Such 'door openers' are deceptive by law, even where the truth is made known prior to a purchase. . . . [p]agejacking materially undermines consumers' ability to find quality Web sites and can drastically affect where they go when they click on a specific search results."

The concept is that it is improper for firms to misidentify their Web sites to search engines in an effort to misdirect consumers. Even though the consumer would know they were misdirected before they purchased anything, the FTC's position is that the initial misdirection taints the entire transaction. The FTC also pointed out that firms misdirect individuals in order to inflate artificially the number of hits to their Web site. The Web site can then use these inflated hit numbers to obtain higher rates from advertisers. This is yet another form of deceptive conduct. Not surprisingly, the FTC demanded in its preliminary injunction that the court prevent the defendants from copying Web pages without authorization and from misrepresenting the contents of their Web pages or Web sites through the use of meta tags, or by any other means.

The extent to which the FTC would prosecute firms that simply engaged in misdirection is unclear at this time. What the FTC has done, however, is point out that misdirection can represent a deceptive practice and thus a violation of Section 5 of the FTC Act. Moreover, misdirection may trigger private lawsuits by advertisers who paid inflated rates or competitors who have lost potential patrons. Indeed, search engines may have claims if misdirection reduces the value of their services or increases the costs of their operations.

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#### SUE AND LABOR: AN ANCIENT INSURANCE CLAUSE DRAWS NEW ATTENTION

For months now the entire insurance industry has been buzzing about the Port of Seattle's lawsuit against Lexington Insurance Company. It was the first of what is now several lawsuits against property insurance companies to recover year 2000 readiness expenditures pursuant to the sue and labor clause.

The sue and labor clause is an ancient component of the marine insurance policy. It allows the insured to recover for labor and expenses incurred in order to prevent loss for which the insurance company would be responsible. Over the years, sue and labor provisions have been incorporated into property insurance policies as well. So, for example, when a hurricane looms off the coast, a store owner can recover the expense of boarding up his storefront even if the hurricane never hits.

As we all know, a different kind of storm is looming, the year 2000 computer virus, a/k/a the "millennium bug." Most businesses are taking steps to prepare themselves and their systems to avert an interruption in business, or a loss or damage to property. Many companies have now made claims against their property insurance carriers to recover their year 2000 expenditures under the sue and labor clause. Recently, companies such as GTE and Xerox have sued their respective property insurance carriers. They are attempting to recover millions of dollars claiming they were incurred to prevent loss that would be covered by the property policy.

The insurance carriers, on the other hand, dispute whether these claims qualify under the sue and labor clause. For instance, the carriers point out that the imminent risk of loss is a critical "sue and labor" recovery element, which is missing in those cases. They also contend that companies have known about the need to prepare for the year 2000 since the late 1980s, which gives rise to known loss, late notice, and timeliness of proof of loss defenses.

Just as no one is certain what effect the new millennium will have on computer systems around the world, no one is certain how the courts will resolve the coverage issues raised by these claims. In the face of this insurance uncertainty, many companies are taking precautions in the event that the courts find that the sue and labor clause covers year 2000 expenditures. As a preliminary matter, many companies are analyzing their insurance portfolios, not just their proper

ty policies but boiler and machinery, hull, directors and officers and liability insurance policies as well. When the new millennium arrives, Y2K compliant will mean more than just booting up in the morning. Many companies are keeping careful records of their year 2000 readiness expenditures. Imagine the insurance risk manager who learns that the sue and labor clause in her property policy will cover the company's year 2000 expenditures, but has not maintained the proper documentation to submit the required proof of loss to the property carrier. Companies are also keeping track of the records, pamphlets, brochures or flyers they receive from their insurance carriers and insurance brokers, proof that the insurance industry considered the Y2K problem an imminent threat. Over the past year, Y2K articles have often stressed the importance of being prepared in order to avoid loss.

Finally, risk managers and general counsel are coordinating to insure that claim submissions and litigation comply with the newly enacted Federal Y2K Act.

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#### FEDERAL TRADE COMMISSION SET TO EXPLORE THE PRACTICE OF CONSUMER PROFILING ON THE INTERNET

On November 8, 1999, the Federal Trade Commission and the Department of Commerce will investigate the issues raised by online profiling at a public workshop. See, Public Workshop on Online Profiling, 64 Fed. Reg. 50.813 (1999). Online profiling involves the tracking of consumer preferences and interests by observing the Web sites consumers visit and their overall browsing habits. Such information is collected, aggregated and potentially cross-referenced with other databases in order to allow firms to target advertisements and product information more accurately and efficiently. Online profiling, however, has generated a criticism and concern because of the privacy issues it raises. Further, most consumers are not even aware that firms are tracking their movements online.

As stated in the FTC and D of C's Notice announcing the Workshop, online profiling "typically employs 'cookies,' text files placed on users' computers to store information about their computers and their online activities." Many consumers, however, are unaware that visiting a Web site may result in having a cookie placed on their computer. Further, few Web sites inform consumers as to how the collected information is used and the steps taken to protect it from persons trying to use it for improper purposes. Thus, the FTC and D of C intend to address issues such as (a) the types of information firms are currently collecting, (b) how firms are collecting that information, (c) the disclosures, if any, made to consumers before information is gathered and used, and (d) the security measures taken to protect information once it is acquired.

One general concern is that online profiling will seriously erode the privacy expectations that many consumers have and demand. Whether these concerns are justified is to some degree beside the point. Concerns over privacy could discourage many consumers from using the Internet, and thus slow the Internet's growth as a distribution medium. Further, if firms view consumer profiles as valuable information, consumers should have the option to bargain with firms for that information.

Consumer profiling, however, is not new. Firms in traditional industries have collected, collated, sold and bought consumer profile information for years. For example, using a credit card, ordering through a catalogue or giving telephone numbers to a retailer allows firms and marketing agencies to track consumer preferences and create consumer profiles. The phenomenal expansion in data processing capabilities has more than anything enhanced the ability of firms to engage in consumer profiling. The Internet, however, could potentially allow firms to track consumer behavior and preferences to an extent unknown by more traditional

nal media. For example, online tracking may allow firms to observe the individual books consumers look at, the articles they read, the vacation destinations they search, the movie reviews they access, etc. An additional concern is that unscrupulous individuals or firms will use such information to engage in identity theft, blackmail and other criminal conduct.

Online profiling, however, has many potential benefits. For example, by knowing more about consumers firms can more effectively prepare and place advertisements. One hope is that online profiling will allow firms to customize the banner advertisements individual consumers see when they visit a Web site. For example, if a computer user has made several searches on tourist attractions in Paris, a profile may allow firms that specialize in vacation packages to Paris to affirmatively provide information to that consumer. It is unclear, however, if current technology even allows such precise profiling. Thus, a threshold question the FTC and D of C will address is the current abilities of online profilers to gather detailed and individualized information.

Overall, the argument in favor of online profiling is that it gets useful and timely information to consumers, lowers advertising costs and potentially lowers the costs of the products themselves. Further, reducing advertising costs while at the same time making it more effective may allow smaller and less established firms to penetrate markets that are otherwise controlled by firms holding well known brands. These benefits, however, do come with costs. The FTC and D of C's hearings hopefully will develop these issues.

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#### SUPREME COURT TO DECIDE WHEN TRADE DRESS SHOULD BE PROTECTED AS INHERENTLY DISTINCTIVE

Increasing conflicts concerning the standards for protecting product designs have arisen over the past eight years, primarily over the question of whether the trademark law's traditional standard for protecting trademarks upon adoption and use is equally applicable to product designs.

On October 4, 1999, the Supreme Court agreed to resolve the question of "what must be shown to establish that a product's design is inherently distinctive for purposes of Lanham Act trade-dress protection." Wal-Mart Stores, Inc. v. Samara Brothers, Inc., 1999 U.S. LEXIS 6583, 1999 WL 552674, 68 U.S.L.W. 3233 (October 4, 1999). For marks consisting of words, a four-step classification system is typically used to measure distinctiveness according to the following categories: (1) generic; (2) descriptive; (3) suggestive; and (4) arbitrary or fanciful. If a mark is suggestive (e.g., ROACH MOTEL), arbitrary (e.g., APPLE for computers), or fanciful (e.g., XEROX), it is protected immediately upon use. If considered descriptive (e.g., AMERICAN AIRLINES), evidence of substantial use and promotion resulting in consumer recognition is necessary for protection.

In its last pronouncement on trade dress law, Two Pesos, Inc. v. Taco Cabana, Inc., 112 S.Ct. 2753 (1992), the Supreme Court answered the basic question of whether a product design may be considered inherently distinctive at all, but did not state what standards should be used in determining whether a product design or trade dress is inherently distinctive. The Court did, however, apply the traditional four-part standard to the restaurant decor trade dress involved in that case.

Several courts, however, have refused to apply the traditional distinctiveness standard to product designs. The First, Second, and Third Circuits all have erected more stringent standards when the claimed trade dress at issue is the appearance of the product itself, rather than packaging or other forms of identification. The Second Circuit, for example, uses the traditional test for bottle de

signs and packaging, while discarding the standard in assessing product designs. These courts reason that the four-part standard does not make sense when applied to product designs, rather than word marks, and that restaurant decor such as that involved in Two Pesos is "more akin to product packaging than product configuration." Thus, according to these courts, the Supreme Court's analysis in Two Pesos case is not binding. Standards developed to displace the four-part standard have also been varied; commentators have identified from three to five formulations for evaluating a product design's inherent distinctiveness.

Other courts insist that the four-part standard must apply to product designs as well as packaging. The Fourth Circuit, for example, recently reviewed the conflicts among circuits in *Ashley Furniture v. Sangiacomo N.A. Ltd.*, 187 F.3d 363, 370 (4th Cir. 1999) and concluded that the traditional standard must be applied to product configuration trade dress. According to the Fourth Circuit, the Supreme Court applied that standard in Two Pesos, and the facts in Two Pesos provided no way to distinguish packaging or bottle designs from product designs.

In the case the Supreme Court will hear, *Samara Brothers, Inc. v. Wal-Mart Stores, Inc.*, 165 F.3d 120 (2d Cir. 1998), the Second Circuit affirmed a finding of inherent distinctiveness of a line of children's clothing. Curiously, the decision applied one of the stricter, but more vague, standards for product designs, rather than the laxer, four-part traditional standard. The petitioner, therefore, was the liable party and may argue that an even stricter standard should apply.

Thus, although the issue accepted by the Court is clear, the clarity of the Supreme Court's ultimate decision may be in doubt. Hopefully, the Supreme Court will set forth some guidelines to resolve all the conflicts among circuits over the proper treatment of product designs.

\*\*\*\*\*

#### CYBERSQUATTING UPDATE

In the September edition of the ITEC Law Alert, we reported on a pending bill to protect against domain name hijacking - S.1255. On November 19, 1999, the Senate approved the "Intellectual Property and Communications Omnibus Reform Act of 1999" (S.1948), which included the anti-domain name hijacking (also known as cybersquatting) provisions from S.1255. President Clinton is expected to sign the bill, which also included provisions relating to patent reform and cable and satellite service providers.

\*\*\*\*\*

#### WHERE WE'RE GOING, WHAT WE'RE DOING

Peter Strand spoke at the Sports and Entertainment Law Seminar in Columbus, Ohio, on September 24, 1999, sponsored by the Ohio State Bar Association Continuing Legal Education Institute. Peter will continue to teach Entertainment Law at Chicago Kent Law School next semester.

Alan Wernick was recently appointed to the American Arbitration Association Chicago office Commercial Arbitration Advisory Panel. He is also a member of the national AAA Technology Panel for computer law and information technology disputes and the national Y2K Panel for Y2K Fast Track Mediation and Arbitration.

\*\*\*\*\*

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The ITEC Law Department members invite your comments (Chicago at 312.715.5700 or Oakbrook Terrace at 630.954.2100) or by e-mail at [last name]@mbc.com.

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===== END ATTACHMENT 1 =====

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| DOCUMENT NO.<br>AND TYPE | SUBJECT/TITLE                                                                                                                | DATE       | RESTRICTION |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------|------------|-------------|
| 002. email               | Triana D'Orazio to Triana D'Orazio at 09:28:54.00. Subject:<br>MALDEF Concerned about Ashcroft-statement. [partial] (1 page) | 01/09/2001 | P6/b(6)     |

CLINTON LIBRARY PHOTOCOPY

### COLLECTION:

Clinton Presidential Records  
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OA/Box Number: 1100000

### FOLDER TITLE:

[06/23/1998 - 10/07/1999]

2009-1007-F  
ab697

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: Triana D'Orazio <tdorazio@maldef.org> ( Triana D'Orazio <tdorazio@maldef.org> [ UNKNOWN ] )

CREATION DATE/TIME: 9-JAN-2001 09:28:54.00

SUBJECT: MALDEF CONCERNED ABOUT ASHCROFT- statement

TO: Triana D'Orazio <tdorazio@maldef.org> ( Triana D'Orazio <tdorazio@maldef.org> [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:  
For Immediate Release  
Contact:  
Marisa J. Demeo  
January 9, 2001  
Triana R. D'Orazio

[REDACTED] (b)(6) [002]

MALDEF VOICES CONCERNS OVER NOMINATION OF JOHN ASHCROFT  
Attorney General Position Not Suitable for Zealous Ideology

(Washington, DC) The Mexican American Legal Defense and Educational Fund (MALDEF) has growing apprehensions that President-elect Bush's nominee to U.S. Attorney General John Ashcroft might not be the best person suited for such a position. MALDEF, as a non-partisan organization, is not concerned about Mr. Ashcroft's particular brand of partisanship or conservative leanings. What does concern us is his potential inability to effectively interpret and administer the laws of this country - specifically as it pertains to the Latino community which MALDEF represents.

"Upon reviewing the positions he has taken in the past, there are questions as to whether Mr. Ashcroft will be able to effectively enforce the laws that will directly impact our community," said Marisa J. Demeo, Regional Counsel for the Washington, DC office of MALDEF.

Ashcroft's record includes vigorous opposition of judicial nominees such as Justice Ronnie White, Margaret Morrow, Margaret McKeown, Susan Oki Mollway, Ann Aiken, Marsha Berzon, Sonia Sotomayor and Richard Paez; and administrative nominees such as Bill Lann Lee, David Satcher, and Jim Hormel. These have all been qualified individuals opposed by ex-Senator Ashcroft because they disagreed with his oftentimes intractable politics or personal opinions. Over the last six years, Ashcroft has shown prejudice against women, minority, and gay nominees for stances they held which ran counter to his own.

"Mr. Ashcroft's beliefs are not the beliefs of mainstream America," concludes Demeo. "We have questions concerning his ability to dispense equal justice."

The Attorney General is charged with overseeing the Civil Rights Division of the Department of Justice. The Division enforces civil rights laws in employment, housing, education, and voting; the Immigration and Naturalization Service (INS) which directly affects the lives of 40% of the Latino community; and a number of other federal enforcement agencies such as the Drug Enforcement Agency (DEA) and the Federal Bureau of Investigation (FBI), among others. As Attorney General, Ashcroft would determine which laws are enforced, and how they are enforced.

"While governor and attorney general of Missouri, Mr. Ashcroft did not develop the rapport with the Latino community that Governor Carnahan - who defeated him posthumously - had," said Demeo. "We're concerned that, if confirmed as attorney general, Mr. Ashcroft might continue to be apathetic toward our community and our needs. We need to be treated fairly by federal law enforcement, whether it is the INS, FBI, or DEA. We're not sure Mr. Ashcroft could ensure that we would be." Demeo added.

MALDEF is a national non-profit, civil rights organization which protects and promotes the civil rights of Latinos through advocacy, community education and outreach, leadership development, higher education scholarships and, when necessary, through the legal system.  
###

RECORD TYPE: FEDERAL (NOTES MAIL)

CREATOR: lgbt-politics@egroups.com ( lgbt-politics@egroups.com [ UNKNOWN ] )

CREATION DATE/TIME: 13-JAN-2001 17:57:34.00

SUBJECT: [lgbt-politics] Digest Number 255

TO: lgbt-politics@egroups.com ( lgbt-politics@egroups.com [ UNKNOWN ] )  
READ: UNKNOWN

TEXT:

To Submit a Newsclipping or Press Release, send it to the moderator at:  
lgbt-politics@eGroups.com

To Unsubscribe, send a blank message to:  
lgbt-politics-unsubscribe@eGroups.com

-----  
There are 13 messages in this issue.

Topics in this digest:

1. HRC extends Elizabeth Birch's contract 2 years  
From: LGBT Activists List <doug.case@sdsu.edu>
2. [NGLTF Press] NGLTF unveils "W Watch" web site  
From: listmgr@nglftf.org
3. LLDEF: John Ashcroft is Not Qualified to Be Attorney General  
From: LGBT Activists List <doug.case@sdsu.edu>
4. Full Text of LLDEF report on Ashcroft  
From: LGBT Activists List <doug.case@sdsu.edu>
5. NGLTF Launches "W Watch" Web Site  
From: LGBT Activists List <doug.case@sdsu.edu>
6. Log Cabin silent on Ashcroft nomination  
From: LGBT Activists List <doug.case@sdsu.edu>
7. Dale Carpenter: Good riddance to Clinton  
From: LGBT Activists List <doug.case@sdsu.edu>
8. Wayne Friday Column, 1/11/00  
From: LGBT Activists List <doug.case@sdsu.edu>
9. CA transgender bill gets another shot  
From: LGBT Activists List <doug.case@sdsu.edu>
10. Ammiano unanimously re-elected board president  
From: LGBT Activists List <doug.case@sdsu.edu>
11. Lesbian mom takes historic seat in GA General Assembly  
From: LGBT Activists List <doug.case@sdsu.edu>
12. MS lawmakers may see gay hate crimes bill  
From: LGBT Activists List <doug.case@sdsu.edu>
13. Activists set their sights on Ashcroft  
From: LGBT Activists List <doug.case@sdsu.edu>

---

Message: 1

Date: Fri, 12 Jan 2001 14:37:55 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: HRC extends Elizabeth Birch's contract 2 years

NEWS from the  
Human Rights Campaign

919 18th Street, NW, Suite 800  
Washington, DC 20006  
email: hrc@hrc.org  
http://www.hrc.org

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FOR IMMEDIATE RELEASE  
Friday, Jan. 12, 2001

ELIZABETH BIRCH AGREES TO TWO YEAR CONTRACT EXTENSION AS EXECUTIVE DIRECTOR  
OF HRC

WASHINGTON - The Board of Directors of the Human Rights Campaign today announced that Elizabeth Birch, HRC's executive director, has agreed to extend her contract as head of the organization for two years. Birch has lead HRC since 1995 and is credited with extraordinary growth of the organization and establishing it as an even more potent political force for the lesbian, gay, bisexual, and transgendered community throughout the

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| 003. email               | lgbt-politics@egroups.com to lgbt-politics@egroups.com at 17:57:34.00. Subject: (lgbt-politics) Digest Number 255. [partial] (3 pages) | 01/13/2001 | P6/b(6)     |

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2009-1007-F  
ab697

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

country.

"We are delighted that Elizabeth has agreed to stay at the helm of HRC for at least two years more," said Candy Marcum, HRC's board co-chair. "Her energy, vision, and dynamic leadership will guide HRC into the beginning of the new millenium where challenges and opportunity await our community."

"Elizabeth has transformed HRC into one of the most respected institutions in Washington and beyond," said Michael Duffy, HRC's other board co-chair.

"She will continue to expand HRC beyond the political realm to provide community resources such as HRC's Internet-based programs for gay families, workplace issues and help with coming out. And she will also continue HRC's ground-breaking public education and research that is instrumental in informing this country about our lives."

HRC is the largest national lesbian and gay political organization with members throughout the country. It effectively lobbies Congress, provides campaign support and educates the public to ensure that lesbian and gay Americans can be open, honest and safe at home, at work and in the community.

- 30 -

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Message: 2

Date: Fri, 12 Jan 2001 17:42:11 -0500

From: listmgr@nglftf.org

Subject: [NGLTF Press] NGLTF unveils "W Watch" web site

\*\*\*\*\*  
NATIONAL GAY AND LESBIAN TASK FORCE  
PRESS RELEASE

Contact:

David Elliot, Communications Director  
202-332-6483 ext. 3303

(b)(6)

[003]

<http://www.nglftf.org>  
1700 Kalorama Road NW, Washington, DC

\*\*\*\*\*

NGLTF LAUNCHES 'W WATCH' WEB SITE

Site will monitor Bush's appointments, track record on issues important to gay, lesbian, bisexual and transgender community

Jan. 14, 2001 - The National Gay and Lesbian Task Force today unveiled its new "W Watch" web site, which will offer valuable information surrounding President-select George W. Bush's nominees and record on issues important to the gay, lesbian, bisexual and transgender (GLBT) community.

The site will also include a "Bush-O-Meter," which will track the number of openly GLBT people appointed to the Bush Administration as well as the number of positive GLBT-related initiatives launched by Bush. (Currently, both counters are stuck on zero.)

And it will provide timely information on inauguration protests and on the continuing election-related controversy in Florida, where tens of thousands of votes went uncounted after the Nov. 7 election.

"The price of democracy is eternal vigilance and we must be ever vigilant to ensure that we are counted in the Bush administration," said NGLTF Executive Director Elizabeth Toledo. "During the next four years Bush will not be able to hide his record on GLBT issues and GLBT appointees. W. Watch will hold him accountable."

To visit W Watch, simply go to [www.nglftf.org](http://www.nglftf.org) and click on the "George W.

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Watch" button."

Founded in 1973, NGLTF works to eliminate prejudice, violence and injustice against gay, lesbian, bisexual and transgendered people at the local, state and national level. As part of a broader social justice movement for freedom, justice and equality, NGLTF is creating a world that respects and celebrates the diversity of human expression and identity where all people may fully participate in society.

This message was issued by the National Gay and Lesbian Task Force Communications Department. If you have a question regarding this post, please direct it to the contact at the top of this message.

To reach the NGLTF Communications Department at NGLTF, please call David Elliot, Communications Director, at 202-332-6483 x3303 or pager (b)(6) or email delliot@nglftf.org.

If you wish to UNSUBSCRIBE from this list, please send an email message with your request to listmgr@nglftf.org.

---

Message: 3

Date: Fri, 12 Jan 2001 16:16:16 -0800

From: LGBT Activists List <doug.case@sdsu.edu>

Subject: LLDEF: John Ashcroft is Not Qualified to Be Attorney General

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LAMBDA LEGAL DEFENSE AND EDUCATION FUND  
www.lambdalegal.org

News Release

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FOR IMMEDIATE RELEASE: Friday, January 12, 2001

Press Contact: Peg Byron 212-809-8585 x230, (b)(6) pager

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John Ashcroft is Not Qualified to Be Attorney General

Lambda says nominee would base law on prejudice and propaganda

(NEW YORK, January 12, 2001) ? The nation's largest and oldest legal organization dedicated to gay civil rights issued a statement Friday opposing John Ashcroft's nomination as United States Attorney General, pointing to the former Missouri senator's record of bias against lesbians and gay men and the equality of many other Americans.

"Because of his record of bias against gay men and lesbians, and because of his disturbing and extreme positions in opposition to the rights and equality of many other Americans as well, Lambda Legal Defense and Education Fund calls upon the Senate to reject this troubling nomination," said Lambda Executive Director Kevin M. Cathcart.

"Lambda's opposition is not merely a matter of disagreement with this nominee along the spectrum of legally permitted policy options, but rather stems from Ashcroft's showing that he does not agree with core American tenets that must be enforced ? not undermined ? by the Attorney General," he said.

In a detailed statement about Ashcroft's record disparaging lesbian and gay Americans and basic civil rights protections, Lambda noted five significant ways he was disqualified, in particular the stigmatizing and false characterizations Ashcroft has made of gay people.

"Key among his disqualifiers is his often expressed view that homosexuality is 'abnormal' and 'a condition from which relief should be sought and not a condition that should be fostered by the society.' Dismissing the unanimous

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expert judgment of every major U.S. medical and mental health professional organization, Ashcroft instead toes the line of fringe anti-gay organizations, declaring, 'I do know that there are thousands of former homosexuals, individuals who once were engaged in a homosexual lifestyle, who have changed that lifestyle and have repudiated it and find themselves to be engaged in heterosexual lifestyles.' A nominee who willfully rejects scientific evidence and seeks to base policy and law on prejudice or propaganda is unfit to serve as Attorney General," Lambda said.

Further disqualifiers for Ashcroft include:

- the view that civil rights protections are 'special rights' that should not be granted to groups that are targets of discrimination;
- actions that reflect the position that a gay sexual orientation disqualifies an individual from government service;
- an activist stance that seeks to break down the constitutionally required barriers between church and state;
- a singular identification with one particular political faction that has a social policy agenda incompatible with the unique responsibilities of the Attorney General.

"Former Senator John Ashcroft's own words and deeds manifest each of these disqualifying factors of particular concern to Lambda, and demonstrate similar disregard for the constitutional rights and equality of women and people of color. He is unqualified to hold the vast power of the Attorney General, whose role includes serving as a guarantor ? not an opponent ? of this country's commitment to the civil rights and equality of all," Lambda's statement continues.

"Because we are all entitled to an Attorney General committed to 'equal justice under law' for all Americans, Lambda Legal Defense & Education Fund calls upon the Senate to reject this extreme, biased, and unqualified nominee," the statement concludes.

A FULL COPY OF THE STATEMENT IS AVAILABLE ON LAMBDA'S WEB SITE,

<http://www.lambdalegal.org/cgi-bin/pages/documents/record?record=761>  
OR BY CALLING LAMBDA'S PUBLIC EDUCATION OFFICE AT (212)  
809-8585.

Click here to view Lambda's news release online.  
<http://www.lambdalegal.org/cgi-bin/pages/documents/record?record=762>

=====  
Lambda Legal Defense and Education Fund  
[www.lambdalegal.org](http://www.lambdalegal.org)  
National Headquarters  
120 Wall Street, Suite 1500  
New York, NY 10005-3904  
212-809-8585 phone  
212-809-0055 fax  
[lambdalegal@lambdalegal.org](mailto:lambdalegal@lambdalegal.org)  
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Message: 4  
Date: Fri, 12 Jan 2001 16:17:15 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: Full Text of LLDEF report on Ashcroft

Lambda Legal Defense & Education Fund Statement  
in Opposition to the Nomination of Former Senator John Ashcroft as  
Attorney General

One indispensable qualification for the nation's Attorney General, our chief law enforcement officer, is an unequivocal commitment to assure equal justice under law to all Americans, without bias or favor.

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Clear disqualifiers for any proposed candidate include (1) the view that civil rights protections are "special rights" that should not be granted to groups that are targets of discrimination; (2) the view, contrary to all reputable, mainstream experts, that gay people are "abnormal" and that efforts should be made to change their sexual orientation; (3) actions that reflect the position that a gay sexual orientation disqualifies an individual from government service; (4) an activist stance that seeks to break down the constitutionally required barriers between church and state; and (5) a singular identification with one particular political faction that has a social policy agenda incompatible with the unique responsibilities of the Attorney General.

Former Senator John Ashcroft's own words and deeds manifest each of these disqualifying factors of particular concern to Lambda, and demonstrate similar disregard for the constitutional rights and equality of women and people of color. He is unqualified to hold the vast power of the Attorney General, whose role includes serving as a guarantor -- not an opponent -- of this country's commitment to the civil rights and equality of all.

Because of his record of bias against gay men and lesbians, and because of his disturbing and extreme positions in opposition to the rights and equality of many other Americans as well, Lambda Legal Defense and Education Fund calls upon the Senate to reject this troubling nomination. Lambda's opposition is not merely a matter of disagreement with this nominee along the spectrum of legally permitted policy options, but rather stems from Ashcroft's showing that he does not agree with core American tenets that must be enforced B not undermined B by the Attorney General.

#### The Role of the Attorney General

The duties and power of the Attorney General are enormous. As the nation's chief law enforcement officer, the Attorney General heads the U.S. Department of Justice; supervises the U.S. Attorneys in every state; represents the United States in the courts; oversees critical agencies such as the Federal Bureau of Investigation and the Immigration and Naturalization Service, as well as the federal penal system; and works closely with the Solicitor General in representing the United States before the U.S. Supreme Court. The Attorney General provides legal counsel to the President and the executive branch. The Attorney General plays a major role in shaping national policy and law in vital areas such as civil rights; constitutional protections; safe access to reproductive freedom; protections against crime, including bias-motivated attacks and the proper training and supervision of law enforcement officers; immigration and family unification; and the separation of church and state. Moreover, the Attorney General advises the President on, and screens appointments to, the federal judiciary, and directly hires and supervises many other important officials with law enforcement responsibilities.

The Attorney General must hold the confidence of all Americans that he or she will faithfully and impartially enforce the laws, and be fair and respectful to all.

#### Ashcroft's Bias Against Gay People Disqualifies Him As Attorney General

Ashcroft's often-expressed hostility to gay people, his acceptance of and participation in discrimination based on sexual orientation, and his unfounded belief that we are "abnormal" and should change as a price for civil rights protection make it impossible to have trust in his preparedness to ensure the fair and impartial administration of justice for all Americans.

In pursuing his opposition to civil rights for lesbians and gay men, Ashcroft has time and again trucked in stereotypes and code-phrases that stigmatize and degrade gay people and our aspirations. For example:

##### 1. Disparagement of Equal Civil Rights Protections for Lesbian and Gay Americans

Ashcroft has repeatedly labeled as "special rights" civil rights protections against sexual orientation discrimination.<sup>1</sup> The "special rights" canard is a staple of extremist propaganda against gay people, and was rejected by six justices of the U.S. Supreme Court in Justice Kennedy's majority opinion in *Romer v. Evans*.<sup>2</sup> A nominee who falsely characterizes or disparages civil rights aspirations and protections -- which even the Rehnquist Supreme Court found to be

basic and important for all -- is unfit to serve as Attorney General.

## 2. Stigmatizing and False Characterizations of Gay People

Ashcroft has often expressed his view that homosexuality is "abnormal" and "a condition from which relief should be sought and not a condition that should be fostered by the society."<sup>3</sup> Dismissing the unanimous expert judgment of every major U.S. medical and mental health professional organization, Ashcroft instead toes the line of fringe anti-gay organizations, declaring, "I do know that there are thousands of former homosexuals, individuals who once were engaged in a homosexual lifestyle, who have changed that lifestyle and have repudiated it and find themselves to be engaged in heterosexual lifestyles."<sup>4</sup> A nominee who willfully rejects scientific evidence and seeks to base policy and law on prejudice or propaganda is unfit to serve as Attorney General.

He characterized the Employment Non-Discrimination Act, a bill to promote civil rights in the workplace for all Americans regardless of their sexual orientation, as "contain[ing] seeds of real instability and inappropriate activity, seeds of litigation which could grow way out of hand and send the wrong signals to young people and provide a special standing and class...."<sup>5</sup> Implying that gay people are a threat to children, that we engage in "inappropriate activity," and that we are asking for "special" protections are all unfounded, dehumanizing, and biased characterizations intolerable in an Attorney General.

He has joined in comments that likened gay identity to "kleptomania" or "alcoholism," and praised football player Reggie White for his anti-gay remarks made during a speech that also included ethnic caricatures. A nominee who fails to respect and defend all Americans, and instead engages in and applauds degrading attacks on minority groups, is unfit to serve as Attorney General.

## 3. Prejudice Against Government Service By Lesbian and Gay Americans

Ashcroft cast one of the two votes in committee against Senate confirmation of James Hormel to serve as U.S. Ambassador to Luxembourg. Ashcroft invoked Hormel's identity as an openly gay man as a disqualification to serve our country, notwithstanding a distinguished civic and business career, saying, "[Hormel] has been a leader in promoting a lifestyle.... And the kind of leadership he's exhibited there is likely to be offensive to... individuals in the setting to which he will be assigned."<sup>6</sup> A nominee for Attorney General who sees gay or lesbian identity as a bar to government service cannot impartially carry out the duties of his office. Moreover, Ashcroft's stereotyping and misrepresentation of Hormel was of a piece not just with his anti-gay record, but also with his treatment of other nominees to office (see below).

As a sitting U.S. Senator, Ashcroft refused to sign a pledge that he would not discriminate on the basis of sexual orientation in employment in his own congressional office. A public official unwilling to pledge not to discriminate against qualified individuals in his own employment decisions can hardly be trusted to enforce the nation's civil rights laws and constitutional commitment to equal protection.

## 4. Unbroken Record of Opposition to Basic Legal Protections for Lesbians and Gay Men

He has uniformly voted against or opposed any measure to provide legal protection for lesbian and gay Americans, including bills that would prohibit discrimination in the workplace or bring violence directed against people because of their sexual orientation within the scope of federal hate crimes prohibitions. This consistent opposition transcends any particular disagreement over policy or legislative drafting, and reflects a deep and abiding hostility to gay people and their legal rights.

Ashcroft has supported measures to declare gay people second-class citizens, including the federal anti-marriage law (the so-called "Defense of Marriage Act" of 1996), and to cut off funding to local gay community health centers that provide services to adults and children with HIV/AIDS. Ashcroft's unbroken record of antagonism to gay people's inclusion and equality makes him unfit to serve as guardian of our nation's commitment to justice for all.

Ashcroft's Anti-Gay Bias is of a Piece With His Unfair Treatment of Others

In addition to his alarming record against gay people and against civil rights for Americans discriminated against because of their sexual orientation, Lambda is deeply concerned about Ashcroft's conduct during the nominations of Bill Lann Lee as Assistant Attorney General for Civil Rights, Doctors Henry Foster and David Satcher to be Surgeon General, and, especially, Missouri Supreme Court Judge Ronnie White to serve as a federal judge. As in the case of Ambassador Hormel, Ashcroft showed himself willing to make reckless and unfair charges in an attempt to sabotage the nominations of minority candidates, and to cite a nominee's support for civil rights or a woman's right to choose as a basis for opposition. Lambda is also concerned about his treatment of women judges nominated to the federal bench as demonstrated by his role in attempting to delay and defeat Judges Margaret Morrow, Margaret McKeown, Sonia Sotomayor, and Susan Oki Mollway.

Given the Attorney General's special role in judicial appointments and law enforcement hiring and supervision, Ashcroft's record is unacceptable. His zeal and willingness to depart from evidence and standards of fairness are dispositively disqualifying, for they undermine core principles that the Attorney General must vigorously guard.

Ashcroft's Activism Against the Separation of Church and State and Extreme Identification With the Far Right's Social Crusades  
Disqualify Him As Enforcer of Our Nation's Laws

Addressing the Christian Coalition in 1998, Ashcroft blasted the federal judiciary as a "robed elite" too committed to the separation of church and state. He has backed tax funding of religion and government sponsorship of prayer. As the primary sponsor of so-called "charitable choice," Ashcroft has campaigned to provide millions of federal tax dollars to religious-affiliated entities without their committing to obey anti-discrimination laws or principles, and without assurances of secular approach or public accountability. Moreover, Ashcroft's has demonstrated a startlingly casual willingness to propose amending the Constitution so as to alter our nation's basic guarantees of liberty in a secular state.

Ashcroft's indelible and defining identification is with right-wing groups and causes, and he has long pledged to serve as an agent of their agenda.<sup>7</sup> His standard-bearing for one faction is contrary to the Attorney General's responsibility to serve all Americans without bias or favor.

Indeed, Ashcroft has demonstrated not only extreme views, but also a fervor in advancing those views that is unsuited to service as Attorney General. For instance, in 1998, Ashcroft proclaimed, "There are voices in the Republican Party today who preach pragmatism, who champion conciliation, who counsel compromise. I stand here to reject those deceptions. If ever there was a time to unfurl the banner of unabashed conservatism, it is now."<sup>8</sup> While greater deference to a President's preferences, however disturbing or wrong-headed, might be warranted in other positions,<sup>9</sup> the nation's Attorney General cannot be perceived as -- or, as in this case, in fact be -- the biased, aggressive, and "unabashed" agent of a far-right agenda to the exclusion of the many Americans whom he has attacked over his long career in public office.

Because we are all entitled to an Attorney General committed to "equal justice under law" for all Americans, Lambda Legal Defense & Education Fund calls upon the Senate to reject this extreme, biased, and unqualified nominee.

#### Sources

- 1.CBS Face the Nation, 7/5/98; Congressional Record, p. 10001, 9/6/96.
- 2.Romer v. Evans, 116 S. Ct. 1620, 1627 (1996) ("We find nothing special in ... protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.").
- 3.CBS Face the Nation, 7/5/98; People for the American Way, <http://www.pfaw.org/news/gay.pdf>
- 4.Congressional Record, p. 10001, 9/6/96.
- 5.Congressional Record, p. 10001, 9/6/96.
- 6.Boston Globe, 6/24/98. Both before and since his nomination by the

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President, ultimately taking office under a recess appointment, Hormel has been welcomed by the government and people of Luxembourg. An openly gay man, he has served with honor and distinction.

7. New York Times, 1/7/01.

8. Human Events, 4/10/98.

9. Apart from the grounds upon which we call for the Senate to reject this unqualified nominee, Lambda vigorously disagrees with his positions in a wide variety of important areas. These include his aggressive campaigns to amend the Constitution and pass legislation that would massively curtail women's reproductive freedom; his opposition to the Equal Rights Amendment; his numerous votes and actions evincing a failure to respect free speech and expression; and his troubling statements and actions on matters of racial justice (including his praise for the notorious magazine, Southern Partisan, his weakening of a federal law protecting minority communities against "redlining" by financial institutions, as well as his opposition to school desegregation measures in Missouri).

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Message: 5  
Date: Fri, 12 Jan 2001 16:27:34 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: NGLTF Launches "W Watch" Web Site

PLEASE POST AND FORWARD!

Get the information you need to know on President-Select George W. Bush's Nominees  
And Issues of Concern To GLBT People

<http://www.nglftf.org/federal/wwatch.htm>

Includes Comprehensive Report on John Ashcroft's anti-GLBT record

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NGLTF Launches "W Watch" Web Site  
Site will monitor Bush's appointments, track record on issues  
<http://www.nglftf.org/federal/wwatch.htm>

The National Gay and Lesbian Task Force today unveiled its new "W Watch" web site, which will offer valuable information surrounding President-select George W. Bush's nominees and record on issues important to the gay, lesbian, bisexual and transgender (GLBT) community.

The site will also include a "Bush-O-Meter," which will track the number of openly GLBT people appointed to the Bush Administration as well as the number of positive GLBT-related initiatives launched by Bush. (Currently, both counters are stuck on zero.)

And it will provide timely information on inauguration protests and on the continuing election-related controversy in Florida, where tens of thousands of votes went uncounted after the Nov. 7 election.

"The price of democracy is eternal vigilance and we must be ever vigilant to ensure that we are counted in the Bush administration," said NGLTF Executive Director Elizabeth Toledo. "During the next four years Bush will not be able to hide his record on GLBT issues and GLBT appointees. W. Watch will hold him accountable."

The National Gay and Lesbian Task Force has worked to eliminate prejudice, violence and injustice against gay, lesbian, bisexual and transgender people at the

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local, state and national level since its inception in 1973. As part of a broader social justice movement for freedom, justice and equality, NGLTF is creating a world that respects and celebrates the diversity of human expression and identity where all people may fully participate in society.

MEDIA CONTACT:

David Elliot, Communications Director

delliot@ngltf.org

202-332-6483, ext. 3303

Pager: (b)(6)

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Message: 6

Date: Fri, 12 Jan 2001 17:54:55 -0800

From: LGBT Activists List <doug.case@sdsu.edu>

Subject: Log Cabin silent on Ashcroft nomination

Anti-Ashcroft groups speak out

HRC, NGLTF among those urging Senate to reject nominee

by Lou Chibbaro Jr.

The Human Rights Campaign and the National Gay and Lesbian Task Force, the nation's two most prominent national Gay political groups, joined a coalition of more than 200 civil rights, women's, environmental, and other liberal-oriented groups this week in declaring their strong opposition to the nomination of former U.S. Sen. John Ashcroft (R-Mo.) to become U.S. attorney general.

At a press conference Tuesday, Jan. 9, at D.C.'s Mayflower Hotel, HRC Executive Director Elizabeth Birch called on members of the U.S. Senate to vote against Ashcroft's confirmation, saying his anti-Gay and overall anti-civil rights record "raises serious doubts about his willingness to fully enforce our nation's civil rights laws."

Birch delivered her remarks at the press conference while standing on a crowded stage beside Wade Henderson, executive director of the U.S. Conference on Civil Rights, Patricia Ireland, president of the National Organization for Women, and representatives of more than 50 other groups opposing the Ashcroft nomination.

"President-elect Bush is entitled to create a Cabinet of his own design," Birch said, referring to Bush's announcement on Dec. 22 that he had picked Ashcroft for the attorney general's post. "However, he does so against the backdrop of a fundamental promise made throughout his campaign to unite the nation. The nomination of Senator Ashcroft represents the extreme antithesis of that goal."

Ashcroft has been an outspoken opponent of Gay civil rights and hate crimes legislation during his tenure as a U.S. senator and governor of Missouri. He voted against the Employment Non-Discrimination Act, a Gay civil rights measure that lost by just one vote in the Senate in 1996. Ashcroft also opposed President Clinton's nomination of openly Gay businessperson James Hormel to be ambassador to Luxembourg, claiming that Hormel's role as a Gay civil rights advocate disqualified him for an ambassadorial post.

Ashcroft has insisted that, if the Senate approves his nomination as attorney general, he will uphold his duty to enforce all laws currently on the books, even those laws he has long railed against, including various civil rights laws. But Gay activists and leaders of African American civil rights groups say they are skeptical of Ashcroft's promise that he will uphold such laws. Birch and other Gay representatives, including NGLTF spokesperson David Elliot, say they are troubled that Ashcroft, for example, would be in charge of implementing the Hate Crimes Statistics Act, which calls for keeping

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track of anti-Gay hate crimes. Activists say that, while Ashcroft could not completely disregard such a law, he could put it at the bottom of his priority in terms of funding and staff time.

Elliot said that NGLTF opposes Ashcroft's nomination along with two other Bush picks - Interior Secretary nominee Gale A. Norton and Health and Human Services Secretary nominee Tommy Thompson. Elliot said NGLTF's opposition to Norton stems from her strong support of Colorado's anti-Gay ballot initiative, known as Amendment 2, during her tenure as Colorado's attorney general.

Elliot said NGLTF opposes Thompson, the current governor of Wisconsin, because the group believes Thompson's highly publicized welfare reform program has been harmful to people with low incomes, including Gays with low incomes. Elliot said NGLTF also is concerned about Thompson's advocacy of school voucher programs and his opposition to a woman's right to choose an abortion.

HRC political director Winnie Stachelberg said HRC has yet to take a position on the Norton and Thompson nominations.

Most political observers believe the Senate will approve the Ashcroft nomination in part because of the Senate's longstanding tradition of giving great deference to a nominee who comes from their own ranks. HRC's Birch and other speakers at Tuesday's press conference urged senators to put aside this tradition of "senatorial courtesy," saying members of the Senate should base their decision strictly on Ashcroft's record.

In a related development, the Empire State Pride Association, a statewide Gay lobbying group, this week called on New York's two U.S. senators - Charles Schumer and Hillary Clinton, both Democrats - to carefully review Ashcroft's record on Gay and AIDS-related issues. In a Jan. 10 letter to Schumer and Clinton, Matt Foreman, ESPA's executive director, and Joseph Grabarz, the group's deputy executive director, urged the two senators to make a careful determination of whether Ashcroft would diligently enforce and implement laws and regulations affecting Gays and people with HIV, including laws pertaining to the gathering of data on anti-Gay hate crimes.

"If you are not satisfied that he will impartially enforce existing laws and regulations, then we ask that you vote against his confirmation and encourage other senators to do the same," Foreman and Grabarz said in their letter.

When asked whether the Gay GOP group Log Cabin Republicans has taken a position on the Ashcroft nomination, Log Cabin spokesperson Kevin Ivers said, "We clearly had others in mind" for the attorney general post. But because at least some Democratic senators have said they will vote for Ashcroft, Ivers said, Ashcroft's confirmation appears to be "inevitable." He declined to say whether Log Cabin has conveyed its views on the Ashcroft nomination to the Bush-Cheney transition staff.

"Everyone has their role to play," Ivers said.

Added Ivers: "We hope President-elect Bush will take the opportunity to reach out to groups who are most concerned about Ashcroft."

Ralph Neas, executive director of the Gay-friendly group People for the American Way, noted that the John Birch Society, a far-right group, has rated Ashcroft ahead of Sen. Jesse Helms (R-N.C.) on issues deemed important to that group.

Said Neas at Tuesday's press conference: "John Ashcroft is well qualified to be the head of the Christian Coalition and the [National Rifle Association], but not attorney general."

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Message: 7

Date: Fri, 12 Jan 2001 17:58:06 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: Dale Carpenter: Good riddance to Clinton

Bay Area Reporter  
<http://www.ebar.com>  
January 11, 2000

Good riddance to Clinton

by Dale Carpenter

He came in with great promise, promising greatly. He leaves with the worst legislative record on gay issues of any president in the history of the country. By his personal irresponsibility, and by his total lack of genuine commitment to the cause of gay equality, President Bill Clinton squandered the opportunity to speak with real moral authority about the place of gays in American life.

Clinton's legislative record on gay issues will unfortunately be with us for decades. No major pro-gay federal measure passed during Clinton's time, not even during the two years in which his party controlled both houses of Congress. On the anti-gay side of the ledger, the most shameful aspects of Clinton's legal legacy are by now familiar, but it is worth recalling how profoundly they damaged the lives of real gay Americans.

Clinton campaigned for gay votes and gay dollars in 1992 on a promise to lift the ban on gays in the military - and we believed him. Yet rather than immediately ending the ban by executive order, which he could have done and which enjoyed majority support in polls at the time, Clinton stalled. This delay allowed supporters of the ban, led by Democratic Senator Sam Nunn, to initiate highly publicized hearings on the effect of ending the policy. The resulting investigation, which focused luridly on group showers and close sleeping quarters, played devastatingly on the worst stereotypes about sexually predatory homosexuals.

Worse still, neither Clinton nor his administration responded to Nunn's nonsense. At the height of the furor, Clinton, in a live television appearance from the Rose Garden, even said the government should be careful not to "condone" the homosexual "lifestyle."

By the summer of 1993, Clinton had permitted Nunn's crowd to dominate the debate so thoroughly that it was necessary to "compromise" by enacting "Don't Ask, Don't Tell." Within a year, observers warned that DADT was being used to continue and even to accelerate anti-gay witch-hunts and discharges. Clinton ignored the problem.

The result is the most easily quantifiable harm done to actual gay people during the Clinton years. According to figures from the Defense Department, discharges for homosexuality declined every year between the first full year of the Reagan administration (1982) and the first full year of the Clinton administration (1994) - for a total decline of more than 70 percent during the period. But in 1994 the number of anti-gay discharges began to rise and has risen every year since. On an annual basis, such discharges have more than doubled since 1994. In 1998, they climbed above 1,000 for the first time in 10 years.

Such dismissals represent hopes smashed, families shattered, a life's work cut short. While Clinton's administration was hiring scores of openly gay campaign contributors (as we were tirelessly reminded), the same administration was firing thousands more through military discharges. From its inception through its implementation, DADT has been a betrayal of trust that should never be forgotten.

Also not to be forgotten is Clinton's support for the Defense of Marriage Act in 1996. Recall that DOMA created the first-ever congressional definition of marriage, denying to future gay newlyweds all of the benefits of marriage accorded to opposite-sex couples under federal law. It also fueled a series of state DOMA laws, the opposition to which has consumed millions of gay dollars and countless hours of volunteer time.

Clinton's defenders say he had to back the bill in the politically charged atmosphere of a presidential election year. Yet Clinton

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agreed to sign DOMA before it was even drafted, suggesting an enthusiasm for this political necessity that goes above and beyond the call of duty. And then Clinton turned this supposed necessity into a virtue, publicizing his support for DOMA in commercials that aired on Christian radio stations during the fall campaign.

Some will respond that, whatever the legislative disappointments, the social standing of gays has risen greatly in the eight years Bill Clinton has inhabited the White House. So it has. But how much of that rise is attributable to Clinton? Very little more than none.

Recall that Clinton signed his marriage-defense law while he himself conducted an extramarital affair. It was the perfect Clintonian moment: defend the principle in the abstract (the sanctity of heterosexual marriage; gay equality) while you corrode it in the application (Monica Lewinsky; DADT and DOMA).

The Lewinsky affair confirmed Clinton's lack of personal integrity, his refusal to control his appetites, and his penchant for betraying those closest to him. It exposed a grownup reluctant to grow up, disinclined to take responsibility for himself and his actions, and unwilling to see in life a duty higher than the preservation of self-interest.

Who could take seriously any instruction from this man? Who could credit his lectures about what ails American culture, including its anti-gay aspects? Clinton lost any authority to speak authoritatively on important cultural matters, like basic fairness for gay Americans.

But even if he'd had the authority, he lacked the will. For Clinton, gays were an expendable constituency. He threw us just enough sops (an administration appointment here, using the word "gay" in a speech there) to keep us quiet when he betrayed us. We accepted this deal because, like a battered spouse, we thought we'd never had it so good.

Having tied ourselves so closely to this man we sit beside the stench of his moral putrefaction, in need of a bath.

Dale Carpenter, a law professor, is the winner of three Vice Versa awards for excellence in gay writing. He can be reached at OutRight@aol.com.

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Message: 8

Date: Fri, 12 Jan 2001 18:00:31 -0800

From: LGBT Activists List <doug.case@sdsu.edu>

Subject: Wayne Friday Column, 1/11/00

Bay Area Reporter  
<http://www.ebar.com>  
January 11, 2000

Bush's disturbing Cabinet picks

by Wayne Friday

The U.S. Senate will soon hold confirmation hearings on President-elect George W. Bush's 14 Cabinet positions as well as his choice to lead the Environmental Protection Agency and none are more controversial than his choice of former Missouri Senator John Ashcroft to serve as attorney general.

Bush also nominated longtime Republican partisan Linda Chavez to become secretary of the Labor Department. Chavez, however, withdrew her name from consideration Tuesday afternoon after questions arose over the weekend regarding the status of an illegal immigrant who resided in Chavez's household and allegedly performed odd jobs for her from 1990 to 1991. The issue became increasingly controversial

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because under federal law, it's illegal to employ an illegal worker and to house a known illegal immigrant. The issue promised to be the dominant one during Senate confirmation hearings, now, however, it appears that Bush will be selecting someone else to lead the Labor Department.

Ashcroft should be rejected. This column gave many reasons last week why Ashcroft is unqualified to lead the Justice Department. Ashcroft has always been an outspoken advocate for the agenda of the religious right and much of that agenda would involve his job as attorney general - such as the issues of gay rights, gun control, abortion, prayer in schools, and the National Endowment for the Arts.

Furthermore, Ashcroft, as attorney general, would likely be the president's chief adviser on choosing nominees to the U.S. Supreme Court. The New York Times revealed recently that the religious right, led by those like James Dobson, president of Focus on the Family, openly promoted Ashcroft for the powerful Justice Department post almost from the day it appeared Bush would gain the presidency. The Times reported that as far back as last summer leaders of the religious right started pushing Ashcroft as a "good" choice for the AG position. In fact, it has now been revealed that since the November 7 election, two other possible Bush choices for the attorney general spot were rejected by the Republican right and only the suggestion of Ashcroft was acceptable to them.

One can only assume that it was with this blending of religion and politics that then-Senator Ashcroft led the fight, along with Senators James Inhofe (R-Oklahoma) and Jesse Helms (R-North Carolina) against the confirmation of San Francisco's James Hormel to serve as ambassador to Luxembourg, based solely on Hormel's sexual orientation, making it necessary for President Clinton to then appoint Hormel to the post in June 1999 as a recess appointment.

Ashcroft should be rejected by the U.S. Senate; two important votes in that confirmation process will come from California's two Democratic senators - Dianne Feinstein and Barbara Boxer.

Call their offices today and urge that they vote against Ashcroft. Senator Feinstein: (415) 393-0707, (202) 224-3841, or e-mail Senator@Feinstein.senate.gov; Senator Boxer: (415) 403-0100, (202) 224-3553, or e-mail Senator@Boxer.Senate.gov.

Politics and people

Supervisor Tom Ammiano (9th District) was unanimously re-elected president of the new Board of Supervisors on Monday, January 8 after the new members took office. By order of lot, those supervisors elected from odd-numbered districts will get to serve four-year terms while those from even-numbered districts will serve two-year terms. Supervisor Mark Leno (8th District) will have to run again for re-election in two years while Ammiano gets a four-year term.

Plenty of mayoral talk at the swearing-in ceremony Monday of the new Board of Supes - among the names being mentioned were Carole Migden, Tom Ammiano, Gavin Newsom, Barbara Kaufman, John Burton, Leland Yee, and Angela Alioto.

Meanwhile, prominent local attorney Neil Eisenberg tells me he will be a candidate for city attorney against incumbent Louise Renne in November.

California Senator Barbara Boxer was appointed last week by Democratic Senate leader Tom Daschle to the post of chief deputy for strategic outreach, making her the only new permanent member of the Senate Democratic leadership.

Governor Gray Davis has set special election dates of April 10 to fill a vacancy in the 32nd Congressional District created by the death of Representative Julian Dixon and March 6 to fill a state Senate seat in the 24th District that became vacant when Hilda Solis was elected to Congress. Both are heavily Democratic districts and if no candidate gets more than 50 percent of the vote, runoffs will be May 1 for Solis and June 5 for Dixon's seat among the top vote-getters from each party.

Los Angeles, incidentally, will elect a new mayor in April and the gay and lesbian community is somewhat split there between openly gay councilman Joel Wachs and former Assembly Speaker Antonio Villaraigosa, both longtime advocates for the gay community. Meanwhile, one of the other leading mayoral candidates in that race,

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wealthy businessman Steve Soboroff, who has the endorsement of outgoing mayor Richard Riordan, has San Francisco's talented Ace Smith, the son of former District Attorney Arlo Smith, as his chief political consultant. The feeling in L.A. is that either Wachs, Soboroff, or Villaraigosa will make it into a runoff with popular City Attorney James Hahn to become the next Los Angeles mayor.

The California Republican Party Central Committee delegates will meet next month in Sacramento to choose a new state GOP chair and the battered state Republicans look for a knockdown fight between former Assemblyman Brooks Firestone of Santa Barbara, a moderate, and current state GOP Vice Chair Shawn Steel, the conservative candidate.

With the 2000 census giving California an additional congressional seat and with the Democrats in complete control of reapportionment, look for the 53rd U.S. House seat to go to Southern California and the Republican incumbent there who has the most to fear from Democratic line-drawing is Representative Steve Horn, the Republican now holding the 38th District seat; Sacramento Democrats likely will redistrict Horn out of a job in the area that already has Democratic registration advantages, and will probably end up as a district favoring a Latino candidate.

The best appointment by president-elect George W. Bush so far from where I sit (and there haven't been a hell of a lot of good ones) has to be Mary Matalin, the co-host of CNN's Crossfire program and veteran conservative Republican operative who was named last week as counsel to Vice President-elect Dick Cheney and who will reportedly serve as an assistant to the new president. A lower level appointment, to be sure, but Matalin, the high-profile wife of popular Democratic Clinton political guru James Carville (making them D.C.'s best known political odd couple) is said to be very gay-friendly, reportedly she and her husband have many gay friends, and I heard her say recently on TV that "any Republican who even thinks about gay-bashing will have to deal with me." Gays who know her say she can be a real "bitch" to those who make anti-gay comments in her presence.

Hey, even in Texas, African Americans who know George W. Bush apparently don't like him; while Bush boasted throughout the presidential campaign that he won 29 percent of the black vote in Texas when he sought re-election as governor, it should be noted that he won only 5 percent of the Texas black vote on November 7.

Democrat Ruth Ann Minner, a high school dropout, was sworn in last week as the governor of Delaware; the country now has five female governors, the most ever.

The numbers of the new 107th Congress: a 50-50 split among Democrats and Republicans in the U.S. Senate; the 435-seat House is split among 221 Republicans, 211 Democrats, two independents, and one vacancy due to the death of California Representative Julian Dixon.

Snubbed spoiler: U.S. News & World Report tells us that Green Party candidate Ralph Nader's spoiler bid for the presidency, which garnered a dismal 3 percent of the national vote but helped George W. Bush gain the presidency, is going to cost the consumer advocate more than a lot of new political enemies. A top Clinton official says that she and her wealthy husband, longtime Nader friends, have cut him out of their will. The couple had included a "substantial bequest" to Nader organizations in their final testaments but had them redrawn after his "spoiler" campaign.

And while the Green Party will forever be remembered as having cost Democrat Al Gore the presidency by pulling in just enough votes to give the presidency to Bush, in the sleepy Northern California town of Sebastopol (population 8,000) Greens won two City Council seats on November 7, giving them a three-person control of the town's five-member City Council, including the mayor, Larry Robinson.

Britain has scrapped laws making homosexuality a crime in its five Caribbean territories, acting after legislatures refused to do so. The order from the British Privy Council, which acts as the highest court for the territories, recently decriminalized homosexual acts between consenting adults in private. The order went into effect last week and applies to Anguilla, the Cayman Islands, the British Virgin Island, Montserrat, and the Turks and Caicos.

Congratulations to one of my favorite people, actress Elizabeth Taylor. Taylor was presented the Presidential Citizen's Medal by President Bill Clinton Monday during a White House ceremony. Taylor

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was recognized for her tireless work in the AIDS battle. She co-founded AmFAR with Dr. Mathilde Krim, and set up the Elizabeth Taylor AIDS Foundation and raised millions to fight the disease; through all the trauma and drama of recent years, Taylor's commitment to the fight against AIDS has remained her one real passion.

When Milton Marks III was sworn Monday to a seat on the City College of San Francisco Board of Trustees he became the third generation member of a respected San Francisco political family to take public office. His father, the late Milton Marks, represented San Francisco and Marin in the Assembly and state Senate for decades; his grandfather, Milton Marks Sr., was a prominent attorney who also served in the state Assembly.

My quote of the week comes from New York Governor George Pataki, who after learning that his recent appointee for state motor vehicle commissioner had been convicted of a DWI arrest in 1989, said: "Well, I guess that qualifies you to be president of the United States, then."

And how was your week?

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Message: 9  
Date: Fri, 12 Jan 2001 18:02:29 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: CA transgender bill gets another shot

Bay Area Reporter  
<http://www.ebar.com>  
January 11, 2000

Tranny bill gets another shot

by Katie Szymanski

Okay, one more time: Existing law allows for California-born transsexual residents to obtain a new birth certificate. It's time for people born here but living abroad and those new to the state to be able to take advantage of this right, no?

Well, no, according to Governor Gray Davis, who vetoed AB1851 by Assemblyman John Longville (D-Rialto) last session, citing on one hand his perception that the bill was unnecessary, and on the other hand expressing concern that the bill did not follow current registrar procedure, even though the bill was designed to change the procedure in question.

"I am flabbergasted," was the reaction last September from Eric Astacaan of California Alliance for Pride and Equality. AB1851 was largely considered non-controversial, and passed with bipartisan support through both legislative chambers. Members of CAPE and the Lambda Letters Project immediately vowed to open a dialogue with Davis, hoping to interpret his reasons for the veto so that the bill could eventually be given a second chance.

It has been four months since the veto, and Longville, as promised, is at it again. The bill will be re-introduced this session and assigned a new number, but will remain true to its spirit. The bill will simply call for a clarification of the process by which transsexuals other than those born and still living here can access their right to legal documentation.

"He wants to take another crack at it," Kristen Wingate, a spokeswoman for Longville, told the Bay Area Reporter. "The assemblyman is a strong advocate of LGBT rights and believes he can guide this bill into law."

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Not much has been done to re-word the bill yet, in part because many LGBT advocates felt that Davis's previous veto came not from opposing it but rather from an apparent lack of comprehension. But Longville's office has pledged to work with the governor to ensure that this time around, the bill will be signed.

"We are planning on working more closely with his office so he understands what the bill does," said Wingate. "And if there are parts of it that remain a concern for him, we plan to come up with a resolution."

The announcement of the bill's re-introduction was cheered by Lambda Letters, which urged LGBT people to get on board by visiting [www.lambdaleters.org](http://www.lambdaleters.org), where the bill can be fought for and tracked throughout its progress.

Passage of the bill through both houses again should not be a problem, according to Wingate, who noted its relatively benign nature and the fact that it previously garnered much support.

"It's not a controversial bill, because the process already exists and just needs to be made easier," said Wingate. "Last session, we even had Republicans voting for it."

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Message: 10  
Date: Fri, 12 Jan 2001 18:03:30 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: Ammiano unanimously re-elected board president

Bay Area Reporter  
<http://www.ebar.com>  
January 11, 2000

Ammiano unanimously re-elected board president

by Cynthia Laird

Supervisor Tom Ammiano, who has been at the forefront of leading the fight for equal rights for gays and other minorities, was unanimously re-elected president of the San Francisco Board of Supervisors Monday, January 8.

All 11 supervisors were sworn in shortly before Ammiano was selected by his colleagues to be board president. The board now includes seven rookie members; all the board members were elected in district elections, which returned to San Francisco after a 20-year absence. Ammiano was an early champion of district elections, and Monday's inaugural meeting saw many new supervisors seated who ran on promises to be independent of Mayor Willie Brown. The progressive candidates in several districts easily beat challengers or incumbents supported by Brown.

The new board brings big change to San Francisco politics. For the past several years, including the last two which Ammiano spent as board president, he has often been on the losing end of votes as the supervisors mostly were Brown allies. All of that changed Monday.

For his part, the mayor offered brief congratulatory remarks after the supervisors were administered the oath of office by Superior Court Judge Ronald Quidachay. Brown then left by a side entrance before the new supervisors made their speeches.

Supervisor Mark Leno, who was re-elected from District 8 (Castro-Noe Valley), and Ammiano are the only openly gay board members.

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"Yesterday was really thrilling," Leno told the Bay Area Reporter. "It's clearly a new day at City Hall. It will be an honor to move forward and continue work with my new colleagues."

Leno downplayed concerns expressed by some that the new district supervisors might be so caught up with district concerns that they don't work on issues affecting the entire city.

"These are very talented, intelligent, experienced people who have been elected and we will be able to work things out for the best interest of the city," Leno said. "My hopes are high. It will be a learning process - how we work with one another to balance the needs of each other's districts and the city as a whole. That's exciting."

Also on Monday, it was determined by chance which supervisors would serve two-year terms and which ones would serve four-year terms. Again, it turned out to be Ammiano's day, as supervisors from the odd-numbered districts will serve four-year terms; Ammiano represents District 9. The others serving four-year terms are: Jake McGoldrick, District 1; Aaron Peskin, District 3; Matt Gonzalez, District 5; and Gerardo Sandoval, District 11.

Leno and the supervisors in other even-numbered districts will face voters in two years. They include Gavin Newsom, District 2; Leland Yee, District 4; Chris Daly, District 6; and Sophie Maxwell, District 10.

During his remarks, Ammiano vowed to push for the creation of a public power district in San Francisco and to lobby state officials to work to end Ellis Act evictions, which have forced hundreds of tenants out of their rental housing, including many people living with HIV/AIDS.

Other issues that the board will likely work on include addressing dot-com development and other growth-related issues, such as live-work lofts. Development was a hot-button issue during the November elections. Growth control advocates saw their Proposition L, a slow-growth measure, narrowly lose at the polls, as well as Mayor Brown's less restrictive Proposition K.

Leno said that he will work on several projects, including some that he started last year. As for continuing projects, Leno listed the transgender task force that was established last year, and in particular one big thing the task force would like to see changed is getting the city's health policy to cover transgender care.

Other projects include ongoing efforts to pass affordable housing legislation and getting the queer young adult housing facility at 2500 Market Street up and running. "We will be very attentive to 2500 Market Street as it goes forward," Leno said.

Another issue of importance to the LGBT community, Leno said, is the drug abuse problem, especially crystal methamphetamine. "I want to continue to attend to health issues, including harm reduction; I'm holding a hearing on crystal meth, which I hear continues to be a problem in the community."

Regarding some citywide concerns, Leno said he will continue with his proposal to implement revenue control procedures at the city's parking lots. Currently, there is no mechanism for "proof of payment" at some city lots, and the city is supposed to receive a 25 percent tax on parking fees. While that has generated about \$48 million in parking tax revenue, Leno said there may be as much as \$20 million in tax revenue that is not being collected. The parking lot tax revenue is divided up with 40 percent going to Muni, another 40 percent to the general fund, and 20 percent for senior services. "We may be able to augment senior services," Leno said. "The [parking] industry, of course, is not thrilled."

Ammiano also told the B.A.R. that he sees "a new day" dawning at City Hall. He said that he was "gratified" at the full support he had from his colleagues who elected him board president. Ammiano is now involved with assigning his fellow board members to various committees, a process he hopes to have completed by the next board meeting.

In terms of issues Ammiano would like to see addressed, he immediately mentioned development.

"People in general on the board have development issues, and we will be working together real soon," Ammiano said, adding that addressing

such ideas as "smart growth" and zoning would be a priority. "Health care is another one," Ammiano said. "There are issues around San Francisco General Hospital."

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Message: 11  
Date: Fri, 12 Jan 2001 18:07:22 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: Lesbian mom takes historic seat in GA General Assembly

Southern Voice  
Atlanta, GA  
January 11, 2001

Lesbian mom takes historic seat in GA General Assembly  
by Laura Brown

Thursday, 11 January 2001

ATLANTA-As the 2001 Georgia General Assembly session opened Monday, gay rights lobbyists said they plan to spend the session building support for a pro-gay civil rights bill, despite a conservative shift in the state's Republican leadership.

Lobbyists may also have to contend with high expectations from gay Georgians. During last year's session, gay rights advocates and their coalition partners succeeded in passing their number one priority, a hate crimes bill, which was sponsored by Sen. Vincent Fort (D-Atlanta).

Although the state's House of Representatives stripped all specific categories, including sexual orientation, from the bill prior to passage, the vote still marked the first time the General Assembly had passed a piece of legislation known to benefit and be supported by gays.

Last year's session was also remarkable for what didn't happen: For the first time in recent memory, no anti-gay bills or amendments were introduced.

With this year's session barely underway, activists are already cautioning supporters not to expect history to repeat itself. A comprehensive anti-discrimination bill, which would include a first-ever statewide ban on discrimination on the basis of sexual orientation, is expected to take several years to pass and supporters won't push for a vote this year, they said.

Meanwhile, gay rights supporters are already gearing up to fight one bill viewed as anti-gay: HB 26, the "Defense of Scouting Act," which would prevent state and local governments from ousting the Boy Scouts of America from public facilities.

Activists in jurisdictions around the country have attempted to persuade school boards and other government entities to stop allowing the Boy Scouts to use their buildings and promote its programs in schools, claiming the Scouts' policy of excluding gays violates some local non-discrimination policies.

The Defense of Scouting Act, an attempt to prevent such efforts from spreading to Georgia, is sponsored by Rep. Earl Ehrhart (R-Cobb), who was re-elected House Minority Whip, and Rep. Glenn Richardson (R-Dallas), who last year was the only House member to speak out specifically against including sexual orientation in the hate crimes bill.

"These classes include sexual orientation," Richardson argued during floor debate on the bill. "For the first time, we are going to create

this class of people? Why are we recognizing this class of people and protecting them more?"

Ehrhart, who did not respond to an interview request, has said the bill is an effort to keep the gay rights fight away from children.

"If you want to fight gay politics versus straight politics, let's fight it out here among the adults and leave the kids out of it," he told the Florida Times-Union.

The bill is a slap in the face to the state's sizable gay population, said Harry Knox, executive director of Georgia Equality, the statewide gay political group.

"The bill is clearly designed to be an insult to the gay and lesbian community as much as anything else, and we will be working to defeat it," he said.

But regardless of the outcome of any legislative battles, the first week of the 2001 session has already proven historic for gays: On Monday, state Rep. Karla Drenner (D-Avondale) was sworn in along with other new representatives.

Drenner, who was accompanied by her partner and two children, became the first openly gay state legislator in Georgia and the South.

'Multi-year' civil rights fight

The planned civil rights bill would provide first-ever protections on the basis of sexual orientation, while also strengthening and streamlining the state's other civil rights laws. It is expected to take at least four years to pass, Knox said.

The bill will ban discrimination on the basis of "race, color, national origin, gender, marital status, sexual orientation, age, religion, disability status, or the perception thereof" in employment, credit, banking, education, insurance, public accommodations and access to services.

Sexual orientation is the only category in the bill that is not already protected under either federal or state level anti-discrimination laws.

The bill, introduced by Rep. Carl Von Epps (D-LaGrange) on day 35 of last year's 40-day session, had little time to gain momentum. This year, supporters said they expect the bill to be introduced "sooner rather than later," but they do not expect to press for a vote on the measure this year.

Epps could not be reached for comment by press time.

"This year, the movement people will see is additional co-sponsors being obtained, and commitments to vote for the bill whether they sign on as co-sponsors or not, and this might be the year we start hearings on the bill so that people can understand why it is so needed," said longtime gay lobbyist Larry Pellegrini, public policy director for the Georgia Rural Urban Summit.

The civil rights bill, which is strongly supported by the Legislative Black Caucus, is likely to take a back seat to efforts to change Georgia's state flag to remove the Confederate battle emblem.

"There is frankly a limit to how much civil rights legislation we can expect to move in one session," Knox said. "But that doesn't mean we can put off our work as citizens in advocating for this bill with our legislators."

While urging constituents to contact legislators to ask them to support the civil rights bill, Knox said Georgia Equality will also join in the effort to change the flag, both because of the needs of gay people of color and also because the flag is "offensive to all minorities."

"The flag is a clear message from the state to all minorities that we live and work here only at the pleasure of the people in the majority," Knox said.

The flag fight could also serve as a "bellwether" for the likely chances of the anti-discrimination bill in the future, said Fort, sponsor of the successful hate crimes bill and a supporter of both changing the flag and the non-discrimination law.

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The flag controversy "is going to say a lot about whether Georgia is going to be an inclusive state or an exclusive state," Fort said. "Gays and lesbians should be watching and involved, because anytime you see racism and sexism, you will see homophobia-they go hand in hand."

#### Hate crimes statute

Last year, the majority of House Republicans solidly opposed the hate crimes bill. This year, the state's GOP leaders have chosen decidedly conservative leaders, re-electing Ehrhart as House Minority Whip and choosing state Rep. Lynn Westmoreland (R-Sharpsburg), known for his conservative reputation, to replace state Rep. Bob Irvin (R-Atlanta) as House Minority Leader.

Westmoreland could not be reached for comment.

While Westmoreland voted against the hate crimes bill last year, supporters of the measure said they don't expect efforts to overturn it.

"In the last session, we did not get the kind of virulent homophobia that had been part of past debates on hate crimes, and I think that is an indication of a reluctance to have that kind of overt bigotry," said Fort, while promising a "knock down, drag out fight" should any attempts to weaken the bill surface.

After the House stripped categories from the hate crimes bill last session, supporters mentioned the possibility of amending the measure to add the categories should the current ban on crimes motivated by "bias or prejudice" not prove strong enough.

So far, no cases have been brought under the new law, and both Fort and Georgia Equality said they had no plans to try to change it until they see how it plays out in court.

"At this point, I want to see how it is implemented, because the proof is in the pudding," Fort said.

#### AIDS drug funding battle

After years of budget wrangling and lobbying, HIV activists cheered last year when the state's Department of Human Resources was finally able to fully fund the AIDS Drug Assistance Program, which provides funding of last resort for HIV medications, removing the waiting list.

Making sure ADAP receives enough money through the state's supplemental and general budget to keep the waiting list from being reinstated will be a top priority for HIV activists, said Jeff Graham, executive director of AIDS Survival Project, which has taken the lead on ADAP lobbying.

ADAP advocates estimate the program will need \$10.8 million in state funds to avoid a new waiting list, Graham said. So far, the DHR has requested \$4.3 million in new funding in next year's budget, and the program has received about \$1 million in this year's supplemental budget, Graham said.

Activists will be monitoring Gov. Roy Barnes' proposed budget, set to be released this week, and will fight to have additional money for ADAP added as the budget makes its way through the General Assembly, Graham said.

An additional \$400,000 in funding is also needed for the AIDS Insurance Continuation Program, which helps people with HIV pay premiums to maintain their private health insurance, he said.

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Message: 12

Date: Fri, 12 Jan 2001 18:10:14 -0800

From: LGBT Activists List <doug.case@sdsu.edu>

Subject: MS lawmakers may see gay hate crimes bill

Southern Voice

Atlanta, GA

January 11, 2001

<http://www.sovo.com>

MS lawmakers may see gay hate crimes bill  
by Gip Plaster

State legislative sessions are underway in Mississippi and Tennessee, and while one Mississippi lawmaker is proposing a bill that could add sexual orientation to the state's hate crimes law, there is no evidence that anything other than budget woes will get the attention of the Tennessee General Assembly.

In the Mississippi Legislature, which convened Jan. 2, House Bill 162 would amend the state's existing hate crimes law to include age and sexual orientation. The bill comes only a year after the state passed a bill prohibiting gay and lesbian couples from adopting children, one of the most restrictive anti-gay bans in the country.

"It is imperative that we get the word out about this and that every person we can find calls and supports this hate crimes bill," said Jody Renaldo, chair of the Mississippi Gay Lobby. "It is about time the Mississippi gay community came out of the closet and stood up for ourselves."

Sexual orientation was left out of the original hate crimes bill, which became law in July 1994, because the state's Republican governor would not have signed it if the category had been included, according to state Rep. Erik Fleming (D-Jackson), who is proposing the change.

Although Gov. Ronnie Musgrove, a Democrat who took office last year, is considered conservative, a veto of the bill, if it passed the legislature, would be unlikely, Fleming said.

"I think he'll be more supportive of a more inclusive hate crimes bill," Fleming said. "Prior to this administration, it was not going to be successful."

The proposal for the gay-friendly change came without prompting from a gay organization, Fleming said, but because it was the right thing to do.

"The thing that still sticks on my mind is the Matthew Shepard case. I think that is one of the greatest tragedies we've had in this country," Fleming said.

The bill has been assigned to the Judiciary committee, one of several committees where Fleming has bills pending, though passage is uncertain, he said.

"This is just one of a hundred bills I'm proposing," Fleming said.

Renaldo said if the gay community does not get involved, the bill will die.

"We already know the Mississippi Family Council and the American Family Association are jumping on this to see that it gets defeated. In 2000, both of these homophobic groups jammed the capitol switchboard and fax lines in support of the bill that banned some gays from adopting children in Mississippi," Renaldo said.

While Renaldo applauded Fleming's efforts regarding the hate crimes bill, another law proposed by Fleming is troublesome, he said.

Fleming is proposing that condoms only be sold to minors by prescription.

"It's a classic scenario: You can please folks and you can get them upset with you in the same session," the lawmaker said.

At last year's Mississippi State Fair, the state health department placed a bowl of condoms on a table near a bowl of candy being distributed by another vendor. Children picking up condoms along with the candy forced parents to answer some uncomfortable questions,

Fleming said.

"That to me highlighted that we really don't have a way of monitoring how condoms are being distributed in this state," he said.

Other bills proposed by Fleming would prohibit the possession of a surgically silenced dog and would strengthen the penalty for killing a police dog.

David Ingebretsen, president of ACLU of Mississippi, said he expects a bill will be proposed to strengthen the law banning gay adoptions. Under the current law, only couples are prohibited from adopting.

"I expect a bill to amend the ban on same-sex couple adoption to also ban adoption by any single gay or lesbian as well as void any same-sex couple adoption made out of state," he said.

TN lawmakers focused on budget

In Tennessee, where the General Assembly convened Jan. 9, it is unlikely that any bills relating to gay issues will be proposed, according to Carter Witt, co-chair of Nashville's Lesbian Gay Coalition for Justice.

Since bills are not pre-filed in Tennessee, exactly what bills are being proposed during a session is not known until after it begins, but the state's ailing budget is expected to dominate much of the session.

Talk of budget shortfall and the possibility of adding a state income tax are top priorities, according to legislative watchers.

"We are in the middle of a budget crisis situation and we're going into the third session where the legislators are not willing to do anything about it," Witt said. "They haven't dealt with much else in the last two years."

A comprehensive hate crimes law that includes sexual orientation and gender identity was passed last year, a bill that Witt said was "sneaked through."

Witt said there are no lawmakers that he can count on to be gay friendly or to serve as his eyes and ears within the chambers, not even the author of the hate crimes bill.

"There are not any members of the legislature that I would consider staunch allies on our behalf," he said. "None of them."

While there is no employment non-discrimination law on the books in the state, Witt said such a bill is not yet feasible.

"We don't have broad enough support to even try to introduce that in Tennessee," he said.

The state Senate is composed of 18 Democrats and 15 Republicans; the house has 58 Democrats and 41 Republicans.

To make further progress on gay and lesbians issues, Witt said more public visibility of gays is needed. Many legislators still do not know they have any gay constituents, he added.

"The problem in Tennessee is that the gay and lesbian community as a whole does not contact their legislators and let them know they're there," Witt said.

National Gay & Lesbian Task Force spokesperson David Elliot said that organization is just beginning to study state legislative sessions around the country and has no current plans to become involved in the legislative process in either Tennessee or Mississippi.

Human Rights Campaign plans to send out an action alert about the pending Mississippi hate crimes bill, according to Liz Seaton, a deputy field director. But with 45 states beginning legislative session this month and a limited staff at HRC, becoming involved in every state is impossible, she said.

"Our role here is to support the work of the statewide organizations," Seaton said.

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Message: 13  
Date: Fri, 12 Jan 2001 18:15:41 -0800  
From: LGBT Activists List <doug.case@sdsu.edu>  
Subject: Activists set their sights on Ashcroft

Bay Windows  
Boston, MA  
January 11, 2001  
<http://www.baywindows.com>

Activists set their sights on Ashcroft

by Peter Cassels  
Bay Windows staff

With the embattled Linda Chavez gone, attention now focuses on AG nominee

Momentum is building to block another of President-elect George W. Bush's cabinet nominees now that Linda Chavez, his pick for labor secretary, has withdrawn after acknowledging that she sheltered an illegal immigrant from Guatemala in the early 1990s. Chavez also had conducted a vicious, sometimes anti-gay campaign against U.S. Sen. Barbara Mikulski, D-Md., in 1986.

The controversy had overshadowed a campaign to prevent defeated U.S. Sen. John Ashcroft, R-Mo., a darling of the religious Right, from becoming attorney general. That effort was re-energized Jan. 9 when a broad coalition of public-interest groups, including the Human Rights Campaign (HRC), the nation's largest gay-rights lobbying organization, launched a major protest urging that he not be confirmed by the Senate.

Also, a spokesperson for the National Gay and Lesbian Task Force (NGLTF) in an interview expressed dissatisfaction with almost the entire lineup of Bush cabinet nominations and indicated that it would actively protest several.

Locally, a gay antiviolence advocate has called on U.S. Sens. Edward Kennedy and John Kerry of Massachusetts to not only vote against Ashcroft, but also lead the opposition to his confirmation.

"Ashcroft is an extremist who cannot be counted on to enforce laws equally for all Americans," Don Gorton, chair of the Massachusetts Gay and Lesbian Antiviolence Project, told Bay Windows Jan. 8. "Concerns have been raised about his fairness to African-American civil rights and abortion rights. Those concerns are weighty by themselves, but when you add concerns about his homophobia, his unsuitability is just crystal clear."

Besides Ashcroft's record of voting against the Employment Non-Discrimination Act (ENDA) and the Hate Crimes Prevention Act and for the Defense of Marriage Act (DoMA), Gorton underscored the former senator's pushing through a Missouri hate-crimes law while governor in the early 1990s that explicitly omitted sexual orientation and gender bias. "That is something I find very troubling," he asserted. "When you add emphasis to deter bias against race or religious affiliation but pass over sexual orientation, you are saying those crimes are not serious and don't deserve attention. So that is one of those clear-cut instances of how he does not favor gay and lesbian equality."

The antiviolence leader said he fears Ashcroft is likely to shut down the Justice Department's prevention programs that address crimes against gay and lesbians. Training materials are gradually being made available to federal, state and local law enforcement agencies that "make it very clear that violence against gays and women is something to prevent. What I see is Ashcroft withdrawing these products before they have been widely utilized and undoing the good that [Janet] Reno

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did by making them available."

The right wing in the last session of Congress, he reported, tried to use the legislative rider process to suppress the crime-prevention materials, but was unsuccessful. "But that whole battle becomes moot if Ashcroft through the stroke of a pen can end the department's prevention message. That's contributing to violence."

Gorton theorized that Bush picked Ashcroft to be the nation's top law enforcer to "throw a major bone to the conservatives. This is as big a bone as they could ask for. This job is the one that makes their issue [blocking protections against gays and lesbians] happen."

In statements to Bay Windows, both Kennedy and Kerry indicated they would speak out against Ashcroft, but stopped short of saying they would lead a battle against Senate confirmation.

"The senator has expressed real concern with the nomination of Senator Ashcroft," Kennedy spokesperson Will Keyser said. "Specifically he has real concerns on his record on civil rights, including gay and lesbian issues. He's looking forward to raising these issues during the confirmation hearings." Kennedy is the senior member of the Senate Judiciary Committee, which, Keyser said, will tentatively begin confirmation hearings Jan. 16.

Kerry spokesperson David Wade reported that Ashcroft and Sen. Jesse Helms, R-N.C., were the only members of the Foreign Relations Committee who vocally opposed James Hormel, the first gay appointed an ambassador. Committee members Kerry and Sen. Dianne Feinstein, D-Calif., led the fight to confirm Hormel as envoy to Luxembourg. "[Kerry] will have a lot to say on the [Senate] floor on Ashcroft's nomination," Wade said.

In a statement to Bay Windows, Kerry said the Ashcroft nomination is "troubling because at a time when the country so clearly needs to be unified, when the new president acknowledges that he must be a unifier rather than a divider, we are forced to vote on [an individual] who, in [his] public record, strike[s] chords of division and could further alienate more of our citizens from the political process."

The senator contended that differences he has with the nominee are not political or ideological, but one of public confidence: "Can John Ashcroft hold the trust of all of our citizens that he will enforce hate-crimes laws and work hard as the nation's top law enforcement official to win the cases and champion the civil-rights causes with which he seemed uncomfortable as a senator? It is a question of whether...it is in the best interests of the nation to name as attorney general someone who argued that James Hormel would 'promote the gay lifestyle' as ambassador to Luxembourg."

Kerry emphasized, "We don't want to make up our minds before we hear the answers to these questions. Neither should we be willing to have a process that...sidesteps the reality that an attorney general must be viewed by all Americans as a kind of neutral force for...equal distribution and application of the law at a time when the country really needs that."

At a Jan. 9 news conference at the Mayflower Hotel in Washington, D.C., HRC Executive Director Elizabeth Birch joined the leaders of eight other interest groups that have joined forces in opposing the Ashcroft nomination. They include the Alliance for Justice, Handgun Control, Leadership Conference on Civil Rights, National Abortion and Reproductive Rights Action League (NARAL), National Association for the Advancement of Colored People (NAACP), People for the American Way and the Sierra Club. Together, they represent more than 200 organizations. The coalition has launched a Web site, [www.stopashcroft.com](http://www.stopashcroft.com), to promote their campaign.

"President-elect Bush is entitled to create a cabinet of his own design," Birch said. "However, he does so against the backdrop of a fundamental promise made throughout his campaign to unite the nation. The nomination of Senator Ashcroft represents the extreme antithesis of that goal. Senator Ashcroft is a divisive figure who does not represent the mainstream values of this nation. ...We, like many Americans, are gravely concerned that Ashcroft, based on his record, will turn the focus of the department from justice to judgment, selectively enforcing only laws that he personally approves."

News media coverage of Chavez's nomination to head the Department of Labor had focused on her harboring an illegal immigrant and largely

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ignored the bitter campaign she waged against Mikulski when the pair faced off in a run for the Senate in 1986.

For years, rumors have circulated that Mikulski, who is not married, is a lesbian, although she has never directly answered questions about her sexual orientation. The rumors have their roots in the campaign, when Chavez accused Mikulski of being a "San Francisco-style Democrat" who should come "out of the closet." According to a Jan. 9 Gay.com column by Michelangelo Signorile, Chavez charged in a debate that Mikulski's support of the Equal Rights Amendment would "open up the whole question of homosexual marriage." After the debate, Signorile reports that Chavez's campaign manager told reporters TV commercials would focus on Mikulski's relationship with a staff member and her support of gay rights.

Signorile contended that the episode traumatized Mikulski: "While most of her voting record is supportive of gay rights, in 1998 she voted with the vast majority in the Senate in favor of [DoMA], perhaps lest anyone use the issue of gay marriage against her again."

According to the column, Chavez has since criticized lesbian parenting and in 1996 attacked the TV sitcom Friends because "recent episodes depicted one-night stands, lesbian moms, homosexual marriage and intergenerational romance." She also praised 1998 newspaper advertisements placed by "ex-gay" ministries promoting the idea that gays and lesbians could change their sexual orientation.

While the controversy over the Bush cabinet nominations now swirls around Ashcroft, Bay Windows also interviewed representatives of other gay organizations about the rest of the slate of candidates.

The Gay Lesbian and Straight Education Network (GLSEN) thus far is taking a neutral position on the nomination of Rod Paige, superintendent of the Houston School District, to become the first African-American secretary of education. While GLSEN gave the district a failing grade in 1998 for its handling of gay education issues, spokesperson Jim Anderson was quick to point out that school boards usually make policy decisions so, "It's difficult to ascertain the role the superintendent played or did not play." GLSEN gave Houston an "F" because it did not have a nondiscrimination policy protecting students or staff, or identifiable inclusive curricular materials, teacher training or a proactive statement supporting gay/straight alliances.

In a news release, GLSEN urged Paige to use "every available resource to combat the pervasive harassment leveled against" GLBT youth in the nation's schools. According to Anderson, the organization extended the olive branch because, "We simply must find ways to work with the new administration. We have a problem of violence and harassment in our schools that is critically important. We don't have the luxury of missing the next four years."

GLSEN Public Policy Director Mary Kate "MK" Cullen said in an interview that Paige seems "not to be in lock-step with the GOP on issues surrounding school choice, tax cuts and larger education policy questions. ... We feel Paige is someone we can work with. We have not seen anything that shows he has extended a hand to gays. We've also not seen him stop or discourage GLBT students or faculty from having a say in their schools."

NGLTF spokesperson David Elliot told Bay Windows he is not knowledgeable enough to assess Paige in detail, but expressed concern about his limited support for school vouchers.

"That is a GLBT issue because if we send the money to private schools and students follow that money there are no guarantees that teachers and students will enjoy anti-discrimination and harassment protection." He pointed out that more than 95 percent of voucher dollars goes to parochial schools, which do not have anti-discrimination policies.

While the HRC indicated it is pleased with the selection of Wisconsin Gov. Tommy Thompson to take the helm at the Department of Health and Human Services because of his pro-gay positions, Elliot said the NGLTF is "disappointed in his nomination and we hope that all progressive groups will unite to defeat him." He listed a "draconian" abortion law Thompson signed as governor that was later struck down, support for school vouchers and welfare reform without a safety net as reasons gays should be opposed to the nomination.

Elliot criticized the selection of Gale Norton as interior secretary

because, as Colorado attorney general, she led the fight for Amendment 2, which would outlawed gay rights laws in the Rocky Mountain State: "The day that Amendment 2 passed at the polls and the day that it was struck down by the U.S. Supreme Court on a 6-3 vote were milestones for the gay movement. It's disappointing that someone who is going to be so visible as part of the Bush administration has such a disappointing and hurtful record on GLBT issues."

His criticism of some other Bush nominees was less severe. "Christine Todd Whitman [as head of the Environmental Protection Agency] may have been one of [the] better appointments. I give her a C-minus, because of her position on racial profiling by the New Jersey State Police. She could have stepped up and stopped it sooner. She is pro-choice and at least nominally pro-gay. I don't know that Whitman has been a hero for our community."

Elliot's concern about Donald Rumsfeld, Bush's choice for defense secretary, is that he "comes from the old guard. He comes from an era in which GLBT people did not exist on a federal level in the minds of our policy makers."

Of Colin Powell as secretary of state designate, Elliot said the general "fought hard against gays and lesbians serving openly in the military. He since came around to support the 'don't ask, don't tell' policy, but that has done a lot of damage. Look at the number of gays who have been hounded out of the military. Powell isn't as bad as some of these nominees, but are we going to spend the next four years saying this nominee isn't as bad as he could have been? Are we going to praise Bush for nominating someone who is not virulently anti-gay? Is that as low as the bar has fallen?"

Asked what ways the NGLTF will voice its concerns about the Bush cabinet, Elliot said it will serve as a clearinghouse for anti-inaugural protests through its Web site, [www.nglftf.org](http://www.nglftf.org). "We're also going to urge our members to contact their senators to defeat some of these nominations." Although it has not yet named which ones it will oppose, Elliot expects a decision soon. t

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VERIZON SAYS NEW MASSACHUSETTS DATA  
SHOWS IT'S READY FOR InterLATA ENTRY

Verizon New England today submitted a new application to the FCC seeking permission to provide interLATA (local access and transport area) services in Massachusetts, after adding new data to an application it filed earlier last fall and then withdrew late last month. Verizon officials are hoping the new data will answer regulators' questions about the original market entry application, including whether the telco provides nondiscriminatory access to digital subscriber line (DSL)-capable loops (TR, Dec. 25, 2000).

Under section 271 of the Telecommunications Act of 1996, a Bell company must apply to the FCC for authority to provide in-region interLATA services. The FCC must determine whether the company has met a 14-point "competitive checklist" of market-opening mandates enumerated in the Act.

Thomas Tauke, Verizon's senior vice president-external affairs and public policy, said late this afternoon that the new filing "demonstrates that we provide nondiscriminatory access to lines other DSL providers lease from us, as well as parity of service for installation and repair."

FCC Chairman William E. Kennard had focused on Verizon's provisioning of DSL-capable loops when the company withdrew its original Massachusetts application. He cautioned Verizon it should include in a new application "verified data reflecting acceptable levels of performance, including an independent showing for loops used to provide advanced services."

Verizon also included in its application today new rates for switched services that it previously had introduced in ex parte filings regarding the original application. Competitors had complained that those rates shouldn't count in the proceeding because they were submitted after comment cycles had ended. "Refiling puts to rest any concerns that interested parties did not have the opportunity to comment on all the issues," Mr. Tauke said.

The FCC now has 90 days to consider the new application. Under section 271, it must consult with Massachusetts regulators and the Department of Justice before issuing a decision. Justice had given Verizon's original application a thumbs-down (TR, Oct. 30, 2000). The Massachusetts Department of Telecommunications and Energy had recommended that the FCC approve it (TR, Oct. 23, 2000).

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BellSouth CASHING OUT PART OF QWEST INVESTMENT

BellSouth Corp. is cashing in part of its investment in Qwest Communications International, Inc., to free up funds for other endeavors, the companies said today. Qwest will pay BellSouth \$1

billion for 22 million Qwest shares, leaving BellSouth with 52 million shares, or a 3% stake in Qwest.

BellSouth has the option of selling another 11 million Qwest shares next month, but Qwest probably will not be the buyer, said Joseph P. Nacchio, Qwest's chairman and chief executive officer. The 22 million shares is about what Qwest figured it could afford without running the risk of hurting its credit rating, Mr. Nacchio told analysts during a conference call. "That was a good number we could handle. It wasn't going to put any burden on us," he said.

BellSouth's purchase of 74 million Qwest shares in 1999 prompted some analysts to speculate that the two companies eventually would merge (TR, April 26, 1999). But BellSouth apparently has other priorities.

The company recently asked Qwest to buy back some of the shares, Mr. Nacchio said. "BellSouth approached us with the desire to achieve some liquidity," he said. BellSouth said the sale would provide resources for the company to focus "on the high growth areas of data and wireless."

The alliance between Qwest and BellSouth will remain, and even grow larger, the companies said. In addition to continuing its co-marketing agreement with Qwest and using Qwest for long-haul transport, BellSouth has promised to buy \$250 million worth of services from Qwest. BellSouth will pay for those services with Qwest shares.

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GLOBALSTAR CEO PLEADS FOR PATIENCE FROM BONDHOLDERS

Globalstar Telecommunications Ltd. is one step away from bankruptcy, its chairman and chief executive officer admitted today as he announced that the company was suspending payment on its debts. But he urged the company's bondholders and other investors to be patient while the satellite service provider revamps its business plan in a quest for profitability.

It would take only three bondholders to force Globalstar into an involuntary bankruptcy filing, Bernard Schwartz acknowledged. "We're hopeful, however, that all bondholders will recognize that the acts we're taking today are designed to improve the situation," he said during a conference call with investors.

Globalstar has hired The Blackstone Group, a private investment firm, to devise a new business and funding plan. Mr. Schwartz said he expected the plan to be finished in six weeks, and he urged bondholders to support Globalstar until then. "A premature action to cause bankruptcy before Blackstone has an opportunity to revise our plan. . . would be damaging to the prospects of all the constituencies, including the bondholders," he said.

Globalstar's decision to suspend payments on its credit facility, vendor financing agreements, senior notes, and preferred stock dividends will save the company \$400 million this year, enabling it to continue operations into next year. The move is supported by Globalstar's main creditors and investors, including QUALCOMM,

Inc., and Loral Space & Communications Ltd.

With only 31,200 subscribers for its global mobile telephone service, Globalstar must do more to recruit customers, must make its handsets and service more affordable, and must deploy new services, Mr. Schwartz said.

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JUDGES SKEPTICAL OF REVOKED CELLULAR LICENSEE'S CLAIMS

A three-judge panel of the U.S. Appeals Court in Washington today expressed skepticism at a former cellular licensee's argument that the FCC wrongly revoked its license for lack of candor when it falsely maintained that all of its partners were U.S. citizens.

Hearing oral arguments in the case, Alee Cellular Communications v. FCC (case no. 99-1460), the judges agreed with the Commission's contention that substantial evidence showed the licensee's partners knowingly deceived the agency to retain a rural service area (RSA) license for Catron, N.M., which was awarded by lottery in 1988.

Hearing the case were Chief Judge Harry T. Edwards and Judges Douglas H. Ginsburg and A. Raymond Randolph.

Alee attorney Philip J. Mause told the court that the license revocation was arbitrary and capricious because the FCC relied on an administrative law judge's finding about the credibility of witnesses that had testified in a separate proceeding. Mr. Mause said that Mr. Miller compiled no written record of his judgments about the witnesses to indicate why he found them credible or incredible.

Mr. Mause also contended that the FCC rejected substantial, credible evidence that showed Alee's partners had not intended to deceive the Commission regarding the non-citizen partner. He also said the agency's decision was not supported by substantial evidence.

But FCC attorney Joel Marcus told the court that before upholding the license revocation, the Commission conducted its own independent review of the case, persuading it to arrive at the same conclusion as Mr. Miller. Mr. Marcus said the agency's decision was supported by substantial evidence. "That standard is easily met here," he said, citing the testimony of witnesses and supporting documentary evidence.

The judges seemed to agree with the Commission's argument. "It looked to me like it was doing its own independent evaluation," Judge Randolph said of the FCC. "They rely on documentary evidence, which they cite," Judge Edwards added.

Judge Ginsburg noted that the Commission cited both documentary evidence as well as evidence of the witnesses' demeanor in reaching its decision to uphold the license revocation.

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COURT UPHOLDS RESELLER'S DISCRIMINATION CLAIM AGAINST AT&T

The U.S. Court of Appeals for the Second Circuit (Manhattan) has upheld a jury's finding that AT&T Corp. should pay \$2.1 million in damages for discriminating against reseller National Communications Association. The appeals court affirmed a Manhattan federal district court jury decision that AT&T had favored its own end-user customers in providing software-defined network (SDN) services to NCA.

The appeals court rejected AT&T's claim that the district court should have granted its motions to dismiss the case and for a new trial. A three-judge panel of the Second Circuit held that there was sufficient evidence to support the jury's finding of discriminatory service, in violation of section 202(a) of the Communications Act.

The appeals court also rejected AT&T's argument that the district court judge erred in instructing the jury that AT&T bore the burden of disproving that its different treatment of NCA and its own end-user SDN customers wasn't unreasonable and unjust under section 202(a).

In its original claim, NCA charged that AT&T delayed resale orders for up to nine months in an effort to "intentionally discriminate against the resellers." Citing the nondiscrimination language of section 202(a), U.S. District Judge Loretta A. Preska in February 1998 directed AT&T to pay \$1.8 million in damages. In June 1999, NCA's damages award was augmented to \$2.1 million in damages and prejudgment interest.

The Jan. 12 appeals court opinion in case nos. 98-9673 and 99-7023, National Communications Association, Inc. v. AT&T Corp., was written by Chief Judge John M. Walker, Jr., was joined by circuit judges Thomas A. Meskill and Sonia Sotomayor.

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FCC PROPOSES PENALTIES FOR WIRELESS TOWER VIOLATIONS

The FCC today proposed that two wireless carriers and two tower companies pay \$327,000 for numerous violations of its antenna rules. The largest proposed forfeiture is against American Tower Corp. for 36 violations in 14 states and Washington, D.C. The Commission has ordered the Enforcement Bureau to conduct a more thorough investigation of American Tower's compliance with its rules.

The Enforcement Bureau also proposed an \$80,000 forfeiture against Telecorp Communications, Inc.; \$18,000 against AT&T Wireless Services, Inc.; and \$17,000 against SpectraSite Corp.

In a notice of apparent liability for forfeiture, the Commission said American Tower failed to (1) properly light an antenna during construction; (2) register two existing antennas; (3) notify the agency of ownership changes involving 24 antennas; and (4) post registration numbers on nine antennas.

"We are concerned that ATC continues to violate our rules despite both oral and written warnings regarding the Commission's antenna structure requirements," the Commission said in its notice. It

said more than half of American Tower's 36 violations were uncovered after a July 2000 meeting between FCC field agents and American Tower officials.

In separate notices, the Enforcement Bureau found that Telecorp failed to properly light antennas on four occasions; that AT&T Wireless failed to post antenna registration numbers on nine occasions; and that SpectraSite failed to post antenna registration numbers on four occasions and failed to notify the Commission of ownership changes on three occasions.

The FCC said the violations were discovered by its field agents during routine investigations and inspections.

An American Tower spokeswoman could not be reached for comment. Russell Wilkerson, director-corporate affairs for TeleCorp PCS, Inc., told TR, "We're talking to our folks in the field. . .to compare the cases by the FCC and some of their findings and then we will respond to them." He added, "We make it a practice to follow the FCC rules and regulations."

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TMI, MOTIENT TO INTEGRATE MOBILE SATELLITE OPERATIONS

TMI Communications & Co., L.P., of Ottawa and Motient Corp. of Reston, Va., announced plans today to integrate their mobile satellite communications operations. The new entity, tentatively named Mobile Satellite Ventures, will focus on provisioning wholesale satellite service to North American carriers.

The companies said they will consolidate some facilities to maximize the joint venture's efficiency, assuming regulatory approvals. Columbia Capital, Spectrum Equity Investors, and Telcom Ventures L.L.C. are investing about \$50 million in the new entity.

"We are convinced that a satellite-only system is ideal for rural and remote areas, and with terrestrial enhancements can also beaffordable and compet Parsons, Motient chairman.

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NEWS IN BRIEF

Jessica Wallace has been named telecommunications counsel to the House Energy and Commerce Committee. She was telecom counsel in Rep. W.J. (Billy) Tauzin's (R., La.) personal office before he became chairman of the Commerce Committee....

Wisconsin Gov. Tommy Thompson (R.) has nominated Robert Garvin to the Public Service Commission to fill the vacancy that will be created when John H. Farrow, who has asked not to be reappointed when his term expires March 1, steps down. The nomination is subject to Senate confirmation. Garvin has been an executive assistant at the PSC since June 1998, responsible for managing the commission's daily operations and providing legal and policy advice on a variety of regulatory matters. Previously, he was the commission's staff attorney and legislative liaison....

Regina M. Keeney, former FCC International Bureau Chief, has become a partner at the Washington, D.C., law office of Lawler, Metzger & Milkman. Her practice will focus on telecom legislative and regulatory matters. She most recently was chief policy counsel at Dell Computer Corp....

Aquis Communications Group, Inc., a Parsippany, N.J.-based paging company, has named Keith J. Powell president. Mr. Powell was general manager of Adelphia Business Solutions....

The Wireless Communications Association has named Joey R. Weedon communications director. Mr. Weedon previously was deputy communications director for the National Republican Governors Association....

The Commerce Department today announced formation of the Information Technology Information Sharing and Analysis Center (IT-ISAC), a group of government and industry interests that will work on critical infrastructure issues. Commerce Secretary Norman Mineta said IT-ISAC would "enable the high-tech industry to take the lead in spotting potential threats to the Internet and information infrastructures, sharing state-of-the-art Internet and information infrastructure security measures, and responding in a more coordinated way." Listed among the group's 19 "founding members" are AT&T Corp., Cisco Systems, Inc., Nortel Networks Corp., and Microsoft Corp....

Spending on telecom services and equipment increased by 12.5% in 2000, generating revenues of \$609.2 billion, according to a report released late today by the Telecommunications Industry Association. In "2001 MultiMedia Telecommunications Market Review and Forecast," TIA says spending on telecom transport services reached \$287.6 billion in 2000, which is an 8.9% increase over 1999 levels. Spending on "specialized" services such as unified messaging, voice messaging, and broadband Internet access, reached \$5.8 billion last year, or 62.2% over the previous year's figures, the report shows....

Net bids in the FCC's ongoing reauction of 422 "C" and "F" block PCS (personal communications service) licenses reached \$16 billion by the end of bidding today (TR, Jan. 15). After round 55, Verizon Wireless still led, with \$8.3 billion in bids. It was followed by Salmon PCS LLC--partly owned by Cingular Wireless LLC--which offered \$3.0 billion. Alaska Native Wireless LLC, which is partly owned by AT&T Wireless Services, Inc., was third with bids of \$1.3 billion. Thirty-eight bidders remained eligible after bidding was completed today. The reauction will shift to six rounds a day tomorrow, which should bring it to a close more quickly. The sale is in a phase that requires bidders to be more active in each round to retain their bidding eligibility....

Genuity, Inc., is postponing plans to raise funds through the sale of debt securities while it assesses "the current slowdown in economic activity" and information technology spending, the company said. Instead the company will fund its operations with money from cash reserves, its bank loans, and its parent company, Verizon Communications, Inc....

Advanced Radio Telecom Corp. of Bellevue, Wash., said today that

its ART Nordic AB subsidiary will team up with a Swedish broadband communications company to provide IP (Internet protocol) service in Norway. ART Nordic will make available its fixed wireless IP network to Utfors Bredband AB of Stockholm, which will use the system in tandem with its fiber optic infrastructure....

Pangea Ltd. said today that it will lease a 1,250-mile "dark" (unpowered) fiber link to Arrowhead AB, a Swedish broadband communications provider. The Bermuda-based "carriers' carrier" will provide Arrowhead an "end-to-end link between Copenhagen [Denmark] and Stockholm [Sweden]." Arrowhead will use the fiber capacity to expand its reach throughout various Scandinavian markets....

InvestAmerica, Inc., (d/b/a Optica Communications, Inc.), announced today that it signed a nonbinding letter of intent to buy optical networking equipment valued at \$675 million from Nortel Networks Corp. The Utah-based start-up said it will deploy a 20,000-mile North American network during first quarter 2002, with plans to expand globally.

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Editor: George E. Brandon  
Associate Editor: Steve Peacock  
Editor in Chief: Victoria A. Mason  
Publisher: Stephen P. Munro  
1333 H Street, NW, 1st Floor-East Tower, Washington, DC 20005  
Editorial information: Telephone: (202) 312-6100  
Fax: (202) 842-3047  
Email: [gbrandon@tr.com](mailto:gbrandon@tr.com)

Customer Service: Telephone: (202) 312-6050  
(877) 874-8737  
Fax: (202) 842-3023  
Email: [customerservice@tr.com](mailto:customerservice@tr.com)

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