

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR, in her
capacity as Executor of the Estate
of CLARA SPYER,

Plaintiff,

-against-

10-CV-8435

THE UNITED STATES OF AMERICA,

Defendant.

(Caption continued on next page.)

DEPOSITION OF GEORGE A. CHAUNCEY, Ph.D.

Tuesday, July 12, 2011



Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOANNE PEDERSEN & ANN MEITZEN,
GERALD V. PASSARO II, LYND
DEFORGE & RAQUEL ARDIN, JANET

GELLER & JOANNE MARQUIS, SUZANNE
& GERALDINE ARTIS, BRADLEY

KLEINERMAN & JAMES GEHRE

DAMON SAYVOY & JOHN WEISS,

Plaintiffs,

Civil Action No.

-against-

310 CV 1750 (VLB)

OFFICE OF PERSONNEL MANAGEMENT,
TIMOTHY F. GEITHNER, in his official
capacity as the Secretary of the
Treasury, and HILDA L. SOLIS, in her
official capacity as the Secretary of
Labor, et al.,

Defendants.



Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF GEORGE A. CHAUNCEY, Ph.D., a
Witness herein, taken by Intervenors, pursuant to
Notice, at the offices of Paul, Weiss, Rifkind,
Wharton & Garrison LLP, 1285 Avenue of the
Americas, New York, New York 10019 on Tuesday,
July 12, 2011, at 10:00 a.m., before DEBRA
STEVENS, a Registered Professional Reporter and
notary public, within and for the State of New
York.



Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

A. No, I am not an attorney.

Q. What did you do to prepare for today's deposition?

A. I reviewed the affidavit I submitted, the deposition and testimony in Perry. I reviewed some of the materials related to the case and I re-read part of my book on marriage. Oh, I met with counsel yesterday to prepare for the deposition.

Q. I would like to ask you some questions about terminology in the affidavit. You use the term "homosexual." How do you define a homosexual?

A. I have generally defined "homosexual" as someone who has an identity based on their sexual attraction to people of the same sex. So, someone for whom that is a core part of their identity.

Q. And you also used the term "gay" throughout the affidavit. How do you define "gay"?

A. I know that some people distinguish "gay" and "homosexual," but I use them synonymous.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

Q. And you use the term "lesbian" throughout the affidavit. How do you define "lesbian"?

A. In similar terms, as a woman who identifies herself on the basis of her sexual attraction to women.

Q. Do you know what percentage of the American population is gay, lesbian or bisexual?

A. I don't know. I think that the estimates that I have seen that seem most authoritative would put it somewhere between 3 and 5 percent or 3 and 4 percent of the population.

Q. I don't think it was in the affidavit but I saw somewhere you used the term "homosociality." What does that mean?

MS. KAPLAN: Objection to form. You can answer.

A. Well, let's see. "Homosociality" has been used in different ways. But as academics use the term, it typically would refer to a social group that is same sex or to patterns of association that are same sex.

Q. How does that term differ from

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

"homosexuality"?

A. There is not necessarily a homoerotic content to homosociality. So that American society historically was once more sex-segregated than it is today in everyday life and in politics and business and so forth. So, there were often groups of men together and women together. That didn't mean that they were erotically attracted to each other. It was the social organization of gender at that time.

Q. And have you consistently used the same definition of homosexuality throughout the affidavit?

MS. KAPLAN: Just so I understand, throughout Defendant's 2?

MR. DUGAN: Defendant Exhibit 2. Yes.

Sorry.

A. I believe I have. I would have to look -- it depends -- probably in some cases, and I actually don't remember the instances here, but I would distinguish between "homosexual" as a noun, referring again to someone who is distinguished from others on the basis of their primary sexual attraction to people of the same

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

sex, and "homosexual" as an adjective, which could just describe erotic sexual relations between people of the same sex who do not identify themselves as homosexual.

Q. And have you consistently used the same definition of homosexuality throughout your career?

MS. KAPLAN: Objection to form. You can answer.

A. Well, I have written so many pages on this subject I wouldn't say that every single time I used the term I have used it exactly this way. But broadly, this has been the way I have used these terms.

Q. If we can turn to Defendant's Exhibit 2, paragraph 2 on the first page? You list some of the cases you have either testified in or been a deposed expert in. Can you just tell me what kind of case Donaldson v Montana was?

A. It was a case in the State of Montana in which there is a constitutional amendment banning marriage but this is a case seeking relationship -- legal recognition of same sex

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

prohibitions against sodomy and unnatural acts, penalized a wide range of non-procreative behavior, including many forms of what now would be called homosexual conduct."

Is it the case that these legislators -- they were not legislating against homosexual acts per se; correct?

A. Well, there is -- again, the word "homosexual" wasn't available to them and so they were operating out of the conceptual framework that I just began to describe.

The laws varied. Broadly, the southern colonies adopted the secular legislation of England, and so they typically criminalized buggery, which included male anal penetration of a woman, a man or a beast, whereas in the puritan colonies in New England, although they certainly penalized a wide range of nonmarital sexual behavior, they were likely -- for instance, in Massachusetts -- to simply quote Leviticus, prohibition against a man lying with another man, and make that a capital offense.

Q. You mentioned the British tradition of a secular prohibition against buggery. How did

1 G. Chauncey

2 What are some of the reasons
3 historians have given to explain this?

4 A. Well, one reason that historians have
5 given for the apparent inconsistency between the
6 vehemence of the denunciation of sodomy from the
7 pulpit and the relatively small number of
8 prosecutions is that -- and we're talking about
9 very small communities and towns in colonial New
10 England in which people's lives were deeply
11 intermeshed.

12 There is some thought that the
13 severity of the punishment -- this is a capital
14 crime -- dissuaded people from pressing charges
15 even if they had some concerns about people;
16 again, people they were closely related to. And
17 some have wondered if the demonization of sodomy
18 was so enormous that it was just hard to connect
19 it to the everyday people they knew in their
20 communities.

21 But again I would stress that this is
22 still an enigma that historians are trying to
23 understand.

24 Q. Turning to paragraph 21 on the same
25 page, page 9 of Exhibit 2, you write there,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

starting in the second sentence, "Current historical research suggests that the concept of the homosexual as a distinct category of person developed as recently as the late 19th century. The word 'homosexual' appeared for the first time in a German pamphlet in 1868 and was introduced to the American lexicon only in 1892."

Can you explain how this historical process of the idea of the homosexual as a distinct category arose?

MS. KAPLAN: Objection to form. You can answer.

A. We're going to be all day if you want me to explain this.

Q. Can you give the CliffsNotes version?

A. Okay. We'll switch from the graduate seminar to --

MS. KAPLAN: Go to the freshman lecture.

A. Well, again I will say, as I did before, historians think about and write about this question a lot and, so, have pointed to earlier periods in which people seemed to have had persistent interest in people of the same sex

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

without being categorized as homosexuals, those categories being unavailable.

Their emergence has been attributed, for instance, to the growth of the medical profession and scientific research, which helped produce and circulate terms of this sort. There is a general impetus towards classification of people.

People have talked about the growth of large cities, in which it was easier for people to separate themselves from the family or household economy and to create lives as lesbians or gay men who lived outside of constraints that they had experienced in small towns.

Those would be two of the major factors people have pointed to.

Q. What was the nature of the reference to homosexuality or the term "homosexual" in that 1868 pamphlet?

A. I believe this was a pamphlet that was -- I could be wrong about this since I am not a German historian, which is where this appeared. But I believe this was a pamphlet written in the context of discussions of the sodomy law in

1 G. Chauncey

2 Germany or in Prussia.

3 So again it gives us an indication of
4 the degree to which sodomy was -- you know,
5 encompassed more than homosexual conduct. It was
6 understood as being primarily by this time an
7 anti-homosexual measure.

8 Q. Then how did the word "homosexual"
9 enter the American lexicon in 1892?

10 A. I believe that it first appeared in an
11 American medical journal in 1892.

12 Q. Did it take time for "homosexual" to
13 be recognized as a specific social category in
14 the United States?

15 A. Well, again, we're talking here about
16 a precise medical or scientific term. Then as
17 now, there were a wide range of vernacular terms
18 used in the streets: Fairies, pansies --
19 "lesbian" actually had been used for a time since
20 it drew on classical references to the poetry of
21 Saphho, who lived on the isle of Lesbos.

22 "Homosexual" spread but there were
23 other terms that had similar or related meanings
24 that were probably used more commonly.

25 Q. In that same paragraph you are talking

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

G. Chauncey

people of Asian descent, women, lesbians and gay men. One would just need to sort of think about the historical specificity while still recognizing that these groups have all experienced a general pattern of discrimination.

Q. At the time of the adoption of the 14th amendment was it illegal for two men to have anal intercourse with each other in every state in the union?

A. I believe it was illegal in every state to have anal intercourse, yes.

Q. In the 19th century, was marriage implicitly understood in America to be the union of one man and one woman?

MS. KAPLAN: Objection to form. You can answer.

A. Well, expectations about what marriage meant and who was available to -- who had access to marriage have changed over time, so that I think in the 19th century one could say that it was generally assumed that marriage would involve only a man and a woman. It was also generally assumed that a black person and a white person could not marry.