

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

1
2 UNITED STATES DISTRICT COURT

3 DISTRICT OF CONNECTICUT

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

7 GELLER & JOANNE MARQUIS, SUZANNE

8 & GERALDINE ARTIS, BRADLEY

9 KLEINERMAN & JAMES GEHRE

10 DAMON SAYVOY & JOHN WEISS,

11 Plaintiffs,

12 Civil Action No.

13 -against-

14 310 CV 1750 (VLB)

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

21 Defendants.
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4 DEPOSITION OF GEORGE A. CHAUNCEY, Ph.D., a
5 Witness herein, taken by Intervenors, pursuant to
6 Notice, at the offices of Paul, Weiss, Rifkind,
7 Wharton & Garrison LLP, 1285 Avenue of the
8 Americas, New York, New York 10019 on Tuesday,
9 July 12, 2011, at 10:00 a.m., before DEBRA
10 STEVENS, a Registered Professional Reporter and
11 notary public, within and for the State of New
12 York.
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Telephone: 212.349.9692
Facsimile: 212.557.2152

One Penn Plaza
Suite 4715
New York, NY 10119

1 G. Chauncey

2 A. No, I am not an attorney.

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

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

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

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

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

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

1 G. Chauncey

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

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

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

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

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

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

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

25 Q. How does that term differ from

1 G. Chauncey

2 "homosexuality"?

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

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

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

17 MR. DUGAN: Defendant Exhibit 2. Yes.

18 Sorry.

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

1 G. Chauncey
2 sex, and "homosexual" as an adjective, which
3 could just describe erotic sexual relations
4 between people of the same sex who do not
5 identify themselves as homosexual.

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

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

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

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

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

1 G. Chauncey

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

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

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

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

24 Q. You mentioned the British tradition of
25 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 G. Chauncey

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

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

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

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

16 Q. Can you give the CliffsNotes version?

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

19 MS. KAPLAN: Go to the freshman
20 lecture.

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

1 G. Chauncey

2 without being categorized as homosexuals, those
3 categories being unavailable.

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

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

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

18 Q. What was the nature of the reference
19 to homosexuality or the term "homosexual" in that
20 1868 pamphlet?

21 A. I believe this was a pamphlet that
22 was -- I could be wrong about this since I am not
23 a German historian, which is where this appeared.
24 But I believe this was a pamphlet written in the
25 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 Sappho, 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 G. Chauncey

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

7 Q. At the time of the adoption of the
8 14th amendment was it illegal for two men to have
9 anal intercourse with each other in every state
10 in the union?

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

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

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

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