

# POSITIVE HISTORY

Three decades later, the mistreatment of people with HIV continues, challenging Lambda Legal and other advocates to find new strategies for dealing with some frustratingly familiar problems.

BY SALLY CHEW

**IT WAS A STORY THAT SEEMED RIGHT OUT OF THE**

**1980S:** When Dr. Robert Franke was evicted in 2009 from a Little Rock, Ark., assisted living facility just for having HIV, it felt like the old days—before the HIV civil rights battles, before the public health campaigns, before all the medical breakthroughs. Thirty years into the epidemic, how could the most basic information about the virus’s transmission have eluded a retirement community promising “round-the-clock care”? How was it possible that people were still being kicked into the street for their HIV status?



Indeed, Lambda Legal's representation of Dr. Franke, in a lawsuit that settled out of court last year (see "Senior Moment," page 12), resonated all the way back to Lambda Legal's involvement in the very first HIV lawsuit, in 1983—*People v. West 12 Tenants Corp.*—in which we represented a New York City doctor whose coop board tried to evict

him because he was treating people with HIV (see "The First Case," right).

### THE MORE THINGS CHANGE...

The truth is that gaining ground in the battle against HIV stigma and misinformation has been shockingly slow: In a 2009 Kaiser Family Foundation survey, one out of three U.S. respondents was under the misconception that HIV could be transmitted through a drinking glass, toilet seat or swimming pool. And there is no doubt that irrational fear of HIV like this fuels the kind of HIV discrimination that continues to require Lambda Legal's intervention in court (to download Lambda Legal's *Report on HIV Stigma and Discrimination*, see page 12).

Despite these persistent misconceptions, impact litigation against HIV discrimination nonetheless is producing better outcomes and continuing to set important precedents, especially under the Americans with Disabilities Act and various other laws protecting against discrimination in employment, housing, public accommodations and the provision of public assistance. Recent successes have made it possible for people with HIV to have access to organ transplants, for instance, and to parent their children without unwarranted court interference. And last year, advocates celebrated the lifting of a 22-year-old ban against people with HIV traveling or immigrating to the U.S., after years of urging Congress and four successive presidents to drop the discriminatory and medically unfounded ban.

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### PRIVACY MATTERS

Because revealing an HIV diagnosis to the wrong person can have serious consequences, laws in most states now recognize the importance of protecting the privacy of HIV test results. (And, under federal law, *no one's* medical information is supposed to be shared without permission.) Yet violations of confidentiality are the second most common issue (after discrimination) addressed by cases on Lambda Legal's HIV docket.

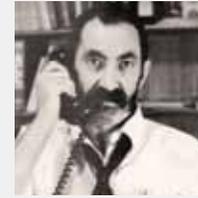
For instance, in *Cooper v. FAA* in 2007, a pilot's HIV status was shared between government agencies in violation of the federal Privacy Act, devastating the plaintiff personally. And in a separate incident last year, personal information belonging to 5,000 Medi-Cal recipients living with HIV was released by the California Department of Health Care Services (DHCS). It's not clear yet what the individual damage may have been from the DHCS's actions, but there is no doubting the seriousness of that violation—especially on such a large scale. Lambda Legal has continued to demand an explanation.

### EXTRA PUNISHMENT

And finally, there are the HIV-related cases that bring the threads of Lambda Legal's work together, revealing that despite the many strides we have made, public policy in many parts of the United States continues to be rampantly antigay. One such example was *State of Kansas v. Limon*, an ACLU case decided by the Kansas Supreme Court in 2005, in which Lambda Legal wrote a brief that argued against giving a young man a greater sentence for having sex with an underage male than he would have received if the partner had been female. The state tried to rely on a public health "rationale" tying gay people's identities to HIV. That assertion had no medical basis whatsoever, and the Court agreed that the longer sentence was unlawful.

### THE FIRST CASE

**PEOPLE V. WEST 12 TENANTS CORP.**  
New York, 1983



Lambda Legal brought the nation's first challenge to HIV discrimination in the early 1980s, when HIV doctor **Joseph Sonnabend** was evicted from his office in New York

City's West Village by the coop board in his building. Sonnabend was among few doctors at that point who were willing to treat people with the mysterious new illness that was by then already beginning to kill a tragically high number of gay men and others.

Lambda Legal and the New York State's Attorney General alleged that the coop board was violating New York Human Rights Law and Civil Rights Law by discriminating against both Sonnabend and his patients on the basis of HIV disability.

A New York court issued a preliminary injunction in 1983 barring the eviction. The coop board appealed, but the parties eventually reached a settlement and the building allowed Dr. Sonnabend to carry on treating people with HIV—which he did for many years.

### JUMPING WITHOUT A NET

**MATTER OF MATTHEW CUSICK AND CIRQUE DU SOLEIL**  
Nevada, 2004

Lambda Legal won a record \$600,000 on behalf of gymnast Matthew Cusick over his dismissal from Cirque du Soleil for being HIV positive. When he was fired, Cusick, 32, had already put in several months preparing for his role in Cirque's popular Las Vegas production *Mystère* and had passed two company medical exams. The company's explanation? Firing Cusick was the "socially responsible" thing to do.

In a complaint filed with the federal Equal Employment Opportunity Commission, Lambda Legal alleged that Cirque du Soleil had violated the Americans with Disabilities Act by firing Cusick, because his performance of his job posed no health or safety risk to himself or anyone else.

The settlement included an agreement by Cirque du Soleil to change its HIV policies worldwide and provide employees with anti-discrimination training.

# THANKS TO THE FRANKE SUIT, STAFF AT A NEARBY FACILITY WERE EDUCATED AND TRAINED ABOUT HIV. "I CAN'T TELL YOU HOW HAPPY THIS NEWS HAS MADE MY FATHER AND ME."

## DETECTABLE PREJUDICE

Among Lambda Legal's current concerns in the HIV realm are the lines sometimes drawn between those with an undetectable HIV viral load and those with a detectable one. That was the problem in *Rose v. Cabee et al.*, which involved a woman with a detectable viral load who was denied gall bladder surgery by a doctor who said he was worried the virus might be transmitted to him or his staff (see page 5).

When this case was filed, Lambda Legal's HIV Project Director Scott Schoettes pointed out that such concerns had been addressed conclusively decades back: "Long ago, the Centers for Disease Control and Prevention established that using universal precautions—which are required in all sorts of medical situations, including surgeries—makes it extremely unlikely for the virus to be transmitted in this setting." And that statement is true regardless of the patient's HIV viral load. Ms. Rose's case was resolved out of court last year.

Another growing concern is the mistreatment of older Americans with HIV in long-term care, like the eviction of Dr. Franke in Arkansas. As more people with HIV survive into their senior years, these cases are cropping up more and more—further fueled in many instances by the homophobia and transphobia that is too common in these already isolating settings.

## WRONGFUL PROSECUTION

In recent years, Lambda Legal has also observed an uptick in the number of prosecutions and sentence enhancements based on HIV status. One particularly shocking case known as *People v. Allen* involved an altercation between Michigan neighbors in which

prosecutors tacked on a bioterrorism charge because the fight involved biting and the accused allegedly had HIV. The case was thrown out after Lambda Legal and others presented commonly available scientific evidence that it would be almost impossible for saliva to transmit the HIV virus. Lambda Legal also objected to the absurdly HIV-phobic application of a terrorism law to a fight between neighbors.

Criminalizing behavior that would otherwise be completely legal—or enhancing a person's sentence for illegal conduct—simply because the person has tested positive for HIV, runs afoul of basic human rights and has no place in sound public health policy. Unfortunately, this type of discrimination is as old as Lambda Legal's fight on behalf of HIV-positive people—and as stubborn, it seems, as the virus itself. Like our colleagues in the medical field, however, who do not intend to stop fighting HIV until it is eradicated, we at Lambda Legal are fully committed to completely eliminating the stigma and discrimination that too often prevent people with HIV from leading full and fulfilling lives. **L**



**UPDATED HIV REPORT**  
**DOWNLOAD LAMBDA LEGAL'S REPORT, HIV STIGMA AND DISCRIMINATION IN THE U.S., AT: [www.lambdalegal.org/fs\\_hiv-stigma-and-discrimination](http://www.lambdalegal.org/fs_hiv-stigma-and-discrimination)**

## SENIOR MOMENT

**FRANKE V. PARKSTONE**  
Arkansas, 2010

**Dr. Robert Franke**, a 70-year-old retired professor and minister, relocated from Michigan



to Little Rock, Arkansas, in 2009 to live closer to his daughter, Sara Bowling. After an application process that included detailed medical information, Franke moved into an assisted living facility called Fox Ridge—but was evicted the next day when staff noticed his HIV status in his paperwork.

With the help of Lambda Legal, Franke and Bowling sued Fox Ridge. Although the case never went to trial, settling out of court in September 2010, it has raised awareness about this growing problem. In fact, Franke and his daughter were recognized for their contribution to the fight against HIV discrimination at a White House meeting in October 2010.

Bowling says the case has already had an impact in the Little Rock area. "Recently, I received an email from a friend who works at a living facility in town," she reports. "She told me that the staff was being educated and trained about HIV and that our case was described to the staff. I can't tell you how happy this news has made my father and me."

## DIPLOMATIC DISPUTE

**TAYLOR V. RICE**

Washington, D.C., 2008

This five-year-long HIV discrimination case against the U.S. State Department finally came to an end when the department agreed to drop its policy of banning all HIV-positive applicants from serving overseas as Foreign Service Officers.

Lorenzo Taylor was barred from joining the Foreign Service because he had HIV. Lambda Legal represented Taylor by filing suit in federal court, alleging that the policy violated the Rehabilitation Act, which prohibits the federal government from discriminating against people with disabilities.

On a motion for summary judgment, the federal district court sided with the State Department's contention that an HIV-positive Foreign Service Officer (FSO) would have health needs—lab work and visits with HIV specialists, for instance—that the department would not be able to provide in every country across the globe. Lambda Legal appealed the district court's decision, and the U.S. Court of Appeals agreed with Lambda Legal that Taylor's claims had merit. Two weeks before trial on remand, the blanket ban against FSO applicants with HIV was lifted.

