Windsor argument revisited: A historical day for equality

By Sharon R. López, Co-Editor of Open Court

It was 3 a.m. on March 27, 2013, and I was in line outside of the Supreme Court of the United States of America with my law partner and best friend, Andrea Farney, and at least 100 other attorneys admitted to the Supreme Court Bar. Oral argument in same-sex marriage federal equal protection case of United States v. Windsor was set for 10 a.m. that morning. It was dark and cold outside the court, but the excitement at attending this sea-change argument kept the lawyers and other advocates talkative and friendly. We all knew the Windsor case focused on federal recognition of same-sex marriage and as of the date of argument, only 10 states had adopted same-sex marriage protection either legislatively or judicially. No matter what the court decided in Windsor, the momentum in the states to adopt same-sex marriage protections was strong and growing. Indeed, between the date of argument (March 27, 2013) and the Windsor opinion and order, three more states began recognizing same-sex marriage and protecting it as a right. We knew we were witnessing legal and constitutional advocacy that was fueled by the same energy that guided civil rights advocates fighting anti-miscegenation laws in Loving v. Virginia in 1967.

At 7:30 a.m., court personnel let us into the courthouse, but it quickly became apparent we would not make it into the courtroom to hear and see the live argument. We each received a ticket with our place in line to get into the courtroom. I had number 25. Fortunately, there was enough space for all of us to sit in the attorney’s lounge reserved for members of the U.S. Supreme Court bar. Andrea and I joined David Rosenblum and Mike Viola, fellow members of the PBA GLBT Rights Committee, in the lounge. We chatted until Chief Justice Roberts called the courtroom to order, and the two-part argument began.

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Profile: Jennifer Ellis

By John Schaffranek, Co-Editor of Open Court

Jennifer Ellis was born in New York City, where she lived for only a short time before she and her family moved to New Jersey. When Ellis was 15, her family moved again, this time to eastern Pennsylvania, where Ellis graduated high school in 1990.

Ellis attended Dickinson College where she majored in English and minored in anthropology. During Ellis’ undergraduate career, she worked in the video/micro room, which foreshadowed her current work in the technology field. After college, she moved to Philadelphia and obtained a position as an assistant to a professor of physical chemistry at the University of Pennsylvania. Her education in law began during that time when she took some law-related courses.

“Lawyers,” Ellis believes, “serve an extraordinary role in our society.” On the legal

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In flight and sympathy: air disaster family assistance and marriage equality

By Mária Zulick Nucci

The disappearance of Malaysian Airlines Flight 370 has understandably received substantial international attention, including the airline’s and other entities’ treatment of passengers’ relatives. For relatives of passengers in airplane incidents on aircraft of United States airlines or foreign airlines authorized to operate to and from the United States, the Air Disaster Family Assistance Act of 1996 (ADFAA; 49 U.S.C. § 41113) and Foreign Air Carrier Family Support Act of 1997 (FACFSA; 49 U.S.C. § 41313) provide comprehensive schemes for communication and other assistance from airlines. Given the overall legal and aviation industry approach to this issue, both historically and currently, this assistance should be provided to the spouses and partners of GLBT persons in the tragic event that it would be needed.

ADFAA was enacted in response to numerous criticisms of the manner in which passengers’ relatives were treated after certain crashes in the 1990s. Under ADFAA, airlines must provide the National Transportation Safety Board (NTSB) formal plans for dealing with family members; Section 41113(b) details the 18 elements of the plan. Section 41313(c) lists similar terms for foreign airlines. NTSB has its own obligations for a family assistance plan, delineated in 49 U.S.C. § 1136. For airlines, services start with initial notification of the incident and proceed to communication protocols, coordination of recovery activities, handling and possession of remains and provision of counseling. NTSB’s duties focus on initial communication, then incident investigation and recovery; the agency is to designate an independent, nonprofit organization (typically The Red Cross) to have primary responsibility for family care.

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Chairman’s Chatter: Reflections

By Leo L. Dunn, Chair

Wow! What an amazing four years! When Helen recommended that I become chairman, I did not expect to serve this long or see such rapid progress in our area of law. At that time our committee had 13 listed members, and the GLBT community was just starting to make headway on the equality front. Today is definitely a different world.

Our committee and community have become increasingly active. Anti-same-sex marriage statutes and amendments are being declared unconstitutional at an increasing pace nationwide. We are recognized as married for most federal purposes. Pennsylvania has two openly gay members of the state House of Representatives – one Democratic and one Republican.

The committee launched an ambitious project to enumerate the benefits that married couples receive under Pennsylvania’s statutory, regulatory and case law as well as some areas of federal law that are not available to same-sex couples. This great educational reference for the GLBT community is more than 400 pages long and has already
My interview with state Rep. Brian Sims

By David M. Rosenblum, Legal Director, Mazzoni Center

On Feb. 10, I had the opportunity to sit down with state Rep. Brian Sims (D- Phila, 182nd District), the first elected, openly gay member of the Pennsylvania legislature. We had a lively discussion about his campaign, the state of affairs in Harrisburg, and his predictions about the future of GLBT civil rights in the state. The questions and responses that follow are parts of the interview.

What made you decide to run for state-wide elected office?

Sims: As a member of the Philadelphia Bar Association and through my work at Equality Pennsylvania, I knew Pennsylvania had never elected an openly gay legislator. I also knew we had a lot of closeted legislators. I discovered through my work at the Victory Fund that Pennsylvania is the second largest state in the country that didn’t have an out legislator. Having an openly gay legislator had a domino effect proposing and passing GLBT civil rights’ legislation. For example, only states that had openly gay legislators successfully enacted relationship recognition laws.

I was in Harrisburg on behalf of Equality Pennsylvania and realized my own legislator, who supported nearly every issue I cared about, was nonetheless not advancing GLBT civil rights issues. So, I ran for office, so I could collaborate and communicate and advance an agenda I cared about.

Did your campaign include issues beyond GLBT rights?

Sims: I have the benefit of being a civil rights attorney. I worked on many policy issues for many of the 92 Philadelphia Bar Association committees. I did disability work before I started at the bar. Economic development, education, the environment are really important issues, so I continue my work on all these issues, but it is critical that I work on GLBT civil rights protections at the state level. Anybody running as a progressive Democrat should have a strong pro-equality platform.

How are they treating you in Harrisburg?

Sims: The reception to me as an out gay man there has been wonderful. Harrisburg is particularly GLBT-friendly; I call it the “pink underground.” There’s a strong out presence there, and not just at the legislative level. Everyone in the capital, gay or straight, has GLBT family members or co-workers. So, there was some level of being both new and familiar to many people. My colleagues respond to me well. I have made it clear that my role is not to be louder about being right. I want to focus on the substantive areas that we do agree on. I’m not there to fight about the 10 percent of the things that we’ll never agree on.

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Pennsylvania’s first same-sex marriage licenses issued

By Jerry Shoemaker, Vice Chair

In 1996, the Pennsylvania Legislature passed a law banning same-sex marriage within the jurisdiction as well as banning the recognition of any same-sex marriage performed outside of Pennsylvania. This law is commonly referred to as Pennsylvania’s “mini-DOMA” (Defense of Marriage Act), and the federal equivalent is simply referred to as “DOMA,” which was enacted in 1994. While the state version of DOMA is currently under attack in multiple lawsuits throughout the commonwealth, it remains on the books today. On June 26, 2013, the United States Supreme Court, in United States v. Windsor, struck down Section 3 of federal DOMA, which defined the terms “marriage” and “spouse” as applying only to opposite-sex couples and not same-sex couples for purposes of federal benefits, rights and responsibilities. The Windsor decision has led to multiple court actions in Pennsylvania and other states.

Specifically, on July 24, 2013, D. Bruce Hanes, the register of wills for Montgomery County, Pa., began issuing marriage licenses to same-sex couples. On July 23, 2013, a same-sex couple asked Hanes whether he would issue a marriage license to them, and he agreed. Ultimately, that couple decided not to apply for the license, but word spread that Hanes would issue licenses to marry to same-sex couples. Hanes’ rationale for issuing the licenses was due, in part, to the United States Supreme Court’s decision in Windsor, and his determination that the marriage laws of Pennsylvania, which preclude same-sex marriage, were unconstitutional. Pennsylvania Attorney General Kathleen Kane supported Hanes’ assessment by refusing to defend the constitutionality of Pennsylvania’s mini-DOMA. Kane announced her position prior to Hanes’ issuance of any same-sex marriage licenses in Montgomery County. Ultimately, 147 same-sex couples were granted licenses to marry in Montgomery County.

On July 30, 2013, Gov. Tom Corbett and the Pennsylvania Department of Health filed an action in Commonwealth Court seeking to stop Hanes from continuing to issue marriage licenses to same-sex couples. Hanes filed Preliminary Objections asserting that the Department of Health did not have standing and the Commonwealth Court did not have jurisdiction over the matter. President Judge Dan Pellegrini overruled Hanes’ Preliminary Objections. Hanes also filed an Answer and Counterclaim asserting that the Pennsylvania statute limiting marriage to oppo-

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The advocates first argued the issue of the court’s jurisdiction to hear the case. Court-appointed professor Vicki Jackson argued that there was no justiciable case before the court because the United States attorney general refused to enforce the provisions of the Defense of Marriage Act (DOMA) that prevented Edith Windsor from securing her $300,000 tax exemption as a spouse. The questions from the bench indicated the justices disagreed. The deputy solicitor general, Sri Srinivasan, argued the court had appellate jurisdiction, even though the government agreed with the decision below. He also argued the president has discretion to decide what actions he will take if he determines a law is unconstitutional. Paul Clement, an ex-solicitor general for the Bush administration, argued the Bipartisan Legal Advisory Group (BLAG) had standing to argue DOMA was constitutional and should be enforced. We listened to the jurisdiction argument as Justice Sonia Sotomayor pointed out there is not authorization for the BLAG to speak for Congress, but merely a private agreement between some senators and House leadership. Justice Anthony Kennedy inquired why a separate group of senators could not organize an opposite position and also have standing to appeal as aggrieved parties. The advocates in the attorney’s lounge chatted briefly as the court took a short recess before starting the argument on the merits.

Clement opened the argument on the merits for BLAG focusing on issues of federalism in that the DOMA definitions of marriage were not encroaching on state law definitions of marriage because the federal definitions applied only to federal statutes. Justice Ruth Bader Ginsburg pointed out there are more than 1,100 laws where the federal definition of marriage may conflict with the state police power to regulate marriage, divorce and custody. Justice Stephen Breyer asked attorney Clement what the rational basis was for the federal law’s refusal to accept the state law definition of a marriage. Clement argued the federal government had an interest in uniformity and in preventing the full faith and credit enforcement of one state’s definition of marriage from being imposed on another – essentially that Congress enacted DOMA to help the states that did not want to recognize same-sex marriage. Notably, Justice Kennedy challenged this premise as being inconsistent with the uniformity argument proffered earlier. Justice Ginsburg brought the courtroom to laughter when she referred to attorney Clement’s two types of marriage as “the full marriage, and then this sort of skim milk marriage.”

Justice Elena Kagan engaged in the most riveting part of the argument when she read the House Report from the 1996 DOMA passage into the record: “Congress decided to reflect an honor of collective moral judgment and to express moral disapproval of homosexuality. Is that what happened in 1996?” (p. 74 Tr. Oral Argument). The advocates in the attorney’s lounge burst into spontaneous applause after hearing Justice Kagan’s sharp challenge to attorney Clement’s assertion DOMA’s definitions of marriage were meant to promote uniform application of federal law.

Solicitor Donald Verrilli argued that the government did not provide a sufficient justification to exclude same-sex married partners from receiving federal benefits and protections that opposite-sex married partners receive. He further argued DOMA was an expression of discriminatory animus: “And I think it’s time for the court to recognize that this discrimination, excluding lawfully married gay and lesbian couples from federal benefits, cannot be reconciled with our fundamental commitment to equal treatment under law.” (p. 92 Tr. Oral Argument).

Attorney Roberta Kaplan argued for Edith Windsor. In response to Justice Antonin Scalia’s question as to why she believed the attitude toward gays and lesbians getting married in 1996 was so different from 2013, she responded, ”There has been a sea change, Your Honor,” and that nine states had adopted or recognized gay marriage since 1996. (p. 106 Tr. Oral Argument). Justice Ginsburg pointed out the sea change had a lot to do with the effective political force in support of gay marriage. When Justice Ginsburg said this, many of us looked at each other around the attorney’s lounge as if to say, “Our advocacy made a difference.” This moment quickly changed when Chief Justice John Roberts challenged attorney Kaplan’s assertion that classification by sexual orientation required strict scrutiny. “As far as I can tell, political figures are falling over themselves to endorse your side of the case.” (p. 108 Tr. Oral Argument). Kaplan responded by pointing to the various referenda placed on state ballots taking away rights of gay people and that until 1990 gays were not permitted to enter the country. She argued that the 2013 perspective of gay marriage had less to do with political effectiveness as a group than with a more generally accepted understanding that “gay married couples’ relationships are not significantly different from the relationships of straight married people.” (p. 109 T. Oral Argument). After a brief rebuttal by attorney Clement, the case was submitted.

As I left the attorney’s lounge, I knew I witnessed constitutional history because it sounded like the equal protection argument would prevail. On June 26, 2013, the court issued its opinion finding that the DOMA definition of marriage violated the Equal Protection Clause of the Fifth Amendment. The decision did not address full faith and credit of marriages in one state to another. Since the Windsor decision, five more states have recognized or protected same-sex marriage.4 The Supreme Court’s Windsor decision made my attendance at oral argument even more memorable. It was a day I will recount to my grandchildren and an experience as an attorney and advocate for GLBT rights that I will never forget. ■

Sharon López is the managing partner at Triquette Law, a boutique Lancaster law firm dedicated to appellate, civil rights and employment law advocacy for workers. She also serves the Pennsylvania Human Relations Commission as special counsel.

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1 States and districts that adopted same-sex marriage protections in order of passage or adoption before March 28, 2013:
1. Massachusetts (Nov. 18, 2003)
2. Connecticut (Oct. 10, 2008)
3. Iowa (April 3, 2009)

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Profile: Jennifer Ellis

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system, Ellis says, “I have always found our legal system fascinating; without lawyers, there is no one to enforce our constitutional rights.” Undeterred by those who claimed she did not have the “personality” suited for a career in the law, Ellis began her legal education at Widener University School of Law in Delaware.

At Widener, Ellis participated in the domestic violence clinic. Ellis also conducted the first Protection From Abuse hearing to be held remotely via video conferencing, again expanding her technological skills. While at Widener, Ellis was on law review and the moot court board. She received a service award for activism while at Widener. Ellis graduated cum laude from Widener in 1998.

Right out of law school, Ellis took the unusual step of going directly to work for the Pennsylvania Bar Institute (PBI). Ellis secured this position by virtue of her significant technological background. Ellis received two Association for Continuing Legal Education (ACLEA) awards while at PBI. The most significant mark she left on PBI was the creation of simulcasting, which allowed for attorneys to attend seminars remotely from across the commonwealth. Ellis notes that the A/V department of PBI played a “huge role” in establishing simulcasting.

While at PBI, Ellis stood as a member of the GLBT community against the anti-gay Westboro Baptist Church. During this period, she also volunteered with Common Roads in Harrisburg, a GLBT youth group for whom Ellis dealt with bullying issues by speaking at local schools as well as mentored the group’s young members. Ellis left PBI after more than 12 years. When she departed, her position was assistant director of media technologies. Upon leaving PBI, Ellis joined Ellen Freedman at Freedman Consulting Inc. There, Ellis acted as the vice president and as a consultant, consulting with law firms on issues of technology, management techniques and marketing.

Presently, Ellis is employed by Lowenthal & Abrams, a personal injury firm in Philadelphia. On the technology side, Ellis manages Lowenthal & Abrams’ online presence, handling items including optimization of the firm’s website and managing online ad campaigns. Ellis also maintains her own consulting practice, Jennifer Ellis, JD, where she consults on technological and marketing matters.

On the legal side, Ellis also represents attorney-clients in ethics and plaintiffs who have been egregiously harmed by legal malpractice. Ellis is passionate about attorney ethics, and as a consultant for firms with respect to their marketing, is very cognizant of the ethical issues surrounding appropriate attorney advertising. Ellis is of the view that attorney ethical rules keep attorneys beholden to their clients. She takes the oath that each attorney takes when s/he begins practice quite seriously.

In March 2014, Ellis spoke for the Philadelphia chapter of American Immigration Lawyer Association (AILA) on technology and ethics, for PBI’s “CLE with the Sixers” on ethics and competence with technology and in Chicago for the ABA Tech Show at two sessions, “Ethics of Social Media Marketing” and “How to Build a Website in an Hour.” Her book, *WordPress in One Hour for Lawyers: How to Create a Website for your Law Firm*, was published in January 2014 by the American Bar Association.

Ellis has had a number of mentors, both personal and professional. She lists her great-grandmother, Eva Fishman, among her personal mentors. Her great-grandmother, she says, was a strong woman who immigrated to the United States from Austria in the early 1900s. “My great-grandmother’s strength is what made me see her as a mentor. No matter what life threw at her, world wars, prejudice, loss of children, she stayed strong and never backed down from anything. She also instilled the value of education in her daughter, who in turn instilled it in my mother,” says Ellis. “My mother was a teacher who made it a point to make me understand that education is key.”

Professionally, Ellis says that Roger Meilton, the former executive director of PBI, always encouraged her to try different things. It was Meilton who encouraged Ellis to teach for PBI and at Widener University, where Ellis taught legal methods from 2002 through 2003. For young attorneys, Ellis believes mentors are invaluable, particularly for those young attorneys who go immediately from law school into solo practice. Ellis highly recommends those young attorneys join the PBA’s Solo & Small Firm Practice Section, of which Ellis is the secretary, as it is critical for these lawyers to have a resource of experienced lawyers from which they can draw.

While the advice easily applies to attorneys and non-attorneys alike, Ellis advises fellow GLBT attorneys that it is important to be yourself: “If you cannot be yourself at a job, you are better off not there.” Young lawyers, Ellis says, should be aware that there are consequences for being outwardly GLBT in today’s world. Even so, she says, things have improved markedly since she graduated law school, and the majority of people she encounters are very supportive. It is important, however, for GLBT lawyers to be realistic and prepare themselves in advance for the times when people will not want to hire them, or work with them, because of who they are.

John Schaffranek is the incoming editor of Open Court. Schaffranek is an associate attorney at Frank, Gale, Bails, Murcko & Pocrass PC in Pittsburgh, focusing on family law, media law and appellate practice.
In flight and sympathy: air disaster family assistance and marriage equality

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and support.

These statutes were passed when GLBT rights did not have the coverage in the media and public discourse, nor the legal status, they have today. None defines “spouse,” “family,” “family member,” “relative” or “next of kin.” However, formal reports and plans, and airlines’ formal policies and performance histories regarding GLBT employees and passengers, indicate they would provide the required services to same-sex spouses, partners and companions.

The NTSB family assistance plan includes partners. The “Final Report” of the Task Force on Assistance to Families of Aviation Disasters (Oct. 29, 1997; https://www.ntsb.gov/doclib/tda/Task_Force_On_Assistance_To_Families_Of_Aviation_Disasters.pdf), noted the lack of formal definitions of “family member”. Today, family bonds are not constrained within traditional boundaries, so that “[a]irlines generally define family member in broad terms,” including “partners.” (Final Report, p. 4.) During task force hearings, airline representatives testified that their companies “will be flexible in defining family member, and will fit the definition ... to the circumstances of the moment.” (Id.) Accordingly, the 1997 task force’s proposed recommendations, like airline practice, were arguably ahead of their time, as they included that airlines continue recognition of new, broader boundaries of family ties, significantly for GLBT persons:

[a]irlines recognize as family members those who might not be considered family members under federal or state law. Therefore, the Task Force is reluctant to define “family member,” since doing so could result in the narrowing of existing airline practice. ... [A]ny definition ... should [consider] that many individuals consider themselves to be the family ... even though the law does not formally recognize the relationship, such as in the case of a ... long-time companion.

(Id., p. 5, Recommendation 1.1.1.) This extended to airlines’ initial notice to a known family member: The airline should ask if another person should receive formal notice as a family member. (Id., Recommendation 1.1.2.)

The NTSB’s Family Assistance Plan for Aviation Disasters follows this progressive approach. Its formal assumptions state:

For purposes of this document, the terms “family,” “family members,” “friends,” and “relatives” are used to refer to those people who have a relationship to a person involved in the accident.”


Advocates should investigate foreign carriers’ definitions of relatives or family members. The Family Assistance Plans of, respectively, Calima Aviación, U.S. Helicopter Corporation and Insel Air excluded “same-sex spouses.” (See http://airlineinfo.com/ostpdf81/241.pdf (Calima; Plan undated); http://dailyairlinefilings.com/ostpdf53/862.pdf (U.S. Helicopter, 2005); and www.airlineinfo.com/ostpdf171/219.pdf (Insel, 2008).) However, Insel’s general conditions state: “‘IMMEDIATE FAMILY’ means any first-degree member of the family of one of the passengers ... including specifically: ... current legal Spouse/Partner. ...” (www.fly-inselair.com/en/general-conditions.) By contrast, Gulf Air, of the Kingdom of Bahrain, includes “same-sex spouses.” (Alhosain Abdullah Alahdal, Family Support Pan for Middle Eastern Countries Following Aircraft Accidents; Ph.D. Thesis, Cranfield University, School of Engineering, Department of Air Transport, August 2010, p. 18; https://dspace.lib.cranfield.ac.uk/bitstream/1826/6850/1/Alahdal_Alhsain_Thesis.pdf.)

Airlines from the United States generally have policies and practices favorable to GLBT persons. For example, American Airlines’ and Southwest Airlines’ websites include sections on their pro-GLBT policies and activities. (American Airlines’ GLBT Policies, Practices and Community Recognition at a Glance, www.aa.com/content/images/promos/aa-lgbt-policies.pdf; GLBT Outreach, www.southwest.com/html/southwest-difference/community-involvement/glbt/index.html.)

Airlines, particularly American and Delta, also opposed Arizona Senate Bill 1062, which did not specifically mention GLBT patrons, marriage equality or similar terms. The bill was formally called Amendment of the 1999 Religious Freedom Restoration Act, passed in response to neighboring state New Mexico Supreme Court’s holding that a commercial photographer could not refuse photography services to a lesbian couple for their commitment ceremony. (www.azleg.gov/legtext/51leg/2r/bills/sb1062p.pdf; www.azpolicy.org/billtracker/religious-freedom-restoration-act-sb-1062.) The Arizona Legislature passed the bill, but Gov. Jan Brewer vetoed it; in her formal comments, she noted, “Religious liberty is a core American and Arizona value, so is nondiscrimination.” (http://i2.cdn.turner.com/cnn/2014/images/02/26/gs_022614_sb1062remar.pdf.)

Inclusion of same-sex spouses or partners in an airline’s ADFAA plan would be consistent with trends in marriage equality, indicated most notably in United States v. Windsor, 570 U.S. 2__ (No. 12–307, June 26, 2013) (federal Defense of Marriage Act unconstitutional denial of equal liberty under Fifth Amendment) and Hollingsworth v. Perry, 570 U.S. 2__ (No. 12–144, June 26, 2013) (returning challenge to California’s Proposition 8 to Ninth Circuit with instruction to dismiss for lack of jurisdiction) and in the several recent state judicial and legislative developments. It would also be consistent with trends in other federal law, for example, the definition of “domestic partner,” for purposes of certain federal administrative personnel, as meaning “an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.” (5 C.F.R. Part 630.201.)

Family member status under ADFAA and FACFSA leaves open related questions, such as whether a surviving partner, as a same-sex spouse via marriage equality, or by civil union, civil commitment, registered domestic partnership or similar status, has standing to bring a related tort action, against the airline and/or other defendants, for wrongful death, survival or for other torts. (This is certainly an open question for
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sion as sources of legal developments and increasingly so. For air travel-

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been requested by several individuals and organizations. Hopefully, by the time you read this, it will have been released. Many thanks go to the late David Rosenblum, his interns at Mazzoni Center, the folks at Dechert in Philadelphia, and everyone who supported this project, including Pennsylvania Bar Association leadership.

Last year the committee teamed up with the PBA Civil and Equal Rights Committee to provide an update on GLBT legal status at the Annual Meeting prior to the Windsor decision. Several of our members followed up the Windsor decision by coordinating several great seminars across the state.

We once again participated in the PBA’s Diversity Summit. Vice Chair Gerald Shoemaker did a great job pulling this together.

At the time I am writing this, a resolution by our committee regarding recognition of same-sex marriage in Pennsylvania is being circulated and hopefully will be approved at the PBA Annual Meeting in May. If all goes well, Pennsylvania will recognize same-sex marriage and finally have a comprehensive non-discrimination statute in place by the end of 2014.

On the membership front, our committee continues to grow. We are up to 54 listed members and still adding more. We still have a long way to go and need to continue efforts on this front, especially getting our allies to join the committee. Our members are very active in our PBA committees and sections, including several serving or having served as chairs.

I encourage everyone to plan on calling in to the monthly conference calls and attending Committee/Section Day when your schedule permits. The monthly call is a great way to stay connected and be aware of what is happening both in Pennsylvania and nationally on the GLBT legal front. Several of our members are representing significant cases and provide us with updates as they are able without impacting the cases.

As I end my time as committee chair this year, I must say it’s been an amazing time, and I’ve been privileged to be involved in many areas of PBA that I never considered. I thank each of you for the support I’ve received over the years, and I look forward to continuing my involvement in future years.

If anyone knows of other areas that need to be addressed or you want to volunteer to help, please contact me at leodunnlaw@gmail.com or Jerry Shoemaker at gshoemaker@hangley.com.

Leo L. Dunn has a solo estate-planning practice in Harrisburg, focusing on the needs of the GLBT community. Dunn also works for the Commonwealth of Pennsylvania in a non-legal capacity and serves as an adjunct professor at Widener University School of Law’s Harrisburg Campus.

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1. New Jersey (Oct. 21, 2013)
2. Illinois (Nov. 20, 2013)
3. New Mexico (Dec. 19, 2013)
4. California (June 26, 2013, Hollingsworth v. Perry, finding Proposition 8 unconstitutional)
5. Hawaii (Nov. 13, 2013)

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The LGBT Equality Caucus has become a force to be reckoned with since you came to Harrisburg. How did the caucus develop, and how is it received in Harrisburg?

Sims: The caucus was initially the idea of Adrian Shanker, the former board president of Equality Pennsylvania. Adrian knew that if we started an LGBT caucus, it could provide a platform for educating our allies. When we launched it last term, it had 23 members. This year, it’s the third-largest caucus in Harrisburg. Ted Martin, who runs Equality Pennsylvania, turned the caucus into a bipartisan, bicameral entity. Dan Frankel is the co-chair of the LGBT Equality Caucus. Rep. Frankel champions progressive causes, and he is in leadership roles, in the LGBT Equality Caucus and other caucuses.

What are the membership numbers for the caucus now?

Sims: I believe there are 70 LGBT Equality Caucus members now. That is pretty impressive. We are doing some interesting things in the caucus. We have roughly five pieces of legislation we are working on. We recently brought in the executive director of the National Center for Transgender Equality, Mara Keisling, and other transgender activists from across the state to talk about issues unique to transgender residents.

Do you see GLBT rights in Pennsylvania advancing through the courts, through legislation, or a combination of both?

Sims: I believe the legislature is the most effective branch of government to advance GLBT issues, with the exception of marriage equality. Pennsylvania is not nearly as conservative as people think it is. For the last 10 years, we’ve been polling on support for an GLBT civil rights bill (presently HB300), which amends Pennsylvania’s anti-discrimination laws to protect GLBT status. It’s a decent litmus test for other progressive issues. It polls about 85 percent in Philadelphia and Pittsburgh. But nowhere in the state does it drop below around 62 percent. The uniform message from the polling is discrimination should not be tolerated in housing, the workplace and public accommodation.

Our legislative goals (which includes non-discrimination, hate crimes, anti-bullying, ban on conversion therapy) are going to happen at the state level, and I predict we will reach our goals in the next 36 months. I believe the courts will bring marriage equality to Pennsylvania.

What’s your take on the local ordinances that include sexual orientation and gender identity that are popping up in the absence of a statewide civil rights bill?

Sims: There are 33 local ordinances that protect sexual orientation and gender identity as a class right now. No other state that has this many municipalities with anti-GLBT discrimination provisions that also does not have statewide statutory protection. In about 65 percent of the state, an employer or a landlord can still fire you or kick you out of your apartment for being GLBT. The ordinances are incredibly important for lots of reasons. From a practical point of view, they provide real protections without the need for administrative exhaustion requirements. The ordinances counter a false narrative that the protection somehow has long-lasting, negative effects on the community. For example, the legislators in York County can’t say there has been any negative impact on the suburban communities based on York City’s municipal non-discrimination ordinance that includes GLBT protections. These municipal non-discrimination laws are an opportunity for local communities to express their values about GLBT issues, which hopefully drive their state legislators to do the same thing.

What advice do you have for other GLBT folks who might consider running for elected office?

Sims: It is important to stand up for your community. You win more with authenticity. Even people who don’t like GLBT people respect that I stand up for my community. Pennsylvanians are very ready for candidates being their authentic selves when they run for office. I think GLBT people have a lot to offer when it comes to electoral politics. Barney Frank always says that “unless you have a seat at the table, you’re probably on the menu.” If you want to run for office and you are an GLBT candidate, be authentic, represent your community and your issues will be on the political menu.

Before his sudden passing on May 2, David M. Rosenblum was the legal director at Mazzoni Center, overseeing direct legal services to members of Pennsylvania’s GLBT community. He served as an adjunct professor at Temple University’s Beasley School of Law, teaching a clinical course on sexual orientation and gender identity law, and co-instructed an advanced legal writing practicum at Rutgers School of Law, Camden.

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Pennsylvania's first same-sex marriage licenses issued

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same-sex couples is unconstitutional in light of Windsor and refusing to issue same-sex marriage licenses would violate his oath to uphold the United States and Pennsylvania Constitutions.

On Aug. 19, 2013, a group of same-sex couples who had been granted marriage licenses by Hanes sought to intervene in the action. They claimed any action by the Commonwealth Court might impact the validity of their marriages or their pending marriages where marriage licenses were issued but no marriage had been performed. The Commonwealth Court ultimately denied their request to intervene.

In a Sept. 12, 2013, decision, the Commonwealth Court effectively ordered Hanes to cease issuing marriage licenses to same-sex couples, ruling that his job was ministerial in nature. Judge Pellegrini did not address the issue of the constitutionality of Pennsylvania’s mini-DOMA as requested by Hanes, indicating that the only issue to be decided was whether Hanes rightfully began issuing the licenses in contradiction of state law: “[u]nless and until either the General Assembly repeals or suspends the Marriage Law provisions or a court of competent jurisdiction orders that the law is not to be obeyed or enforced, the Marriage Law in its entirety is to be obeyed and enforced by all commonwealth public officials.” There was no direction given as to the validity of the 147 licenses already issued, and at least one action has been filed by 23 same-sex couples who were married with licenses issued by Hanes.

Hanes appealed the decision to the Pennsylvania Supreme Court. Hanes’ appeal argues the Commonwealth Court erred in the following respects: (1) in not reaching the constitutionality of the Pennsylvania’s mini-DOMA; (2) in determining the Pennsylvania Department of Health had standing to bring the matter to court; and (3) in concluding it had original jurisdiction over the matter when Hanes argued his acts were not simply ministerial in nature, thereby granting original jurisdiction in a different court. Hanes filed his brief on Dec. 3, 2013.

Corbett and Kane were removed as defendants in the action on Jan. 16, 2014. They were replaced by the secretary of the Pennsylvania Department of Health, which filed its brief on that date. No date for argument has been set as of the date of this article.

Hanes was not the first state government official to issue same-sex marriage licenses in apparent opposition to existing state law. On Feb. 12, 2004, San Francisco Mayor Gavin Newsom directed his clerk to issue marriage licenses to same-sex couples. Ultimately, the California Supreme Court halted the issuance of same-sex marriage licenses, but by that time, more than 4,000 same-sex couples had been issued licenses to marry. The marriages led to the landmark ruling In re Marriage Cases, which legalized same-sex marriage in California.

Ultimately, Proposition 8 later overruled that decision, and Hollingsworth v. Perry struck down Proposition 8.

The Supreme Court issued the Hollingsworth v. Perry decision striking down Proposition 8 the day before it issued the Windsor decision. Although Windsor held a same-sex couple was denied equal protection under the federal law, it did not address state law inequities. The lack of equal protection under state law keeps states like Pennsylvania fertile ground for controversies to be litigated by advocates for equal protection under the law.

Jerry Shoemaker is the incoming chair of the PBA GLBT Rights Committee. He concentrates his practice in domestic relations issues, including equitable distribution, alimony, custody and support matters. He has also handled a variety of issues arising out of same-sex relationships.