

# THE HIV PROJECT: then & now



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Lorenzo Taylor and Lambda Legal fought against the ban on hiring HIV-positive people as Foreign Service officers.

It's not often that one person can stand up against the government and make a difference. But Lorenzo Taylor took up the fight on behalf of people living with HIV, challenging the U.S. State Department's blanket ban on hiring HIV-positive people to be Foreign Service Officers. Taylor himself was an excellent candidate for the Foreign Service: He speaks three languages, holds a degree from Georgetown University's Walsh School of Foreign Service and received a conditional offer of employment after passing the rigorous application process. But his application was rejected because he has HIV, even though he never had any HIV-related illness and the virus was undetectable in his system.

Lambda Legal's HIV Project fought Taylor's case. We argued that a policy to reject all candidates with HIV is based on outdated assumptions about people with HIV and their ability to work. On the eve of trial, the Foreign Service finally lifted its ban on hiring candidates with HIV by adopting

new medical clearance guidelines. The Foreign Service will no longer automatically reject job candidates based on their HIV status but will instead assess each on a case-by-case basis — as federal law requires.

This is a tremendous victory for people with HIV in America, and it signals just how far the HIV Project has come in the past two decades. From the beginning, we have held that the civil rights of anyone with HIV are at risk as long as HIV discrimination and stigma, which often stem from homophobia, persist. And over the years we've tackled cases that will make an impact — through litigation, public advocacy or public education — on as many people affected by HIV as possible.

Our commitment to advance civil rights for all people living with HIV, whatever their sexual orientation or gender identity, is as strong as ever. HIV issues initially became part of our work because of the impact of the epidemic on gay and bisexual male communities. Now into its third decade,

the epidemic continues to have a disproportionate affect on LGBT communities but is a major concern for non-LGBT communities as well, especially communities of color and people with fewer financial resources. When we fight HIV discrimination on behalf of one person living with HIV, like Lorenzo Taylor, we are combating the ignorance and animus that put the rights of all people living with and affected by HIV at risk. When we win, we win for all of us. As part of Lambda Legal's 35<sup>th</sup> anniversary, we celebrate the HIV Project and its work at the forefront of civil rights.

### Early Battles, Victories

In 1982, Dr. Joseph Sonabend was working out of his Manhattan office, treating people diagnosed with AIDS in the early days of the epidemic, until the building's co-op board sent him an eviction notice. It cited his treatment of people with HIV and their presence in the building as the reason for the eviction. Lambda Legal took his case

and blocked the eviction. This became the first HIV discrimination lawsuit — and victory — in the country.

Our HIV casework has always reflected the many contexts in which people living with HIV face discrimination. During the late 1980s and the 1990s, we helped clients who were denied adequate health care and discriminated against on the job because they had HIV. We have also helped shape the law and educate the judiciary about HIV, by filing friend-of-the-court briefs in many cases, including those that established how the courts would evaluate discrimination claims under the Americans with Disabilities Act of 1990 (ADA).

Many of our cases in the 1990s dealt with insurance carriers and coverage for people affected by HIV. In California, for example, we filed a discrimination case on behalf of a woman who was denied life insurance because her husband was HIV-positive. The court ruled in our favor, in one of the first cases to establish that,

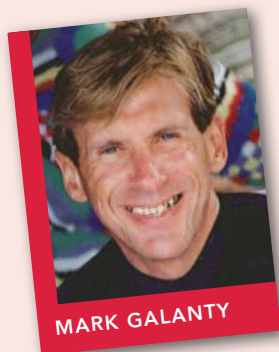
under the ADA, insurers could not deny life insurance coverage based on the HIV status of a spouse. In another case, we joined in the representation on appeal of a man denied disability benefits after he became unable to work due to medical conditions related to his HIV infection. The company had taken premium payments from him for more than five years but claimed he was ineligible for disability benefits because he had tested positive for HIV before the policy was issued. The California appellate court agreed that, under California law, insurers could not collect premium payments for many years and then deny coverage when the person becomes disabled.

#### On the Job

On the employment front we represented a California bank employee, Andrew Bell, who was denied permission to work one day a week from home to accommodate his medical needs related to HIV. The bank had provided that benefit in the past, but new management revoked the permission. Bell was unable to continue working without that accommodation and had to file for disability benefits. He sued the bank for discrimination, but the trial court ruled against him. We filed a friend-of-the-court brief supporting Bell in his appeal. The appellate court agreed with our argument in the brief and ruled in favor of Bell.

While we have seen some civil rights gains for people with HIV, we continue to find employees suffering harassment and other adverse actions at their workplace once their employer or fellow employees learn

they have HIV. Some are fired because of ungrounded fears about HIV transmission, like the sandwich shop employee we recently represented in Nevada. Others are denied reasonable accommodations — such as flexible work hours — that they need due to the side effects they experience from their HIV medications. Gay employees, sometimes presumed to have HIV solely because of their sexual orientation, also continue to deal with fallout from unfounded rumors about HIV status, while employees with HIV are affected by breaches of confidentiality.



Recently, we weighed in on behalf of several HIV service organizations in the Midwest to support an employee whose HIV status was revealed by a doctor in his workplace, and that case is currently moving its way through the courts. And, of course, we take heart that since February, people with HIV have been allowed to apply for Foreign Service jobs and be treated the same as other candidates.

#### Our Families, Ourselves

When it comes to our most precious resources — our families — it becomes even more crucial that parents and grandparents and other family members with HIV can count on the law to back their rights. And some-

times we fight for the rights of people affected by their loved one's HIV status. Early in this decade, we helped convince an appellate court to rule against a county policy barring placement of HIV-negative foster children in the care of foster families who also are providing care for children living with HIV. On behalf of public health, HIV/AIDS and child-advocacy organizations, we explained to the court that the county's assessment of the risk was not supported by any sound public health evidence. The appeals court agreed, and the policy was reversed.

But ignorance and stigma related to HIV continue to wrongly influence judges. In 2005, we represented Kerri Rowell, a mother of three children who was given custody with the restriction that the children not visit their aunt, a woman living with HIV. We won reversal of this ruling that was based on ignorance about HIV transmission risks. Most recently, we have undertaken representing a father whose efforts to maintain custody of his children have been hampered by ignorance and bias regarding how HIV impacts his ability to care for his children.

#### Advocacy: A Team Sport

Our public policy work for people living with HIV complements our civil rights work in the courts and before administrative agencies. And, in doing this policy work, we can't underestimate the importance of the partnerships and coalitions we've been a part of over the years. Our collaborations with other HIV advocacy, legal and medical organizations have resulted in powerful initiatives that cover broad ground. We

regularly submit formal comments on proposed regulations or policies of federal agencies, including the Department of Homeland Security, the Centers for Disease Control and Prevention (CDC), the Social Security Administration and the Food and Drug Administration. We tackle issues including immigrants' rights, privacy and confidentiality concerns, eligibility for benefits for those disabled by HIV, and blood donations by gay men. Currently, we are advocating with sister organizations for proper implementation of expanded HIV testing programs in response to revised recommendations of the CDC, so that HIV testing is conducted in an ethical manner that ensures that testing is voluntary and informed.

As the HIV epidemic has evolved, so has Lambda Legal's HIV Project. We've made our mark: in 2008, it's hard to imagine a doctor facing eviction for treating people with HIV. Our years of experience and direct involvement in helping mitigate so many of the problems facing our communities prepare us for the future of HIV activism, impact litigation and public policy work. We're addressing issues faced by employees who, thanks to medications, are able to work but face discrimination due to outdated, oversimplified views of what it means to be living with HIV. Looking forward, we've identified some likely issues: elder care, for example. And while we still face unknown scenarios in the future, we feel confident that the successes we've had and the progress we've seen is an upward trend. **L**