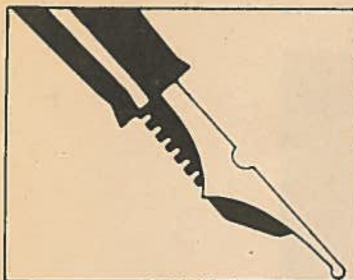
75¢ O



The Washington

THE GAY WEEKLY OF

Georgetown must provide equal access

Fiercely divided court cuts a 'clever' compromise, but Gays claim biggest piece

by Lisa M. Keen

Both sides were quick to claim victory last Friday when the D.C. Court of Appeals ruled that Georgetown University did not have to "recognize" two campus Gay groups but that it did have to provide them with equal access to the same "tangible benefits" afforded other campus groups.

Attorneys for the two Gay groups—the Gay Rights Coalition (GRC) of the Georgetown University Law Center and Gay People of Georgetown University (GPGU)—noted that they never sought "recognition" in the first place and, therefore, that they won everything they started out to win seven years ago when the case was first filed in D.C. Superior Court.

Georgetown University President Timothy Healy, in a statement issued Friday, claimed victory for the university, saying that the court "confirmed" the lower court opinion "recognizing the university's right to refuse to endorse" the Gay campus groups. The statement—which said the university would "study" the court's decision before deciding "what additional steps it must take"—left open the possibility the university might seek to appeal the decision. Such an appeal would have to be filed within 90 days to the U.S. Supreme Court.

by Doug Hinckle

Student groups' attorney Richard Gross and a law group plaintiff Lorri Jean after D.C. Court of Appeals decision was released Friday.

While attorneys for the Gay groups reveled in what they consider their victory in a "David and Goliath" type court battle, Georgetown could not claim it got all it wanted from the court. The university sought permission to deny giving even the tangible benefits to the Gay groups, contending that to do so would constitute a form of subsidy or "endorsement" of the groups. Catholic Church policy holds that homosexual activity is an "abomination,"

Continued on page 8

NEWS

A minority 'whose interests have . . . traditionally been neglected.'

The following are excerpts from Judge Julia Cooper Mack's majority opinion in which she discusses why the District of Columbia has a compelling governmental interest in eradicating discrimination against Gays. Such a "compelling interest" is necessary to uphold the ordinance, but it must also be weighed against any constitutional rights which may be involved:*

. . . the question presented is a novel one. Although it is well settled that government has a compelling interest in the eradication of other forms of discrimination, such as that based on race, or sex, no appellate court has had to answer that question in the context of sexual orientation discrimination.

We approach our task, therefore, with more than a little trepidation. Our society is built upon a heterosexual model. We are met at the outset with centuries of attitudinal thinking, often colored by sincerely held religious beliefs, that has obscured scientific appraisal and stunted the growth of legal theories protecting homosexual persons from invidious discrimination. We know one basic fact—that homosexual and bisexual citizens have been part of society from time immemorial. These orientations, like that of heterosexuals, have cut across all diverse classifications —race, sex, national origin, and religion, to name but a few. After careful reflection, we cannot conclude that one's sexual orientation is a characteristic reflecting upon individual merit.

. . . It was found in one study of almost fifteen hundred heterosexual and homosexual men and women that homosexual adults had typically experienced sexual feelings in that direction about three years before engaging in intimate homosexual activity. There is no reliable evidence that adult homosexual orientation—the attempt is never made in the opposite direction—can be "cured."

. . . Just as it is impossible to typecast heterosexually oriented persons (or, for that matter, members of racial minorities or women), gay people cannot be neatly pigeonholed into any recognizable category. A homosexual orientation tells nothing reliable about abilities or commitments in work, religion, politics, personal and social relationships, or social activities, except to the extent that in many areas the lives of gay people are frequently conditioned by the attitudes of others. It is often forgotten that "homosexuality encompasses far more than people's sexual proclivities. Too often homosexuals have been viewed simply with reference to their sexual interests and activity. Usually the social context and psychological correlates of homosexual experience are largely ignored, making for a highly constricted image of the persons involved."

Despite its irrelevance to individual merit, a homosexual or bisexual orientation invites ongoing prejudice in all walks of life, ranging from employment to education, and for most of which there is currently no judicial remedy outside the District of Columbia or the State of Wisconsin [the only state which has a comprehensive Gay rights law]. Illustrative is a 1950 Senate investigation into the employment of homosexual persons and "other moral perverts" in the federal government. It concluded that even one "sex pervert in a government agency tends to have a corrosive influence upon his fellow employees. . . ." As a result of this reasoning it was not until 1975 that the federal government lifted its ban on the employment of homosexual workers.

. . . Although by no means a prerequisite to our conclusion of a compelling government interest, we note parenthetically that sexual orientation appears to possess most or all of the characteristics that have persuaded the [U.S.] Supreme Court to apply strict or heightened constitutional scrutiny to legislative classifications under the Equal Protection Clause.

. . . This country has a "long and unfortunate history" of discrimination based on sexual orientation . . . [D]ue to the legal and social penalties commonly triggered by public acknowledgement of homosexuality or bisexuality, persons so oriented may constitute "discrete and insular minorities" whose interests have traditionally been neglected by "the operation of those political processes ordinarily to be relied upon to protect minorities."

*Legal and reference book citations have been deleted from this excerpt.

D.C. court rejects Reagan

Continued from page 1

and the Vatican in recent years has pushed American church officials to sever all ties with Gay, even Gay religious, organizations.

But in a 5 to 2 decision from a very divided Court of Appeals, Judge Julia Carter Mack wrote that "recognition" or "endorsement" must be dealt with separately from equal access to tangible benefits. She then ruled that the D.C. Human Rights Act, which protects Gays from discrimination, did not require that the university recognize the Gay groups but did require that it provide the same benefits to them as it did to other campus groups. Those benefits include four "tangible benefits": a mailbox, computer mailing labels, mailing facilities, and the right to apply for student government funding.

Acknowledging that to require Georgetown to provide equal access in this case did place a burden on the Catholic-run university's First Amendment right to free exercise of religion, the burden, she said, was "relatively slight" compared to the compelling interest the D.C. government has in eradicating discrimination based on sexual orientation.

In demonstrating why the D.C. government's interest in eliminating discrimination against Gays was "compelling," Mack, who was joined in her conclusion by Judges Theodore Newman Jr., John Ferron, John Terry, and Chief Judge William Pryor, delved into what research has shown about a homosexual orientation and into the "centuries" of discrimination and "ongoing prejudice" Gays have suffered.

"Despite its irrelevance to individual merit," wrote Mack, a Ford appointee, "a homosexual or bisexual orientation invites ongoing prejudice in all walks of life, ranging from employment to education, and for most of which there is currently no judicial remedy outside the District of Columbia or the State of Wisconsin." Wisconsin in the only state to pass a comprehensive Gay rights bill.

But in addition to winning the first appellate court decision in which laws protecting Gays have been deemed a "compelling" governmental interest, the two Gay campus groups also won a declaration by four judges that types of discrimination cannot be ranked in a hierarchy of importance.

The suggestion that discrimination against Gays might be less compelling than discrimination against racial minorities or women came from dissenting Judge James Belson, a Reagan apppointee. Belson argued in his dissent, joined by Nixon appointee Judge Frank Nebeker, that "it cannot be said that the goal of eliminating discrimination on the basis of sexual orientation, as undesirable as such discrimination may be, has attained the same priority as public policy, in the District of Columbia or nationally, as has the goal of eliminating racial discrimination."

Judge Newman, a Ford appointee, responded to Belson's argument in his concurring opinion. His discussion of the attempt to rank forms of discrimination was joined by Judges Mack, Ferren, and Terry.

Healy: 'Put this matter . . . behind us'

In remarks preceding an address to the Georgetown University faculty last Saturday at the school's Fall Convocation, University President Timothy Healy hinted that the university would probably accept the terms of Friday's D.C. Court of Appeals decision. Healy said he was eager "to put this matter, which has preoccupied us for so many months, behind us."

Healy began his prefatory remarks to the faculty by noting that Georgetown's total endowment had declined in value by more than nine percent in the Oct. 19 world market crash. He made no mention of the nearly $200 million in city-issued low-interest bonds for the university which have been held up by the District on the condition that the university conform with the city's human rights law which prohibits discrimination against Gays.

In speaking of the two Gay student groups' case, Healy said the university "entered the suit with a view to defend its right to assert corporately that homosexuality is not a morally neutral issue." Healy did not mention in the speech how he thought the court's decision affected that position. In a statement issued by his office Friday, Healy said he believed the court "confirmed" the university's "right to refuse to endorse moral positions not in accord with its tradition."

—Joe Bittmann

Photo: M. Philbin

METROPOLITAN COMMUNITY CHURCH OF ROCKVILLE
Worship Service Every Sunday at 7 P.M.
501 Mannakee Street
Rockville, Maryland
Virginia G. Miles, Pastor
For Information Call (301) 926-8704

The Metropolitan Community Church of the Disciples
in the heart of our community
Rev. Harry Stock, Interim Pastor
Rev. Michael Weeks, Ass't. Pastor
WORSHIP SERVICES
Sunday at 10:45 a.m., Ministry Center (2122 'P' Street, N.W., 2nd Floor)
3:00 p.m., Church of the Pilgrims (23rd & P Sts., N.W.)
331-0055
Non-Fermented Cup At Services
See Calendar for Events

ARCHITECTURAL ARTIFACTS, INC.
Antique Furnishings
Eastlake, Mission, primitives
Welsh dresser
Eastern Mkt. Emporium
666 Pennsylvania Ave., S.E.
546-2811
Hours: Wed.-Sun., 11-6
Architectural Antiques
Marble mantels, stained glass & more
220 "Eye" St., N.E.
488-8770
Hours: Sat. & Sun., 12-5 & By Appointment
ARCHITECTURAL ARTIFACTS, INC.

NEWS

appointee suggestion to rank oppressed minorities

"The District of Columbia Council," wrote Newman, "determining to pioneer where the federal government, and indeed many state governments, have not, has chosen to include sexual orientation discrimination within the ambit of those forms of discrimination that it deems anathema in this jurisdiction...This provision, no less than the [Human Rights] Act's more traditional prohibitions, deserves the deference of this court."

And Gay groups won a symbolic legal treasure in Judge Mack's majority opinion when she stated—without using the actual legal term—that she believes Gays "appear to possess" the necessary criteria to be considered a legitimate minority (in legal terms, "suspect class") under the U.S. Constitution's Equal Protection clause.

Mack also stated, in a footnote, that Gay rights laws, such as that in the District, "may be compared to the local antidiscrimination measures which paved the way for the federal Civil Rights Act of 1964."

A euphoric reaction

Both attorneys for the Gay groups and members of the groups past and present were very satisfied with the Court of Appeals' 171-page opinion.

Asked who won the case, Ron Bogard, one of the two original attorneys on the case, did not hesitate to respond, "We did." He praised Judge Mack's extensive discussion of the historic discrimination against Gays and said he believes the opinion will be used in other cases around the country to defend laws protecting Gays from discrimination. As to the university's claim of victory on the question of "recognition," Bogard repeated his belief that the "recognition equals endorsement" argument was simply a "pretext" by the university for refusing equal access to the two groups.

Leonard Graff, who joined Bogard in representing the student groups two years before the suit was even filed in 1980, said he believes the court's opinion is a "tremendous boost for morale."

"It demonstrates that individuals can make a difference," said Graff, pointing to the 20 some members of the original two Gay groups. "It demonstrates that even against a powerful institution like Georgetown University, our community has developed and has *resolve*."

But one concession

Lorri L. Jean, current president of the D.C. Gay and Lesbian Activists Alliance and one of the original plaintiffs, was also very happy with the court of appeals decision. But, she acknowledged, she had to agree with Judge Ferren's opinion in which he and Judge Terry concurred with the granting of equal access but vehemently dissented from the court's decision to allow the university to withhold "recognition."

"[I]f gay rights groups must have access to tangible benefits...but may lawfully be excluded from the list of officially 'recognized' student groups..." wrote Ferren, a Carter appointee, "then the [Human Rights] Act permits a 'separate but equal' access to university facilities and service reminiscent of the justification that once permitted blacks on public buses, but only in the back."

"...To me," wrote Ferren, "that conditional access is an obvious affront to human dignity, amounting to a form of discrimination at least as intolerable as the denial of tangible facilities and services."

"I agree," said Jean. "If I had had all my wishes granted, they would have found the university had to 'recognize' us." But, said Jean, the original plaintiffs decided early in the case that "we were willing to give up that part" of the legal battle. "It is a weakness in the opinion."

Graff said he believes the decision to separate university "recognition" from "tangible benefits" was a "cleverly crafted compromise" among a clearly divided bench.

Of the seven judges who heard the case in October 1985, all seven submitted statements with the opinion—an occurrence that is unprecedented in the D.C. Court of Appeals. And while other cases have taken the court more than two years to render an opinion, court observers acknowledge that it is a very rare occurrence also.

While most of those associated with the student groups concede that the university won part of the compromise by convincing the court that "recognition equals endorsement," they quickly point out that they believe the argument was simply one of "semantics" and that the student groups won the strongest argument in the case.

The meaning of the decision, said Richard Gross, the lead attorney on the case before the Court of Appeals, "is analogous to *Brown v. Board of Education* in racial relations." That case, before the U.S. Supreme Court in 1954, declared that "separate but equal" accommodation of black and white students in public schools violated the Constitution's Equal Protection clause.

Drawing an analogy to Ferron's "back of the bus" argument, Bogard said he believes the court of appeals' overall decision means that "while the bus driver can wear any kind of anti-Gay sign he wants to, the Gay groups can sit anywhere on the bus they want."

photos by Doug Hinckle

Mark Schulte of the main campus group and Andrea Grill of the law center group say they will apply for funding and other group benefits as soon as possible. In an article in Monday's Georgetown Law Weekly, Grill said the Gay groups "hope that now a healing process can begin" within the Georgetown University community.

Bonds still await compliance

The District government must continue to withhold nearly $200 million in low-interest revenue bonds from Georgetown University for an indefinite period of time despite last Friday's ruling by the D.C. Court of Appeals, a District official said this week.

Tom Bastow, an attorney with the D.C. Corporation Counsel's office, said legislation enacted by the City Council and signed by D.C. Mayor Marion Barry in 1985 bars the city from issuing the revenue bonds to the university unless the director of the city's Office of Human Rights certifies that Georgetown is no longer violating the Human Rights Act.

OHR Director Maudine Cooper has said she will not certify the university for its bonds until she determines the university has stopped denying Gay campus groups equal access to university facilities and services.

The D.C. Court of Appeals ruled last Friday that the university is required to give two Gay campus groups equal access to its facilities and services although it is not required to formally "recognize" the groups.

Gay activists this week said they will urge the city to withhold issuing bonds to the university until university officials declare publicly they will not appeal last week's court decision and until the university actually begins to provide its services and facilities to the Gay groups.

In a statement released Friday, a spokesman said Georgetown University President Timothy Healy has not decided whether to appeal the decision by the appeals court to the U.S. Supreme Court.

Lorri L. Jean, president of the Gay and Lesbian Activists Alliance and one of the original plaintiffs in the student groups' lawsuit against the university, said attorneys for the groups may seek a court consent decree, in which the university would have to promise to end its past policies of discrimination against the Gay groups. Jean said the decree would also require the university to agree not to appeal last week's appeals court decision.

Steve Smith, a GLAA member who has monitored the Georgetown University lawsuit, said Gay leaders may also ask the District government to withhold the bonds unless Georgetown resolves new charges of discrimination made by two Gay undergraduate students. The two students have charged the university with discriminating against them by failing to give them an adequate dormitory room after their former roommates refused to continue to live in the same room with them because they are Gay. The students say the university found them alternate rooms but that the new rooms are inferior to their previous rooms.

Georgetown's bond requests, meanwhile, are likely to be subject to new City Council legislation. One City Council bill authorizing $70 million in bonds for campus construction projects expired in September. A second bill authorizing an additional $127 million in bonds expires December 26.

Jean and Smith said they will urge the Council to refuse to pass new bond bills if the university announces it plans to appeal its case to the Supreme Court or if the university fails to obey the terms of the appeals court decision.

—Lou Chibbaro Jr.

GEORGETOWN'S TRAVEL BOOK SHOP

■ LLOYD BOOKS ■

Travel Guides, Maps, Language Cassettes (and Dictionaries), Travel Literature

NEW TRAVEL ● FINE & RARE EDITIONS

3145 DUMBARTON ST., N.W.
WASHINGTON, D.C. 20007

(202) 333-8989

BET MISHPACHAH

THE GAY & LESBIAN SYNAGOGUE OF WASHINGTON, D.C.

Sabbath Service & Oneg, Every Friday, 8:30 p.m.
Women's Outreach Service, first Friday of every month

For this week's events see the Blade Calendar
Services held at Christ United Methodist Church
I St., S.W. between 3rd & 4th. For information, call 833-1638