

Brad King spent last summer in San Francisco clerking for Gay Rights Advocates.

# Summer of '79

by Jon Bradley King

1. The law displays a unique solicitude for its scolytes: In no other discipline are uninitiates presented with the opportunity to gain experience in their future career by working a summer with a full-fledged member of the profession. Summer law clerking not only offers insight into the workings of law in the so-called "real world," but also engenders a different perspective on the value of academic life. It allows one to glory in the sublime and the absurd. In no other situation would one feel a rapture of professional pride upon correcting the citation error of a firm's partner. The experiences of my colleagues over this past summer reveal that this situation also brings out the best and worst in attorneys. Some former clerks have contended that Dante's muse failed him when he placed Judas in Satan's jaws instead of at his desk as a clerk. However, the majority felt that they established that lawyers were human, "with warts and all," possessing professionalism they sought to emulate.

My own experience as a summer clerk left me with a mixture of emotions: frustration at returning to the grindstone of academic endeavor, pride in a job well done, and sadness in leaving behind friends and respected attorneys. Many clerks no doubt experience a similar sense of fulfillment and loss. However, my own summer was distinctive from the standard clerking experience: I worked for a public interest law firm dedicated to securing the rights of gay people.

Employment, like romance, often turns up most unexpectedly. During the holiday break after my first semester in law school I began to plan for my summer. Although not expecting to secure a law-related job, I hoped to find employment that prepared me in some way for a legal career. During a visit to the site of my undergraduate studies, Indiana University, I read a copy of *The Advocate*. Those not familiar with that tabloid may have difficulty believing that a periodical in some ways similar to *Rolling Stone* exists solely to serve the needs of gay persons. One news report in that issue stated that Gay Rights Advocates, a San Francisco law firm, had received a grant from the Playboy Foundation, and hoped to expand its data collection service and provide better representation to the gay community. Gay Rights Advocates is engaged in a wide variety of litigation in several states. The situation seemed extraordinarily attractive, for here was a law firm specializing in a subject I had considerable interest in, in a city renowned for its beauty and excitement, and at least a prospect of employment. I immediately wrote GRA a letter mentioning my interests and my undergraduate research on the Miami (Dade County) gay rights referendum.

One day in January, I discovered their response in my mailbox. With hesitancy and determined pessimism I opened the letter. I was overjoyed to learn that they were asking me, sans interview, to work for them as a clerk that summer. They indicated, however, that they could not pay a salary. This development gave me pause; I realized that San Francisco was more expensive than many cities, and that gathering funds might be a difficulty. However, a member of the firm expressed his willingness to board me for a week or two until I found accommodations in the city.

At the end of the spring semester, I returned to my parents' house to begin marshalling my resources. I painted a house for a few hundred dollars, worked in my grandfather's business and soon had enough money to make the move west. I arranged my airline flight, and prepared to arrive in San Francisco on May 22.

2. As I made my plans, a storm was brewing in San Francisco. On November 27, 1978, Mayor George Moscone, a liberal sympathetic to gay concerns, and City Supervisor Harvey Milk, San Francisco's first openly gay official, were assassinated in City Hall. Dan White, a conservative, homophobic City Supervisor, had resigned his position a week before to devote his attention to his business. Shortly afterwards, he reconsidered his decision, and sought to persuade Mayor Moscone to reappoint him. Moscone, on the advice of Milk and some residents of White's district, refused and planned to name another individual to the post. White entered City Hall through a basement window on the morning of the 27th, thereby evading the elaborate security precautions at the entrances. He entered the Mayor's office and demanded to see him; Moscone did, but reaffirmed his decision not to reappoint White. The ex-Supervisor thereupon drew a gun and shot the Mayor to death. He fled down the corridor and paused in a restroom to reload his weapon. White

then entered a row of supervisor's offices and met Harvey Milk. He asked to speak with Milk privately. They stepped into White's old office, and moments later, White drew his gun again, and killed the Supervisor.

The all too familiar vignettes from recent history followed: the glaring newspaper headlines; shocked, tearful faces, the accused assassin led before the television klieg lights; the flag-draped coffins in the rounds; the processions of mourners; Joan Baez singing the dirges. A city, horrified by the People's Temple tragedy only two weeks before, was numbed with shame and grief.

Throughout the winter the trial of Dan White wore on. The jury was no doubt fascinated by the defense presented for White's acts. Pleading "diminished capacity," White's lawyers claimed that he committed the murders while under the influence of Twinkies. They put forth the view, with perfect solemnity, that the Supervisor's junk food binges had led to a chemical imbalance that affected his mental state. The prosecution introduced into evidence a chilling taped confession in which White recounted, without apparent remorse, his murder of Moscone and Milk. The latter, he said, deserved to die because "he smirked at me." Only when White mentioned his family, his business, and his position of trust in the community did he display a lack of composure. White, a former police officer, sought the sympathy of his one-time colleagues for his acts; some observers claimed during the trial that he was receiving it. In early May, the jury began to deliberate on the fate of Dan White.

On May 21, the verdict came in. The jury had bought the "Twinkie Defense" and found White guilty of voluntary manslaughter. His penalty was later set at the maximum possible under the statute: seven years and eight months, with a possibility for release in five. To imagine the fury this aroused in the gay community one must make comparisons to recent assassinations in American history. We remember the widespread destruction that followed the death of Martin Luther King, Jr. Could one imagine the rioting that would have followed a similar sentence for James Earl Ray? Can we comprehend the outrage that would have enveloped the courts had Lee Harvey Oswald or Sirhan Sirhan received seven years in prison for their actions? I do not claim that the leniency of the jury justifies what followed; I do contend that it makes the outpouring of anger comprehensible.

That evening, a protest began on Castro Street, the center of San Francisco's gay community. Five thousand marchers began to move along Market Street toward City Hall; as they did so, their mood grew uglier. Spray paint graffiti made its appearance: "Death to Dan White," "Eat a Twinkie, Kill a Cop!" When the protestors reached City Hall, violence broke out. The windows of City Hall were smashed, a dozen police cars were set afire and burned eerily in the night. Mayor Diane Feinstein was unable to calm the crowd.

Shortly afterwards, the police vented their rage. Claiming to pursue a rock-throwing protestor, a dozen officers entered the Elephant Walk, a gay bar on Castro Street. They brandished their nightsticks, and proceeded to smash heads. Seven patrons and two waiters were injured. One hapless epileptic



crossing a nearby streetcorner was beaten in the midst of a seizure. In all, 140 persons were hurt in the rioting that night.

Back in Indiana, I watched the events unfold on television as I packed. I thought "My God, what kind of lunatic asylum am I getting into?"

3. On May 23rd, I walked up a flight of steep stairs to the office and met Judy, a busy receptionist. She showed me into the office of Donald Knutson, the Executive Director of Gay Rights Advocates. Don was engaged in a flurry of activity, speaking with a client, and answering the insistent ringing of the telephone. When a pause came in his work, he introduced himself and the other members of the firm

### The Nob Hill area is still grand, despite the passage of years.

who were present. Don was a graduate of the University of Minnesota Law School who had recently concluded a teaching stint at a California law school. The firm's General Counsel, one of five other staff attorneys, can best be described as a dynamic young attorney whose caustic wit could bring forth laughter in the most harried moments. In addition, the firm had several other summer clerks and volunteers that I came to know and love.

Gay Rights Advocates is dedicated to aiding gay men and women across the nation in their struggle to secure or protect their rights. The scope of their activity is impressive: GRA is working to enforce the gay rights ordinance adopted in Houston, to overturn a new law in Oklahoma that prohibited the employment of gay people as schoolteachers, to enforce San Francisco's comprehensive anti-employment discrimination law against several recalcitrant businesses, and to bring a libel suit against State Senator John Briggs for his statements concerning a political opponent during the vociferous debates on California's Proposition 8, a defeated version of the Oklahoma teacher statute. We discussed my plans for the summer, and I received my first assignments. I took responsibility for compiling a pamphlet on Gay People and the Family, and for writing a memorandum on the proper venue for the Briggs suit. Later, I became the firm's librarian and grew to abhor the seemingly endless parade of West Pocket Parts.

With my responsibilities at the office established, I turned my attention to finding housing for the summer. San Francisco is not the easiest place to find an apartment. The requirements for potential tenants were often bizarre: "30ish bi-male, smoker, seeks roommate with steady income and interest in modern science fiction writers, no dealers please." Hardly an opportunity to pursue. After two weeks, I found acceptable lodging. I discovered an institution previously unfamiliar to me: "the residence club." A residence club is an institutionalized boarding house that provides a room and two meals daily for a monthly fee. The San Francisco Residence Club is located on California and Powell, one block from the summit of Nob Hill at the Mark Hopkins Hotel. In that "club" I established my summer home. The Nob Hill area is still grand,

despite the passage of years. Not besieged by tourists, it nonetheless is a crossroads where almost everything of interest is within walking distance. Chinatown is just two blocks away. One night returning home I considered another unique aspect of summer clerking in San Francisco: In no other city did clerks commute home by streetcar.

A still more difficult task lay ahead: finding a part-time job that provided enough money for me to survive in San Francisco, yet allowed me to devote significant time to my work with GRA. Eventually I took a position as secretary to the head of the Reproduction Department of SOHIO Oil Company. The experience shattered one deep-seated stereotype: I learned to my surprised delight that oil companies were not monolithic, brutally efficient business enterprises, but instead were plagued with petty personal conflicts, needless waste, and procrastination just like any other company. Anyone who has witnessed a major corporation grind to a halt due to the inexplicable absence of a Xerox repairman would find it difficult to retain the traditional view.

4. About this time the first major legal events of the summer occurred. The case of Gay Law Students Association v. Pacific Telephone and Telegraph, 595 P.2d 592, was decided by the California Supreme Court on the same day that its counterpart, *DeSantis v. Pacific Telephone and Telegraph*, No. 77-1109, (N.D. Cal. May 31, 1979), came down from the U.S. District Court. The GLSA had represented a Mr. DeSantis, an employee of PT&T who had been dismissed after his supervisors discovered his homosexuality. Apparently he had performed competently on the job and was fired solely due to his sexual orientation. Gay Rights Advocates assumed responsibility for the case approximately one month before the decisions were handed down.

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The District Court followed the precedent set forth in a series of cases by holding that Title VII did not preclude employment discrimination due to homosexuality. However, the Supreme Court of California ruled that under the state constitution, DeSantis's rights had been violated. Declaring that PT&T was practically an arm of the state due to its extensive regulation as a public utility, they demanded that the company show at least a rational basis for firing DeSantis. Because the utility had introduced no evidence faulting his performance, it failed to meet even the "rational basis" test put forth by the court. In dicta, the court indicated that homosexual persons were a group capable of equal protection analysis, and that arbitrary discrimination against them in employment might not be permissible solely due to sexual orientation. In effect, the California Supreme Court laid the groundwork for a decision banning discrimination against gay people in all employment situations, public or private.

Understandably, the decision was hailed as a significant victory for the gay rights movement. Although GRA had led the case through its final weeks, our firm gave all credit to the GLSA for pursuing the matter through the courts for several years. The decision proved to be a favorable omen for the rest of the summer.

One Friday afternoon I decided to take a break from work on the pamphlet and those endless Pocket Parts. I traveled to Marin Beach, one of the most beautiful in northern California. While I absorbed the restorative rays of the sun and marveled at the crashing waves, a drama was unfolding that was to consume the remainder of my summer clerking and send GRA into battle with the U.S. Immigration and Naturalization Service (INS).

Carl Hill and his lover, Michael Mason, were preparing to leave their London home for a two-week holiday in the United States. Carl, an antique dealer, hoped to photograph the San Francisco Gay Freedom Day Parade for Michael's newspaper, *Gay News*. Carl reached into Michael's wardrobe closet and picked out a suit jacket to wear on the flight. He didn't notice that the lapel bore a small lavender button with the inscription "Gay

### "Eat a Twinkle, Kill a Cop!"

Pride 1969/1979." That tiny lapel pin proved to be the catalyst for a summer of legal battles over the American Immigration laws.

As Carl and Michael passed through customs after their long flight, Michael moved forward without incident. However, a keen-eyed INS officer noticed Carl's button and detained him. For the next four hours Carl Hill was subjected to a barrage of questions about his sexual orientation. When he stated that he was in fact homosexual, Carl was released pending deportation hearings.

The basis for this action by the INS was the 1952 Immigration Statute that provides "anarchists, . . . paupers, . . . and those with psychopathic personalities" are excludable aliens. 8 U.S.C.A. 1182. While the flood of immigrants and visitors has ebbed since the Ellis Island days, the sheer volume of persons moving through customs each day precludes any systematic attempt to identify individuals possessing excludable traits. As a result, persons are arbitrarily singled out due to some readily apparent detail, in this case, a button. That day the process snared a remarkable victim.

Carl and Michael spent the night in the York Hotel, where they told the largely gay clientele of that establishment their story. The fabled gay grapevine sprang into action. To FBI Chief J. Edgar Hoover is attributed the apocryphal remark "If this agency was composed entirely of homosexuals, I could get twice as much work done with half as many men." In this case, the information gathering process fulfilled its reputation. Late that night the manager of the York Hotel referred Carl to GRA. By dawn, a habeas corpus order had been secured and his imminent deportation prevented.

As the lawyers and clerks of GRA began to familiarize themselves with the immigration law in this area, we discovered that deportation here

Gay Rights Advocates specializes in litigation involving gay men and women.

## Action propelled Gay Rights Advocates into a major court battle that summer.

requires a two-step process. First, a doctor in the U.S. Health Service is required to conduct an examination to determine if the alien has a "psychopathic personality." If he does, the case is referred to the INS who then hold a peremptory deportation hearing with the burden of proof falling upon the visitor to disprove the physician's finding. GRA decided to prevent the first stage of the process from occurring. We discovered that in 1973 both the American Psychological Association and the American Psychiatric Association had struck "homosexuality per se" from their lists of mental disorders. As a result, the mere status of homosexuality does not make an individual a psychopathic personality, at least in the view of the mental health professionals. We then sought to convince the U.S. Health Service that the APA actions precluded it from making that determination in Carl's case. Again, a combination of circumstance and excellent communications aided our effort. The President-elect of the American Psychological Association was visiting San Francisco that week; he submitted a deposition stating that it was impossible for a psychologist to certify that an individual is homosexual because there is no test to determine sexual orientation. He added that it would be unethical for a psychologist to make such a certification due to the absence of an objective standard. The President-elect then put us in contact with the present officers of both APAs, who submitted similar depositions.

This strategy placed the psychologists and psychiatrists of the U.S. Health Service in a dilemma that could only be resolved in Carl's favor: If they attempted to certify that due to his homosexuality he possessed a psychopathic personality, they were subject to penalties for violating the ethical standards of their profession. If they declined to make that certification, the INS would be unable to hold its deportation hearing. After prolonged

negotiation, Dr. Julius Richmond, the head of the U.S. Health Service, issued a statement declaring that this professional obligation prevented his agency from declaring gay people "psychopathic personalities."

Thus the INS was left with an immigration statute that resembled a hollow shell. Although the statute remained on the books, no enforcement mechanism existed to implement its intent. As might be

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expected, the INS did not intend to submit to this bowdlerization without a struggle. They announced their postponement of a decision in Carl Hill's case until after his scheduled departure date, hoping to render the issue moot.

In so doing, they underestimated the resourcefulness of San Francisco's gay community. Carl, a charming, articulate, and sympathetic figure, was the perfect client for this case. He announced that he intended to stay in America as long as necessary to win this fight. Because GRA provides representation to all clients free of charge, a fund-raising drive for Carl Hill's case began. The psychologists and psychiatrists of the Bay Area held a dinner to raise money for the case; Carl's button was auctioned off at that dinner for several hundred dollars.

The British visitor's plight attracted widespread support. The San Francisco Board of Supervisors passed a resolution, which I am proud to say I helped draft, condemning the actions of the INS. The local television stations and newspapers editorialized against the arbitrary and archaic immigration law. Several California congressmen, including Representative Philip Burton, spoke with representatives of the President in an effort to halt the INS action.

Finally, as my summer ended in August, the INS relented. Commissioner Ramon S. Castillo issued an order stating that all homosexual persons seeking entry into the United States were to be allowed in on "parole" until the Congress altered the immigration laws or the deportation procedures.

GRA was ecstatic. As Carl planned his long-delayed departure, he expressed his relief that his future plans to travel to America had not been jeopardized. However, one order does not a bureaucracy move. The day before Carl left for Britain, two Mexican nationals attracted the attention of INS officers at San Francisco Airport. Both were detained and questioned extensively about their sexuality. When they declared their homosexuality, they were informed that they could either contest deportation or leave on the next flight. Confused and frightened, they prepared to return to Mexico. However, GRA learned of the incident and once again one of their energetic lawyers bounded through airport lounges with habeas corpus orders in hand. By serving everyone from pilots to airline

representatives he prevented the deportation of the two Mexican visitors. They eventually entered the United States for their vacation and left without incident.

5. As I prepared to return to law school in August, the policies of the INS attracted the attention of the entire gay community, both in the United States and in Europe. It became apparent that Carl Hill's experience was not an isolated event. We learned that scores of Canadian women seeking to visit a women's music festival in Michigan were turned away at the border when INS officers suspected them of lesbianism. A West German visitor had returned home to avoid deportation proceedings after a Minneapolis INS officer discovered his bisexuality. Most recently, on December 29, Jaime Chavez, a Mexican national, was subjected to inquiries about his sexual orientation and threatened with deportation. GRA filed a suit on his behalf against the U.S. Government.

Meanwhile, the official stance on this issue has hardened. In October, Secretary of State Cyrus Vance issued an order to consular officials abroad commanding them to enforce the ban on granting visas to homosexual persons. The U.S. Department of Justice declared that the INS was bound to enforce the law until Congress amends it.

In response, gay activists have increased their effort to insure that no person can be barred from America due to his sexual orientation. The Directors of the National Gay Task Force met in the White House recently with representatives of each of the departments and agencies involved to work out a

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common immigration policy. Dutch activists have taken a more novel approach. In borrowed police uniforms with the label "HOMOSQUAD," they detained American visitors at Amsterdam Airport to quiz these tourists about their sexuality. Most were surprised to learn that U.S. Immigration officials conducted the same investigations in earnest. Finally, 130 of the 150 members of the Dutch parliament indicated their support for the effort to remove the ban on gay visitors to the U.S.

In our own Congress, Senator Alan Cranston of California has introduced legislation to amend the immigration statute to allow gay people to enter this nation without harassment. Presidential candidates Kennedy and Brown expressed their support for such legislation.

As I left San Francisco, I realized that the summer had been an unparalleled learning experience. I gained a greater understanding of the workings of a law firm, of the federal bureaucracy, and of gay political activism. I had the most a first-year law student could hope for in a summer clerking position: three months in a vibrant, sophisticated city, dedicating myself to a law firm and to a cause that I believe with all my heart to be just.

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