

April 10, 2006

1. Attached to this declaration is a true and correct copy of my curriculum vitae.

2. I am a Professor Emeritus of Latin American History, Director Emeritus of the Center for Latin American Studies, and former Chair of Latin American Studies at San Diego State University in San Diego, California. I was at San Diego State for thirty-three years (1968-2001), and was Director of the Center for twenty-two years (1979-2001). For more than 30 years, I have devoted my academic studies, teaching, field work, and scholarly research to politics in Latin American countries, with a particular emphasis on South America and the Andean nations of that continent. As a part of my research I have traveled extensively in Mexico, Central America, and South America.

3. I have also held several national-level posts including six (6) years on the institutional grant board of the National Security Education Program in the U.S. Department of Defense, seven (7) years on the Fellowship Board of the Inter-American Foundation, five (5) years as Executive Secretary of the Conference on Latin American History (CLAH) of the American Historical Association, and eight (8) years as the Executive Secretary-Treasurer of the Consortium of Latin American Studies Programs (CLASP). I am also a Past President of both the Pacific Coast Council on Latin American Studies (PCCLAS) and the Rocky Mountain Council on Latin American Studies (RMCLAS).

4. Although my BA, MA and Ph.D. degrees are in history, I have vast experience with and expertise in multi-disciplinary and inter-disciplinary studies of Latin America. As noted above, I was Director of the Center for Latin American Studies at SDSU for 22 years and as such had to learn our faculty's disciplines well enough to be able to make recommendations to the Dean and the

Provost on tenure and promotion. Also, I developed an entirely new, multi-disciplinary, inter-disciplinary curriculum.

Moreover, I served long periods on both the Inter-American Foundation Grants Board (1986-1992) and the Institutional Grants Board of the National Security Education Program in the Department of Defense (1995-2001). Both of those positions required solid expertise in language and area studies. I would never have been appointed to those boards if I did not have a national reputation in multi-disciplinary, inter-disciplinary Latin American Studies.

Over the years, I was asked by 15 university presidents in the United States to prepare formal, outside reviews/evaluations of their programs in Latin American Studies and Language. In each case, I reported directly to the President and Provost of each campus.

In addition, for 22 years, I attended at least one meeting a year in Washington, D.C. at the U.S. Department of Education, concerning the Title VI, National Resource Centers for Latin American Studies Programs. Three times I was asked to chair that meeting. Title VI funded the Center for Latin American Studies at San Diego State University 1976-2003 for a total of over \$4,000,000.00.

Finally, The William and Flora Hewlett Foundation awarded me and Professor Brian Loveman (1997-2002) over \$765,000.00 for collaborative, **interdisciplinary** research on Chile with Chilean scholars, universities and research centers, as well as with contiguous countries, including Peru. Professor Loveman has received additional funding over the past three years, but I don't know the exact amounts.

5. As part of my research for my first book, Indian Integration in Peru: A Half Century of Experience, 1900-1945 (Winner of the 1973 Hubert Herring Award for the best book on Latin America), I traveled extensively throughout Peru and Bolivia for about two (2) years (by train, car, bus, truck, and on foot) and I know the country as few others do (including the vast majority of Peruvians). I have also traveled extensively in Bolivia, Ecuador, Central America, and, of course, Mexico and the U.S.-Mexico border region. As a direct result of those travels, I learned Hispanic culture and how that culture affects the daily

decision-making of people, something very few foreigners are able to accomplish.

6. In addition to my extensive travel in Latin America, I read on a daily/weekly/monthly, basis over six (6) magazines and journals from Central America, three (5) United States newspapers, and more than ten (10) United States and British publications on Guatemala and Latin America. These include: NACLA Report on the Americas, The Journal of Inter-American Studies and World Affairs, Guatemala: Bulletin of Guatemala Human Rights Commission/USA, Mesoamerica, Washington Office on Latin America, all the publications by EPICA (Ecumenical Program on Central America and the Caribbean) the U.S. Department of State Human Rights Reports on Latin American nations (particularly Peru, Argentina, Guatemala, Central America and Mexico), for the past ten years, CIA World Factbook 2005, CIA Regional Reports on the Caribbean, Central America and South America, and other Country Reports, Amnesty International Reports and Updates on the Andean republics, the Southern Cone and Latin America. World Watch and Americas Watch publications on Argentina, Central America, Mexico and Peru. World Refugee Survey 2005 and Refugee Reports of the Immigration and Refugee Services of America, the web pages of all the Latin American Military and Police Forces by Country, and the Latin American Data Base.

I have also set up "Google Alerts" on my computer for most Latin American countries, including Argentina. I have also set up "Google Alerts" for homosexuality in each country, i.e., Argentina Homosexual. I receive dozens of e-mails a day with all the stories posted on the internet.

7. For almost twenty-seven years, I was married to a Peruvian national, Eloísa Carmela Monzón Abate, who died of cancer ten years ago. As a result of that marriage, I became part of a very large, extended Peruvian family which contained several homosexuals (none of them "out" to the family). Over the past thirty-five years, I have also developed friendships with dozens of male and female homosexuals in Peru, Ecuador, Bolivia, Brazil, Argentina, Guatemala and other Central American nations, Mexico, and, particularly, along the U.S.-Mexico border.

8. Another result of that marriage was that I developed unusually broad and deep personal and professional friendships with military and paramilitary police officials, not just from Peru, but also from a number of South American countries. My Peruvian father-in-law, Gen. José Monzón Linares, was a Lieutenant General (Three-Stars) in and former *Director General* (Commander-in-Chief) of the *Guardia Civil del Perú* (Civil Guard of Peru, the nation's paramilitary police force). General Monzón's brother, Guillermo Monzón Linares was the *Inspector General* (Inspector General) of the *Policía de Investigaciones Peruana* (Peruvian Investigative Police, Peru's FBI). General Monzón Linares' friends were almost all military personnel from Peru and neighboring republics. I thus had an incredible opportunity to know, interact with and develop close interpersonal relationships with dozens of military and police personnel. My more than thirty-five years living on the U.S.-Mexico border enabled me to know and interact with dozens of Mexican, Guatemalan, Honduran and other Central American military and police personnel, as well. The fact that I was the son-in-law of a Peruvian general, of course, helped me a great deal.

9. Each of these military and police officers taught me their own particular versions of military lore and ideology, ideologies which were always identical in two areas: the preservation of *La Patria* (The Fatherland) through the maintenance of internal order, and the need to "cleans" *La Patria* continuously by riding it of traitors and sexual deviates (two groups they believe to be identical). The truth is that officers of the Peruvian *Guardia Civil* and its Argentine counterpart the PFA (Federal Police) counterpart) were and are often even more vehement in their attacks so as not to appear less patriotic than the regular military. The point of this is that the police and military forces of Argentina, Guatemala, El Salvador, Bolivia, Peru, Chile, Argentina, etc. are imbued with virulent homophobia from their very first day of service.

10. These family contacts, together with my more than forty years of travel and study in Latin America, provided me with an extensive network of individuals from every social, political, and economic strata of the country: my Peruvian extended family (including my brother-in-law, Pedro Monzón Abate, who was one of four Vice Presidents of the *Banco de la Nación*-National Bank of Peru), my relationships with individuals inside and outside of

the family through the ritual kinship of *compadrazgo* (entering into compact to be the godparent of a child), the Latin American academic community with whom I have worked closely, huge numbers of social friends, high-ranking military officers, government officials, congressmen and senators, private businessmen, and the thousands of Latin Americans I have interviewed, both formally and informally, over the years. I continually renew these contacts through long-distance phone conversations, e-mail correspondence and travel. Therefore, I have an intimate knowledge of current political, economic and social conditions in these nations, particularly Guatemala, El Salvador, Mexico and the Andean republics of Bolivia, Peru and Ecuador.

**11.** Within the fields of Andean American and Latin American Studies, I have concentrated particularly on the role of the military and guerrilla movements in several Latin American countries, including Guatemala. I am recognized, both nationally and internationally, as one of the foremost experts on terrorism and guerrilla warfare in Central and South America. My curriculum vita details the books, articles, translations of Latin American military documents, papers and lectures I have prepared or presented on this topic. I would point particularly to the two books I have written with Professor Brian Loveman: The Politics of Antipolitics: The Military in Latin America. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997; and Che Guevara on Guerrilla Warfare. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997 (the first edition of this work won a national prize, the 1985 Hubert Herring Award for the best book of the year published on Latin America).

Rowan Littlefield recently awarded Professor Loveman and me a contract for the fourth edition of Che Guevara on Guerrilla Warfare. We will finish the manuscript by January, 2007 so that the book can be published in October on the fortieth anniversary of Che's assassination by the Bolivian military.

The Politics of Antipolitics contains extensive treatments of Argentina.

**12.** In addition, I am the author of an internationally-recognized comprehensive, annotated bibliography of the military in the Andean Republics: "The Military in Bolivia, Ecuador, and

Peru," in Errol D. Jones and David LaFrance, eds., Latin American Military History: An Annotated Bibliography. New York: Garland Publishing, Inc, 1992, pp. 277-341.

**13.** I am recognized, both nationally and internationally, as one of the foremost experts on terrorism and guerrilla warfare in Central and South America. Since 1992, I have been asked to serve as an expert witness in over 240 political asylum cases in San Diego, Los Angeles, San Francisco, Sacramento and El Centro, California; Portland and Eugene, Oregon; Seattle and Tacoma, Washington; Eloy, Arizona; Dallas and Harlingen, Texas; Omaha, Nebraska; Chicago, Illinois; Miami, St. Petersburg and Jacksonville, Florida; Arlington, Virginia; Baltimore, Maryland New York and Ithaca, New York; and Boston, Massachusetts. The respondents were from Colombia, Venezuela, Ecuador, Peru, Bolivia, Chile, Argentina, Uruguay, Paraguay, Brazil, Panama, Nicaragua, El Salvador, Honduras, Guatemala, Mexico, Haiti and the Dominican Republic. In all but one case, in all of the above named cities, I was recognized as an expert on Latin America by Judges of the Executive Office of Immigration Review.

**14.** I am also a recognized authority on Latin American culture, including Latin American views of sexuality, both heterosexual and homosexual. As noted above, since 1992 I have been asked to serve as an expert witness in over 240 political asylum cases (9 on Argentina) and, while many of those cases dealt with death threats from the military or the guerrillas of a given nation, I have also testified for 122 homosexual males and females, all from Latin America, 9 from Argentina.

**15.** When I married my Peruvian wife, I became part of a very large, extended Peruvian family which contained several homosexuals (none of them "out" to the family). One of my aunts-in-law was literally driven out of the country by the family. She currently lives in Guayaquil, Ecuador with her partner. Moreover, over the past forty (40) years, I have also developed friendships with dozens of male and female homosexuals in Peru, Bolivia, Ecuador, Guatemala, El Salvador, Mexico, and, particularly, along the U.S.-Mexico border.

**16.** My testimony concerning the treatment of gay men with "female" sexual identities was discussed prominently by the United States Court of Appeals for the Ninth Circuit in the case of Hernández-Montiel v. INS 225 F.3d 1084 (9<sup>th</sup> Cir. 2000). (See Below).

Subsequently, the 9<sup>th</sup> Circuit Court of Appeals reaffirmed the above decision in *Reyes-Reyes v. Ashcroft*, 384 F.3d 1163, 1172 (9<sup>th</sup> Cir. 2004). I served as the expert witness for the appeal of this case to the 9<sup>th</sup> Circuit Court of Appeals.

Another reaffirmation of Hernández-Montiel v. INS F.3d 1084 (9<sup>th</sup> Cir. 2005) is *Jose Patricio Boer-Sedano v. Alberto R. Gonzalez*,\* Attorney General (No. 03-73154). I was consulted several times as this case moved through the court system.

**17.** For the past eleven (11) years, I have conducted extensive research on gender and sexuality in Latin America, particularly on LGBT (lesbian/gay/bi-sexual/transsexual) themes. I undertook this research in order to teach the courses listed below and to prepare affidavits for the above mentioned 118 homosexual males and females for use in Immigration Court.

**18.** I developed three courses which contained extensive treatments of sexuality, family and religion:

- A. Modernization and Urbanization in Latin America, a 500-level course which at SDSU means senior undergraduates and graduate students.
- B. A Graduate Seminar on "The Andean Peoples and Their Cultures: Collision and Syncretism" which dealt with Iberian, pre-Columbian, colonial, mestizo and Afro-Andean cultures, and the development of national cultures after independence.
- C. A Graduate Seminar on "Traditional and Syncretic Religion and Medicine in Latin America. The religions covered included indigenous, Roman Catholic, Folk Catholic, Yoruban-based African (Condomblé in Brazil, Santería in the Caribbean and New York, and Vodun in Haiti) and Pentecostal Evangelical Protestantism.

Included were in-depth analyses of traditional medicine, medieval Spanish medicine (*casera*), folk medicine and magic, and so-called "modern" medicine. Deeply interwoven into all of these are attitudes on sexuality, homosexuality, family and gender roles and discrimination.

**19.** After my arrival in San Diego in 1968, I had 50-60 openly gay and lesbian students and many others who came to me confidentially (as have my Peruvian family members and most of my homosexual friends in Latin America). Over fifty percent of those students were Hispanics who were terrified to tell any of their family members or friends. Several have since died of AIDS, which, for me, was akin to losing my own child. Moreover, between 1979-2001, I had four gay or lesbian Graduate Assistants in the Center for Latin American Studies with whom I worked closely.

**20.** Moreover, my step-daughter (I remarried after my Peruvian wife's death) is lesbian. I have worked with her on several projects and I am now working with various LGBT groups here in Albuquerque, New Mexico.

**21.** I am equally conversant with the literature and available materials on LGBT (lesbian/gay/bisexual/transsexual) themes in Latin America. These include reports from global human rights groups such as Amnesty International, Human Rights Watch, the International Gay and Lesbian Human Rights Commission, and a large number of LGBT groups, including the International Lesbian and Gay Association (particularly its incredibly important World Legal Survey).

In addition to the above named international human rights organizations I read on a daily/weekly/monthly basis two LGBT magazines, The Advocate and Out, and monitor a number of internet sites, including the International Gay and Lesbian Human Rights Commission, the Lesbian and Gay Immigration Rights Task Force, the International Lesbian and Gay Association, the Lesbian and Gay Refugee Advocacy Project, the Gay Men's Health Crisis, PlanetOut.com, Gay.com, GayToday.com and the many sites of LGBT and AIDS support groups in the various Latin American nations.

The most important LGBT and AIDS support groups in Argentina are *Comunidad Homosexual Argentina*, CHA (Homosexual Community Argentina), and the *Asociación de Lucha por la Identidad Travesti-Transsexual*, ALITT (Struggle for a Transvestite-Transsexual Identity).

Please see also my "Selected and Annotated Bibliography" which is appended to this declaration.

**22.** Also of transcendental importance for this case are two works by Andrew Reding, an researcher/employee of the Resource Information Center of the U.S. Citizenship and Immigration Services. Although he has written extensively on all of the individual countries in Latin America, his most important work to date is *Sexual Orientation and Human Rights in the Americas* (New York: World Policy Institute at New School University, December, 2003). I was asked to review a draft of that not yet published manuscript which was entitled "Conditions for Gay, Lesbian, Bisexual, and Transgendered Persons in Latin America and the Caribbean." In fact, I spoke by telephone with Mr. Reding for over an hour in early June, 2003, and he has cited me in the final version.

**23.** I do not know Mr. XXXX, but I have been asked by his attorney to assist with this case. After reviewing the facts of his case and reading his affidavit with care, I agreed to help because I find his situation to be particularly compelling and very typical of any like person in his circumstances. As I will explain in this affidavit, I believe Mr. XXXX's fear of persecution as a homosexual in Argentina to be extremely well-founded.

**24.** Although the percentage of homosexuals in Latin America is the same as it is everywhere, Latin Americans, historically and to the present, have refused to recognize it as anything other than a "demonic lifestyle." The view and treatment of homosexuals, particularly males, is that they are the "lowest of the low" and strenuous, even violent persecution of them is not only accepted, it is praised in Latin American society.

**25.** The definitions of homosexuality in Anglo-America and Latin America are very different. In Anglo-America, little attention is paid to the "role" of the two sexual partners. Although there are often deprecating references to "effeminate" and "swishy" males or masculine and "bull dyke" females, Anglo-Americans do not really recognize an appreciable difference, i.e., both of the partners are homosexual and are thus treated equally.

**26.** In Latin America, on the other hand, a sharp distinction is drawn between the two, each according to his/her supposed role in the relationship, i.e., either the "male" or the "female role." It is assumed that each homosexual partnership has a clearly defined "male" and an equally clear "female." It is also true that the latter group is viewed with contempt in the *macho* (the cult of extreme "manliness") Argentine society as having rejected the proper role of the male. This distinction is of paramount importance in Argentine society for it will literally determine the extent and severity of rejection and persecution, with greater severity reserved for the homosexuals perceived to be more effeminate and passive.

**27.** Culturally speaking, Latin Americans are Spaniards and Spaniards are as much or more Moorish than they are European. In fact, I have always taught that Spain belongs to Eastern Mediterranean-North African culture far more than to Europe and that it must therefore be studied and treated differently.

**28.** From 711-1492, the Moors occupied the Iberian Peninsula (now Spain and Portugal), transferring to the Iberian population not only their architecture, farming techniques, building skills, etc., but their views on sexuality as well. In Moslem culture (and therefore Spanish and Latin American culture), a male is not considered to be homosexual if he is performing the role of the male, i.e., he inserts his penis into the other. Before marriage, it is considered to be quite normal. Even after marriage, it is barely denigrated. For example, Mohammed Daud, a resident of Kandahar, Afghanistan, is unmarried and has sex only with men and boys. But he does not consider himself homosexual, at least not in the Western sense. "I like boys, but I like girls better. It's just that we can't see the women to see if they are beautiful. But we can see the boys" (quoted in a

brilliant article, "Kandahar's Lightly Veiled Homosexual Habits," by Maura Reynolds, *Los Angeles Times*, April 3, 2002. p. 5).

29. For a Latin American viewpoint on this same subject, one need only turn to Octavio Paz, one of the greatest thinkers and writers in Latin American history and recipient of the 1990 Nobel Prize for Literature. In his world-renowned *El laberinto de la soledad* (The Labyrinth of Solitude), Paz wrote: "It is likewise significant that masculine homosexuality is regarded with a certain indulgence insofar as the active agent is concerned. The passive agent is an abject, degraded being. This ambiguous conception is made very clear in the word games or battles--full of obscene allusions and double meanings--that are so popular in Mexico City. Each of the speakers tries to humiliate his adversary with verbal traps and ingenious linguistic combinations, and the loser is the person who cannot think of a comeback, who has to swallow his opponent's jibes. These jibes are full of aggressive sexual allusions; the loser is possessed, is violated, by the winner, and the spectators laugh and sneer at him. Masculine homosexuality is tolerated, then, on condition that it consists in violating a passive agent. As with heterosexual relationships, the important thing is not to open oneself up and at the same time to break open one's opponent" (The Labyrinth of Solitude. Translated by Lysander Kemp (New York: Grove Press, Inc., 1985), pp. 39-40.

30. In his groundbreaking book, Life is Hard: Machismo, Danger, and the Intimacy of Power in Nicaragua (Berkeley: University of California Press, 1992) Roger N. Lancaster explains the passive/active in more explicitly sexual terms. "There is clearly stigma in Nicaragua homosexual practice, but it is not a stigma of the sort that clings equally to both partners. Only the anal-passive *cochón* is stigmatized. His partner, the active hombre-hombre, is not stigmatized at all; moreover, no clear category exists in the popular language to classify him. ... Indeed, a man can gain status among his peers as a vigorous *machista* by sleeping with *cochones* in much the same manner that one gains prestige by sleeping with many women. I once heard a Nicaraguan youth of nineteen boast to his younger friends: 'I am very sexually experienced, I have had a lot of women, especially when I was in the army, over on the Atlantic coast. I have done everything. I have even done it with *cochones*.' No one in the group thought this a damning confession, and all present were

impressed with their friend's sexual experience and prowess. This sort of sexual boasting is not unusual in male drinking talk" (p. 241)

**31.** Indeed, I have known many Argentine, Guatemalan, Mexican, Peruvian, Ecuadoran, Venezuelan and other Latin American males, who consider themselves to be very manly (*muy macho*) even though they engage in both heterosexual and homosexual relations. In fact, a high percentage of these men will openly brag about their "conquests" of both females and effeminate males, particularly when drinking in male-only social situations. Please see my "Selected and Annotated Bibliography" on these subjects which is attached to this declaration.

**32.** The view and treatment of the "female" partner (the receptor), however, could not be more diametrically opposed. The so-called "fem" (or a homosexual who is sexually active ONLY with other men, rather than those males who have an affinity for both males and females, as noted above) is despised as the "lowest of the low" and strenuous, even violent persecution of them is not only accepted, it is praised in Latin American society. At the family level, male "fems" are perceived as constituting a threat to the *machismo* of all the males in the family, particularly to the father, brothers and cousins of the individual.

**33.** Simply stated, the idea of having a homosexual son or brother or other family member is so overpowering in Argentina that families have indeed been known to kill their homosexual relative.

**34.** Indeed, in one of the most concise and cogent statements on gay males in Argentina ever written, Sofia Kamenetzky, M.D. stated: "Argentina is still, to a large extent, a macho society, and machos detest gays whom they see as effeminate. For a majority of the population, including physicians and psychologists, homosexuality is felt to be a perversion and a disease. Teenagers who feel a strong attraction to members of their same sex experience, first extreme confusion about their feelings. When the picture becomes clear in their mind, they awake to the unpleasant reality of belonging to a group that society marginalizes. ... To be gay or lesbian in a

repressive environment whose stereotypes are the macho man and the submissive reproductive woman is not an easy task indeed. Anyone who deviates from a strict heterosexual behavior is ridiculed: A gay is not a man, a lesbian is a degenerate woman" (Sofia Kamenetzky, "Argentina," in Robert T. Francoeur and Raymond J. Noonan, eds. The Continuum Complete International Encyclopedia of Sexuality. Updated With More Countries. New York: Continuum, 2004), p. 10).

**35.** Dr. Kamenetzky further substantiates her thesis of anti-homosexual attitudes when she takes note of neighborhood patterns: "I also did not find neighborhoods exclusively or predominantly homosexual. Most mix with the mainstream population of their own class. Those who have a well-defined and highly visible economic or political role are still in the closet. The same is true for members of the armed forces and the Church. To confess their lifestyle and orientation would be suicidal" (Ibid., p. 10).

**36.** At this point it is of transcendental importance to point out that Latin Americans look for any indicator, mannerism, life interests and/or relationships with the opposite sex to determine if a person is homosexual or not. In the United States, we do not look for these mannerisms. Very often in a store I will see an obviously homosexual couple and no one pays them any attention at all. However, in Latin America, family members, religious leaders, people in the street, etc. are always attune to any sign of feminine mannerisms in a male or masculine mannerisms in a female. These include the way a person walks, talks, holds his/her shoulders and gestures with his/her hands. Moreover, the community pays close attention to such things as whether a person is dating someone of the opposite sex or is married with children. Those who are not married by at least thirty years of age are suspected of being homosexual.

The simple truth is that we are who we are and we can not change the way we walk, talk, carry our hands and shoulders, etc. We should not have to try and change to fit arbitrary gender roles imposed by a given society (see the comments by the Honorable A. Wallace Tashima in **#67** below). Moreover, our mannerisms tend to become more pronounced as we grow older, and we become more truly ourselves, i.e., any homosexual mannerisms will become more and more obvious.

Mr. XXXX, for example is a homosexual transvestite and as such exhibits overt feminine mannerisms. Not only is he incapable of hiding those mannerisms, they have become more pronounced in the last few years and will continue to do as he grows older.

Moreover, I want to make it perfectly clear that Mr. XXXX is NOT a cross-dressing heterosexual, but rather a homosexual who identifies as a female and dresses accordingly.

**37.** Indeed, Mr. XXXX knew at an early age that he was different.

"Since I was fifteen years old, little by little I discovered that my sexual inclinations were different from my other school partners: I felt myself different and at the end I ended up accepting myself as a homosexual. That was the first step to get free of a big psychological and cultural conflict. To manage to get social and familiar recognition as a homosexual is very difficult, almost impossible, in a society as conservative as Argentina."

**38.** Like other gay males in Argentina and the rest of Latin America, Mr. XXXX chose to isolate himself from classmates, family, indeed everyone in the society. He lived in constant fear, not only of being discovered and/or "outed", but of being denied employment, thrown out on the street, even beaten or killed by the police, the military, or thugs in the street.

As Mr. XXXX himself states so poignantly: "I have been a victim of relentless pursuit, persecution, extortion, physical mistreatment and arbitrary arrests by the Argentine police because of my appearance and my homosexual condition."

**39.** In fact, Mr. XXXX was absolutely terrified during his teens. As he notes correctly, "the police had absolute repressive power against the civilians and respect of human rights was almost nil for over fifteen years." Therefore, he had to live a double life, fearing the police, the military, his employers, even his own family.

And, the truth is that Mr. XXXX had every reason to fear the police and the military. Born in 1967, Mr. XXXX was seven years

old when the Argentine military took power in 1976. Thus, he grew up under one of the most brutal military dictatorships in the history of Latin America (1976-1983). Responsible for the deaths of over 30,000 people, the Argentine military singled out various groups in the society for elimination, most particularly the LGBT (lesbian, gay, bisexual, transgender) community which the Argentine military and police consider to be evil, God-less monsters who will infect *La Patria* (the Fatherland) if they are not extirpated.

For more complete analysis of the military dictatorship, see **#49** below.

What is even more tragic is that for much of his life, Mr. XXXX believed that his "condition of being a homosexual was illegal, anti-natural, immoral, in short something bad."

**40.** In addition, the male "fem" is a threat to all the females of the family because the female is always responsible for the maintenance of family values, family morals and the image of the family in the outside world.

It is here that the Roman Catholic Church's dogma on the role of females and family is particularly visible. The ideal female in Christianity is, of course, the Virgin Mary, Mother of God, who is idealized and revered in Mexico and Latin America to a much greater degree than anywhere else in the world. In Spanish, devout "femininity," i.e., devotion to Mary, is called *marianismo* which is the direct opposite of *machismo*.

This is nowhere better seen than with Pope John Paul II's canonization of Juan Diego Cuauhtlahtoztzin on July 31, 2002. Juan Diego is the Chichimeca Indian to whom the Virgin of Guadalupe appeared in 1531. She is the most revered Virgin in Mexico and Latin America, worshiped as the ultimate, perfect female, the model for every female in the nation.

**41.** A homosexual, and particularly a homosexual transvestite, represents a total rejection of this cultural/religious norm, thereby constituting a direct, frontal attack on the Virgin Mary, the Virgin of Guadalupe and all that is sacred and holy in the Roman Catholic Faith.

Indeed, in recent years, the dangers for LGBT peoples emanating from one of the principal players in Argentine culture and society, i.e., the Roman Catholic Church, have increased enormously. The Catholic Church in Argentina has long been one of the most conservative in Latin America, not far behind the Church in Colombia which is generally considered to be the most conservative and reactionary in Latin America. That conservatism and the concomitant homophobia, battle-hardened during the military dictatorship (1976-1983), have been strengthened and intensified over the past decade. Indeed, the Church's attack on homosexuality has increased exponentially in the past decade, not only in Argentina, but in all of Latin America and the world as well.

For the pronouncements of Pope John Paul II and Joseph Cardinal Ratzinger (now Pope Benedict XVI), please see my "Homosexuality and the Roman Catholic Church" which is appended to this affidavit.

**42.** One Latin American example of the Church's stand on homosexuality is that of Cardinal Javier Lozano Barragán, a prominent member of the Mexican Church hierarchy who, in October, 2004, denounced a Spanish proposal to legalize same-sex marriages, saying it would be like considering cats or cockroaches part of a family. "They even give cockroaches the rank of family now because they live under the same roof. If there's a cat, a dog, two lesbians and everything living there, it's a family" (*The Los Angeles Times*, October 13, 2004).

**43.** Moreover, as elsewhere in the world, the Roman Catholic Church in Argentina has recently stepped up its attacks on homosexuality through both its own pronouncements and its public support of and adherence to a recent publication in Peru. At the request of the Cardinal of Lima, Archbishop Juan Luis Cipriani Thorne, the Pontifical Catholic University of Peru (*La Pontífica Universidad Católica del Perú*) published (2002) a pamphlet entitled *Identidad Sexual: ¿Es Posible Escoger?* ("Sexual Identity: Is It Possible to Choose?") which describes homosexuality as a curable illness: "There are innumerable psychological studies from the past 40 years that describe childhood problems that form part of the history of persons with homosexual inclinations: distorted maternal and paternal role models; peer group problems in childhood; sexual abuse in childhood, among others. ... Like any other behavioral problem,

homosexuality can be reversed" (Centro de Asesoría Pastoral Universitaria de la Pontífica Universidad Católica del Perú, 2002).

Then, in a May 31, 2005, interview with Fides news service Cardinal Cipriani Thorne, said: "We are presented with a new sort of feminism which fails to recognize maternity as God's most valuable gift to women and upholds homosexuality as a sexual option rather than the disordered inclination which it is" (Catholic World New web site).

The concept that homosexuality is "curable" is common in Argentina. Please see my short description of "Homosexuality and Psychiatry" which is appended to this declaration.

**44.** Other Roman Catholic Church attitudes in Latin American are abundant. For example, in 2004, for example, Observatori de Les Llibertats Sexuals posted an article on its web site entitled "Iglesias de México y Nicaragua Quieren Ahogar Derechos de Trans y Homosexuales (The Churches of Mexico and Nicaragua Want to Smother the Rights of Transsexuals and Homosexuals).

"The Episcopal Conference of Nicaragua and the Evangelical Alliance of the Apostolic Christian Center Ministry, agreed that the proposed law, the Equal Opportunities Law, recently approved by the Commission of the Women, Children, Youth and Family of the National Assembly **'seeks to impose a new standard of conduct which would question the role of the female within society and within God's design.** "These Christian groups claim that the initiative, as it was presented, **'seeks to achieve equality for women, granting them special new rights such as the right to abortion and the right to lesbianism.'**"

"`This proposed law contains a deceptive new vocabulary,' states the pronouncement of the Episcopal Conference of Nicaragua referring to the Law of Equal Opportunities."

"The Episcopal Conference of Nicaragua argues that the terms 'Sexual Health' and 'Reproductive Health' are internationally recognized as euphemisms for forced abortion and for the promotion of homosexuality. Meanwhile, the term 'gender' denaturalizes the essence of the male and the female, denying the natural differences which exist between the sexes and **substituting six genders for the genders masculine and feminine:**

**homosexual, bisexual, transsexual, indifferent, heterosexual, and transgender.'**" The translation is mine and the emphasis is mine.

45. Every religion and every denomination of course has the right to establish its own dogma and doctrine in matters of faith. What it does not have the right to do is to deny basic human and civil rights to those individuals who do not agree with or do not accept that dogma. The Roman Catholic Church has walked that extremely delicate line on homosexuality for decades, but it has not crossed the line.

The problem for this case is that the official Vatican position provides to the military and police of Argentina seeming religious support, indeed Divine sanction, for their homophobic attacks on LGBT peoples in their country. They have always claimed that they are doing what they are doing to protect and save *La Patria* and Western Christian Civilization. Now they can, and do claim to be doing God's work as they carry out their mission of cleansing *La Patria* of all that is evil and corrupt in order to "save *La Patria* and its children."

46. These are exactly the type of reactions I have heard in Latin America since I first attended the National Autonomous University of Mexico (UNAM) in 1961. In fact, I have heard such reactions in every Latin American country I have visited over the past 40 years.

47. Since the concept of *machismo* is so critical to an understanding of Mr. XXXX's treatment by his co-workers, the police and other members of Argentine society, an explanation or definition is needed here. Please see my brief discussion of *machismo* which is appended to this declaration.

48. Unfortunately, the danger to male homosexuals is not confined to the family and co-workers. In Argentina, Guatemala, Honduras, Mexico, Ecuador, and Chile, for example, it is common for the police, without provocation, to detain gay males, beat them up, rape them with batons or other foreign objects in the anus, and otherwise abuse them physically, always accompanied, of course, by verbal and psychological abuse. As a result of these beatings/rapes, many gay males have died in these countries.

Moreover, the police in Argentina do not differentiate between gay males with feminine characteristics and transvestites. They are considered to be the same. Therefore, almost all reports in Argentina regarding attacks on gay males state that the victim was a transvestite, thereby lumping all male homosexuals into one solo group.

**49.** It must be noted here that homophobia is particularly virulent in Argentina where the military has a long history of extreme political views and of even more extreme violence against its people (See Robert A. Potash, The Army and Politics in Argentina, 3 vols. Stanford: Stanford University Press, 1969-1996). Many Latin American countries and militaries were pro-Fascist before and during World War II, but only the Argentines were avowed Nazis, mirroring Hitler's virulent policies on Jews and homosexuals, in both word and deed. In fact, Argentina did not even declare war on the Axis Powers until she was officially threatened with economic, political, diplomatic and military isolation in March, 1945 (even exclusion from the United Nations), by the Inter-American Conference on Problems of War and Peace meeting in Mexico City.

The period 1945-1976 was fraught with military violence and *coups d'etat*, with ongoing military harassment of all dissidents, most particularly Jews and homosexuals. In 1976, the Argentine military took power in an incredibly bloody *coup* and began a systematic massacre of its own population (it is generally agreed that the military murdered and "disappeared" between 25,000-30,000 people over a seven-year period, 1976-1983). Singled out for particular "attention" were the Jewish and homosexual populations (for a terribly chilling account of Navy Lt. Cmdr. Francisco Scilingo throwing live people out of military planes over the Atlantic Ocean, see Horacio Verbitsky, The Flight: Confessions of an Argentine Dirty Warrior. New York: New Press, 1996; see also Alicia Partnoy, The Little School: Tales of Disappearance and Survival in Argentina. San Francisco: Cleis Press, 1986; and Loveman-Davies, The Politics of Antipolitics, pp. 61-74, 158-170, 228-238, and 365-423).

**50.** Mr. XXXX's description of his and his friends' encounters with the Argentine police, although horrific, are perfectly consistent with, as well as symptomatic of the homophobia of Argentine security forces.

**51.** In December, 2000, Mr. XXXX was invited to a private party where he performed as a transvestite. When the party ended, they found that the police were waiting outside. The police began to hit them and accused them of possessing illegal drugs and of prostitution.

Mr. XXXX's account of what happened is very graphic: "They pushed us into a car specially designed to carry arrested people. They took us to the local police station: there they kicked us, they insulted us with bad words, they mocked us. I was dressed like a woman, that is why I was hit twice as much."

**52.** Clearly Mr. XXXX and his friends had not committed any crime because the police released them after six hours. Still, they threatened them with arrest in the future if they created a public scandal.

The use of the phrase "public scandal" is very important because Argentina, like all of the Latin American republics, has laws which are usually grouped under the heading of *Ofensas Contra la Moralidad* (Offenses Against Morality). They include those who disturb others; offenses that might provoke public scandal; uttering words, making gestures or adopting corporal postures that are contrary to public decency; etc., etc.

These laws are so vague that they can be applied in any way that the police choose at any given time. The Argentine police utilize these vague laws to harass, arrest and physically abuse LGBT peoples.

**53.** In June, 2001, Mr. XXXX's friend Nestor Rodas got a booking for his transvestite show so Mr. XXXX ordered several cabs to transport them. A police patrol car which had been following them from the outset stopped them and said that they had a radio dispatch about a criminal who looked like them. All the occupants were ordered to produce their identification papers, but when it came Mr. XXXX's turn, he was arrested because he was dressed as a female. As he states: "In my country, it is illegal to walk along the streets dressed in clothes of the opposite sex."

When he got into the patrol car, Mr. XXXX recognized one of the policemen, Mr. Benitez, who had arrested him on a previous occasion and who made Mr. XXXX pay a bribe to go free. They took

him to a secluded area and called another policeman who arrived on a motorcycle. They insulted him, hit him and knocked him down near the motorcycle. They then burned him by pushing his arm against the hot exhaust of the motorcycle. After breaking two of his teeth, they finally stopped hitting him when they thought he had lost consciousness. During the beating, the policemen shouted at him to leave the city, "that they were cleaning off the city of prostitutes and f... like me, that the next time they saw me they were going to kill me."

Two of the policemen then helped Mr. XXXX home without charging him with any crime at all.

**54.** It is absolutely vital here to make clear that the police who harassed and abused him were acting not out of homosexuality, but rather enhancing their *macho* image by dominating a "queer." It is horrific, but not unusual in Argentina. In fact, it is consistent with everything I have read, heard or seen in my forty-three years of experience in Latin America.

**55.** In another incident, in April of 2001, Mr. XXXX left a club at midnight and was walking when a car stopped and a man pushed him into the car. After driving to a secluded spot, they made Mr. XXXX get out of the car and walk to the woods.

"All of a sudden, I felt a hitting on my kidneys. I fell to the ground on my knees and the heavy foot of one of them made me fall flat. One of them told me: 'Did you see f... what happened to Fabiana (This is a woman that had been murdered some days before, and whom I knew)? If you do not leave the neighborhood, we are going to kill you.' They pulled my head up and hit me over my forehead; I lost my consciousness."

**56.** The truth is that over the past six years, discrimination against and abuse of LGBT peoples has actually increased in Argentina, despite the anti-discrimination laws that have been approved in Buenos Aires, City and Province and Río Negro Province. For example, on February 11, 2000, police arrested Miguel Angel Ledesma (aka Vanesa Lorena Ledesma), a transvestite in Córdoba. Ledesma died five days later of what the police claimed was a heart attack. An autopsy revealed, however, that Ledesma had severe bruising to his feet, arms, back and shoulders, obviously inflicted by torture (International Gay

and Lesbian Human Rights Commission (IGLHRC), "HIV+ Transvestite in Police Custody, Dead Under Suspicious Circumstances," March 2000. See also "Update on Vanesa Ledesma's Murder," May 2000, and "Update on Vanesa Ledesma's Murder," June, 2000).

Also, in March, 2000, The International Gay and Lesbian Human Rights Commission issued an urgent appeal for Marlene Guayas who was arrested by two policemen while resting in her house for no reason other than she was a transgendered individual who worked as a prostitute which is not a violation of the law in either Buenos Aires or Argentina (IGLHRC, "Urgent Fears for Jailed Transvestite Activist's Safety," March, 2000).

In June, 2000, Ana Di Toro, a member of the Commission for the Right to Abortion, a non-governmental organization, was physically and verbally attacked by Catholic groups. As in the cases of attacks on LGBT people, the police did nothing to protect her, even though they were present (IGLHRC, "Right-Wing Demonstrators Physically Attack Campaigner for Women's Reproductive and Sexual Rights; Police Fail to Intervene," June 22, 2000).

Then on August 9, 2000, police car #3041 belonging to Precinto #1 (Police Station #1) in Córdoba, stopped in front of Vanesa Piedrabuena's house. Four uniformed policemen, armed with shotguns got out of the car and began to shout threats against Ms. Piedrabuena, calling her a "police accuser," ordered her to "stay locked in her house," and promised her that at any moment she would "be found in a ditch" and that "no one would stand up for her" (IGLHRC, "The Life of Vanesa Piedrabuena, Transvestite Activist From Córdoba, Argentina, Is At Risk," August, 2000). Interestingly, yet very ominously, Ms. Piedrabuena is the activist who denounced the torture and murder of her friend Vanesa Ledesma (see above).

On December 18, 2000, Tamara (legal name Alejandro Moreno) was arrested in the Provincia of Santiago del Estero on a charge of "instigation to commit carnal acts." She was sent to the local prison where she was still incarcerated five months later. Astonishingly, the judge condemned Tamara's attorney, Sandra Zamón, to a month's suspension of her license for even accepting the case because, as the judge stated, "Transvestites are dirty and they deserve death." Both Tamara and her attorney have also been threatened and have received death threats since the case became public (IGLHRC, "The Rights of Transvestites in Argentina," April 3, 2001).

57. Conditions did not improve in 2001 as can be seen in a number of cases. On February 14, 2001, Diana Sacayán, a transgender person whose legal name is Walter Oscar Sacayán, was arrested in the city of Don Bosco, in Buenos Aires Province. The police said she was being charged with robbery, but there were no witnesses to the "crime," and no evidence was found. Ms. Sacayán argued that her refusal to pay bribes to the police was the real reason for her incarceration. Three months later, however, she was still in jail with no formal charges yet filed. Moreover, she was being held under harsh and unsanitary conditions. She was denied blankets at night and food for days on end, forced to share space with male inmates and subjected to verbal and psychological abuse by the guards who continually attacked her gender identity (IGLHRC, "Justice Delayed, Equality Denied," June 1, 2001).

In May, 2001, in San Martín in the Provincia of Buenos Aires, unknown assailants murdered a transvestite known as Andrea and dumped the body in a trash can. Nothing was done to investigate the case (International Gay and Lesbian Human Rights Commission, Resumen del año 2001 en américa latina y el caribe. San Francisco: IGLHRC, 2002. Hereafter cited as IGLHRC, Resumen del año 2001).

On October 19, 2001, Buenos Aires police arrested Ms. F.A. XXXX, a transvestite who was waiting for a friend. She told them that she was not engaged in sex work, but they grabbed her, tear-gassed her, forced her into a police van, handcuffed her, threw her to the floor and kicked her in the head. She was then taken to the police station where she was again kicked, slapped in the face and beaten with police sticks and subjected to verbal threats. Police officers claimed that they could "make her disappear" and called her a "*puto sucio*" (dirty faggot) and a "*gordo de mierda*" (ball of shit). She was forced to sign documents she could not see due to the beatings and the tear gas. Finally, she was released at 3 a.m. on October 20 with no charges filed against her. She filed a formal complaint with the Juzgado de Instrucción 27 (Magistrate Court), but nothing was done about her complaint (IGLHRC, "Torture of Transvestites Must Stop Now!," November 5, 2001. See also, IGLHRC, Resumen del año 2001).

Police continued to raid gay bars and restaurants, even in cities that have adopted anti-discrimination ordinances for homosexuals. For example, in May, 2001, police raided Tacla, a gay restaurant in Buenos Aires, detaining and harassing about 40

patrons. The local LGBT organizations filed a complaint, but nothing was ever done to investigate the charges. Then in June, 2001, police raided and subsequently closed the gay bar Mamanodansa and the lesbian bar El Refugio in the city of Rosario, State of Santa Fe, about 200 miles from Buenos Aires (IGLHRC, Resumen del año 2001).

Finally, despite anti-discrimination legislation, gays and lesbians were still being fired from their jobs because of their sexual orientation. For example, in June, 2001, Karina Lucero, a lesbian, filed a complaint charging that she had been dismissed from her position with the provincial judiciary in Comodoro Rivadavia after her sexual orientation became known to her superiors (IGLHRC, Resumen del año 2001).

**58.** Discrimination against homosexuals, as well as physical and verbal abuse, continued throughout 2002 and 2003. On the night of May 26, 2002, police fired rubber bullets on transsexual activists who were trying to photograph and document a police attack on a transvestite. Rubber bullets do and did cause serious injuries. In this case, two transvestites were wounded. The incident was but another example of escalating police violence against any person or group of persons who are deemed by the authorities to represent a danger to public order. Police violence against homosexuals has a very long history, but there are indications that it may even be increasing in intensity and viciousness in part due to a backlash against the anti-discrimination legislation which Buenos Aires and other cities have passed recently.

There was also severe discrimination against LGBT students which obviated any gains made in the legal realm. For example, a transgender student, Lohana Berkins, who had been studying in night school in order to obtain a high school certificate faced tremendous discrimination from the principal of the school who refused to address her by her feminine name or to give her a school certificate in that name. This despite the fact that Ms. Berkins had been extremely active in facilitating workshops on gender issues to educate the school community and the fact that both her teachers and her fellow students accepted her for what she is (IGLHRC, "Act Now to Support the Right of Transgender People to Education," October 21, 2002).

Moreover, there still have been serious problems for LGBT organizations when they sought to register their organizations,

even up to the present. In October, 2003, ALITT, a transgender and transvestite organization in Buenos Aires was denied legal registration by the government because the organization's aims "do not contribute to the public good nor offer a valuable framework for the development of coexistence, becoming part of the community's spiritual and cultural heritage." Lack of legal registration means that the organization in question has a very restricted access to funds, as well as less protection in case the organization or its members are attacked (IGLHRC, "Protest Denial of Legal Registration to Transgender Organization," October 6, 2003).

In November, 2003, the Argentine police were still harassing transvestite and transgender sex workers, while turning a blind eye to female prostitutes who openly worked on the city streets. The transvestite and transgender workers were arrested under a myriad of laws such those against "public scandal," "prostitutes and homosexuals," and "men wearing women's clothes" (IGLHRC, "Urgent Support Needed for Proposal to Decriminalize Sex Work and Transgender Expression in Buenos Aires Province," November 3, 2003).

**59.** Another example of continued police harassment of LGBT peoples is the arrest of Amancay Diana Sacayan and her sister in Buenos Aires Province in July, 2004. The International Gay and Lesbian Human Rights Commission reported on the case as follows: "Amancay Diana Sacayan is a trans activist who has been very active in protesting police brutality in Buenos Aires province and also in social justice issues for a number of years. On July 10, 2004, she and her sister, Johana, were arrested. Police officers told them that the Deputy Commissioner at Police Station 4 wanted 'to see them.' As both trans women had been arrested and harassed by officers from that Station many times, they refused to go. **Then, police officers employed unnecessary force to take both trans women to the police station. First, they were charged with 'prostitution' and days later with 'resistance to authorities, injuries and damages.'** Johana was released on **October 28, 2004, but Diana is still being held in jail.**" Emphasis Mine.

"Many activists believe that the real reason for the arrest **is Diana's involvement in denouncing police brutality against transvestites in the area where she lives. Diana has met with government officers on several occasions and has provided them with documentation to support her claims**" (International Gay and

Lesbian Human Rights Commission, "New Version Argentina: Demand Immediate Release of Trans Activist Jailed for Protesting Against Police Brutality," November 22, 2004). Emphasis Mine.

**60.** Finally, on December 20, 2004, a judge of the United States Executive Office of Immigration Review recognized the dangers LGBT peoples face in Argentina and granted a transgender activist, María Belén Correa, asylum in the United States.

The International Gay and Lesbian Human Rights Commission, which intervened on Ms. Belén Correa's behalf, described her situation as follows: "From 1995 to 2001, Correa was one of the leaders in the fight for Argentinean transgender persons against police brutality and for the full enjoyment of their human rights. In return, police arrested and abused her, subjected her to death threats, forced her to leave her place of work and prevented her from traveling."

"Feeling that such constraints were damaging her possibility to lead a productive and enjoyable life, as well as placing her physical, emotional and mental integrity at risk, Correa left Argentina for the USA in 2001" (International Gay and Lesbian Human Rights Commission, "Bitter-Sweet Victory: Argentinean Trans Leader María Belén Granted Asylum in the United States," December 20, 2004).

**61.** These incidents are not unusual in Argentina. Indeed, police abuse and torture of male and female homosexuals is so common that it is mentioned almost in passing in accounts of "gay-bashing" in Argentina. If Mr. XXXX is forced to return to Argentina, it is quite likely that, in time, he will again encounter problems with the police. If this happens, he risks police abuse and torture. Please see the last five to ten years of reports by Amnesty International, World Watch, Argentine human rights NGO's, and the Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices—Argentina. See also the two most important Buenos Aires newspapers: La Nación (December, 1995–June, 2005) and Clarín (March, 1996–June, 2005).

**62.** What happened to these people were but a few cases in a horribly long list of abuse and torture of LGBT people by the Argentine authorities. Obviously, Mr. XXXX cannot file a complaint because the police will always protect their own and refuse to take his statement. Nor will the police ever

investigate such incidents or prosecute the perpetrators because such abuse is tacitly accepted and often encouraged. In fact, gay males in Argentina can not count on protection from assault on the part of any civil or military official in local, state or national governments. On the contrary, gay males, particularly those who are HIV+, are viewed as constituting a threat to *La Patria* and must be eliminated so that *La Patria* will be "clean."

**63.** This is no where better seen than in official and unofficial views of Acquired Immune Deficient Syndrome (AIDS), or *Síndrome de Inmunidad Deficiente Adquirida* (SIDA) as it is known in Latin America. Latin Americans will rarely admit that AIDS even exists in their country, but if they do they will describe the disease as an abomination, caused by the Devil or an angry God who has cursed a person or a family. That the blame for AIDS always falls upon the "fem" in the homosexual encounter is an even more powerful rationale for persecuting "fems" and cleansing *La Patria* and/or the family of all AIDS. The fact remains, however, that HIV+ or AIDS patients are lumped together into one horrific group whose existence is a threat to every individual, every family, yes, even to the nation (*La Patria*) itself. According to this way of thinking, therefore, abuse of these people is deemed to be deserved.

**64.** Ms. Mirta Roses Periago, Director of the Pan American Health Organization noted: "Important gains in child health and life expectancy in the continent are being swept back by AIDS, destroying the efforts and investments of past decades. The poor get infected, and those infected become poor and isolated by stigma and sickness, rejected from schools and jobs" (quoted in Peter Aggleton, Richard Parker, Mirima Maluwa, "Stigma, Discrimination and HIV/AIDS in Latin America and the Caribbean." Washington, D.C.: Inter-American Development Bank, 2003, pp. 1-2).

**65.** In this same incredibly important report, Peter Aggleton, Richard Parker and Mirima Maluwa stated: "HIV/AIDS plays to some deep-seated fears and anxieties----fear of germs and disease, fear of death, and anxieties about sex. There are major similarities between HIV/AIDS-related stigma and discrimination and some of the negative social reactions triggered by diseases such as leprosy, tuberculosis and cancer."

"But the stigma and discrimination that HIV/AIDS has given rise to is much more than this. All over the world, and especially in Latin America and the Caribbean, it has systematically played to, and reinforced, existing prejudices and anxieties—about homo- and bisexuality, about prostitution and sex work, and about injecting drugs." Please see Peter Aggleton, Richard Parker, Mirima Maluwa, "Stigma, Discrimination and HIV/AIDS in Latin America and the Caribbean." Washington, D.C.: Inter-American Development Bank, 2003, p. 3.

**66.** This becomes an even more dangerous situation when one looks at the increasing prevalence of HIV/AIDS in Argentina. In 2001, the rate was 0.69 percent of adults aged 15-49, just slightly above the rate in the United States. At the end of 2001, UNAIDS estimated that there were more than 130,000 persons infected with HIV out of a total population of 37 million (United Nations Development Programme, Human Development Report 2002. New York: Oxford University Press, 2002, p. 170).

The supply of HIV/AIDS medicine was/is therefore particularly vital in Argentina, yet, in September, 2000, for the second time in two months, the Argentine Ministry of Health failed to provide a continuous supply of the antiretroviral medications needed by AIDS patients to stay alive. The companies who had contracted with the government to guarantee these medications failed to fulfill their contracts and the government did nothing to enforce those contracts (IGLHRC, "AIDS Treatment Interrupted in Argentina," September, 2000).

According to Andrew Reding, in February 1998, "a lower court ruled that the Ministry of Health 'had failed to comply with its obligation' to provide 'assistance and treatment to those affected by that ailment [AIDS].' The Supreme Court upheld that verdict a year later, in February 1999" (Reding, Sexual Orientation and Human Rights in the Americas, p. 21).

Reding goes on to note that the government began offering antiretroviral medicines to 15,000. The intent of the courts is admirable, but the continuing economic crisis in Argentina (see below) and the prohibitive cost of these medications precludes the government from actually carrying out its program.

This is a disaster for Mr. XXXX because although Mr. XXXX is NOT HIV positive, he exhibits clearly defined homosexual mannerisms. Moreover, there is no way for Mr. XXXX to alter his

feminine mannerisms. He is what he is, thereby complicating enormously his efforts in Argentina to obtain true medical assistance.

The problem is that medical personnel in Argentina will not treat patients who are infected with HIV/AIDS out fear that they might become infected themselves. As noted above, Mr. XXXX is NOT infected, he is a homosexual with overt feminine mannerisms. That is the same thing to the vast majority of Argentines: all gays have HIV/AIDS (which is not true) and everyone infected with HIV/AIDS is homosexual (which is equally false).

**67.** There is no doubt that male "fems" and other homosexuals are members of a particular social group and that Mr. XXXX is in danger due to that membership. As The Honorable A. Wallace Tashima, Judge, United States Court of Appeals for the Ninth Circuit wrote in *Geovanni Hernández-Montiel v. Immigration and Naturalization Service*: "Geovanni's female sexual identity must be fundamental, or he would have changed years ago. . . .Geovanni should not be required to change his sexual orientation or identity. . . . Because we conclude that Geovanni should not be required to change his sexual orientation or identity, we need not address whether Geovanni could change them. Geovanni's credible and uncontradicted testimony about the inherent and immutable nature of his sexual identity compels the conclusion that Geovanni was a member of the particular social group of gay men in Mexico with female sexual identities."

**68.** In that same case, the Honorable Melvin Brunetti, Judge, United States Court of Appeals for the Ninth Circuit, in a concurring opinion stated: "The evidence presented by Professor Davies supports the legal conclusion that in Mexico, gay men who have female sexual identities constitute a particular social group for asylum purposes. Hernandez-Montiel's uncontradicted testimony regarding his physical and mental state is sufficient to establish that he is a member of this particular social group. Professor Davies testified that gay men with female sexual identities are persecuted in Mexico. Hernandez-Montiel's testimony before the Immigration Judge that he suffered persecution on account of his membership in this social group was found credible by both the Immigration Judge and the Board of Immigration Appeals. Hernández-Montiel is therefore entitled to asylum and withholding of deportation based on his well-founded fear of persecution should he be returned to Mexico."

69. The situation in Argentina in 2006 is actually much worse than it was in Mexico at the time the Hernández-Montiel case was heard. As I will show below, Mr. XXXX's life is in much greater danger in Argentina than in any other country in Latin America (with perhaps one or two exceptions). Indeed, it is my expert opinion, which I will detail below, that Mr. XXXX is an extremely high profile target and would be in grave danger of being tortured and/or killed if he were forced to return to Argentina.

70. First, Argentina is the very epitome of a country ravaged by neo-liberal economic policies. Through most of the twentieth century Argentina was the wealthiest country in Latin America, one well down the road to becoming a first-world nation, but then the entire economy declined precipitously causing disastrously unstable political conditions. Although the economic crisis really began in 1998, Fernando de la Rúa was elected President in 1999 amidst a great wave of confidence in the future, confidence which was quickly dashed. The economy continued to decline throughout 2000 and most of 2001, but then in October, 2001, it crashed. First, there were rumors of a stock market crash and currency shortages which prompted a run on the banks. In December, there were food riots and widespread looting which prompted the President to impose a 30-day state of siege. On December 20, President de la Rúa was forced to resign, replaced by the President of the Senate, Ramón Puerta. Four days later, Puerta was replaced by Adolfo Rodríguez Saa who immediately suspended payments on Argentina's international debt (approximately \$145 billion) and issued a new currency to stop bank runs.

On January 2, 2002, Eduardo Duhalde became the fifth President of the Republic in two weeks and immediately devalued the currency by 40 percent and froze all bank accounts touching off massive protests. He then allowed the currency to float on the world market and declared a five-day banking freeze. Throughout February, March, April, May and June, there were massive demonstrations, protest marches and riots by the unemployed. Added to the riots was a wave of kidnappings for money by the desperate. By October-November, there was massive unemployment, 25 percent of Argentinians below the poverty line, thousands of homeless children are on the street and the spectacle of thousands of people scavenging garbage cans in search of something to eat. Finally, there were massive

demonstrations and riots on December 19, the first anniversary of the first riots in 2001.

In April, 2003, in the midst of economic chaos, presidential elections were held and Nestor Kirchner, the former governor of Patagonia was elected, but there were no economic successes. Indeed, per capita gross domestic product dropped from \$7,418 in 2001 to below \$2,700, unemployment rose to 21.5 percent, underemployment was so high it was almost immeasurable, income disparities vastly increased and the percentage of Argentinians living below the poverty line rose to over 50 percent. Moreover, as late as November, 2003, the government was still trying desperately to reschedule over \$141 billion in international debt.

Then on December 20, 2003, tens of thousands of Argentines marched on the Presidential Palace in Buenos Aires, demanding jobs as well as commemorating the second anniversary of the riots which drove President De La Rúa from the presidency (December 20, 2001). Although peaceful when compared to the 2001 riots, the demonstrations were marked by a number of explosions and the fact that dozens of people were injured, including three who were badly burned when a bomb went off in a garbage can.

In mid-January, 2004, President Nestor Kirchner met with U.S. President George W. Bush at the Summit of the Americas held in Monterrey, Mexico. Relations between the two countries cooled when Kirchner cancelled a major joint military exercise between Argentina, Brazil and the United States because of Argentina's refusal to grant U.S. troops immunity anywhere in the world from any human rights charges that might be leveled against them.

Moreover, Kirchner defied Bush's "suggestion" that he not meet with Venezuelan President Hugo Chávez who has been at loggerheads with the Bush Administration over myriad conflicts and disagreements.

At that same meeting there was continued conflict between Kirchner and Horst Kohler, the Managing Director of the International Monetary Fund (IMF). Kirchner had offered to pay private investors only a fraction of the \$90 billion debt owed them. Kohler, on the other hand, was adamant that Argentina pay the full amount owed (Héctor Tobar, "Argentine President Passes the Test," *Los Angeles Times*, January 14, 2004).

71. Then, in early March, 2004, President Kirchner and the IMF reached a tentative agreement on Argentina's \$3.1 billion debt to the IMF. The negotiations, which were described as "testy," provided both President Kirchner and the IMF a temporary breathing space, but the major structural problems remained. Moreover, although the official unemployment rate declined in 2003, the truth is that the real unemployment rate had inched higher and the unemployment rate had continued to soar. The anti-IMF demonstrations in Buenos Aires were symptomatic of the massive economic crisis which continues to wrack the nation, an ominous portent for Mr. XXXX. See: Bill Cormier, "Argentina, IMF in Accord Over Repayment of Debt," *The San Diego Union-Tribune*, March 10, 2004.

Finally, in March, 2005, 76% of Argentina's creditors agreed to accept new bonds which were worth only one-third of the original value. While representing a much needed breathing space, the economy remains very shaky. Even after the bond swap, the nation's total public debt still stands at \$125 billion, a full 72% of the gross domestic product. Moreover, the official poverty rate in Argentina still hovers around 50% and the economy is just beginning to grow (see Héctor Tobar, "Argentina Prepares to Shed Its Debt, Reenter Fiscal Markets," *The Los Angeles Times*, February 2, 25, 2005; and "Most Bondholders Agree to Argentina's Debt Swap," *The Los Angeles Times*, March 4, 2005).

For an almost daily analysis of the economic breakdown, see *The Miami Herald*, *The Los Angeles Times*, and *The San Diego Union-Tribune*, 2001-2005 and the U.S. Department of State Country Reports, 1998-2004.

72. The U.S. Department of State's analysis of the informal sector of the economy in 2005 is sobering indeed:

"The monthly national minimum wage was approximately \$215 (630 pesos) which did not provide a decent standard of living for a worker and family. Most workers in the formal sector earned significantly more than the minimum wage. The Ministry of Labor (MOL) is responsible for enforcing legislation related to working conditions. **A MOL report based on inspections conducted during the year reported that the informal sector employed 46 percent of the workforce.**" Emphasis Mine.

"Federal labor law sets standards in the areas of health, safety, and hours. The maximum workday is 8 hours, and the

maximum workweek is 48 hours. Overtime pay is required for hours worked in excess of these limits. The law sets minimums for periods of rest, requiring a minimum of 12 hours of rest to start a new workday. Sundays are holidays, and those required to work on Sundays are paid double. **However, laws governing acceptable conditions of work were not enforced universally, particularly for workers in the informal sector"** (2005 Country Report on Argentina, p. 10). Emphasis Mine

73. As mentioned before, the city of Buenos Aires passed a statute banning discrimination based on sexual orientation. Then in December, 2002, Buenos Aires passed a law enabling members of the same sex to enter into civil unions. In December, 2002, the Province of Río Negro passed a law providing for civil unions between same-sex partners. And in December, 1996, the city council of Rosario, had passed an ordinance prohibiting discrimination based on sexual orientation.

As we moved into the 21<sup>st</sup> Century, more and more national and international companies opted to provide benefits and protection to their LGBT employees. Since they have made that commitment internally, it is logical to assume that they will look askance at countries who maintain discriminatory policies and laws against LGBT peoples.

Even a casual perusal of the companies listed in The Advocate magazine reveals the scope of this change. In 2004, the magazine added ten more companies that were LGBT friendly: Agilent Technologies Inc.; Best Buy Co., Inc.; ChoicePoint Inc.; Cisco Systems Inc.; Citigroup Inc.; Dell Inc.; Kimpton Hotel and Restaurant Group; Miller Brewing Co.; Owens Corning; and PepsiCo Inc.

Some of the other firms listed by The Advocate include: American Airlines, American Express Co.; Apple Computer Inc.; AT&T Corp.; Bank One Corp.; Bausch and Lomb Inc.; Borders Group Inc.; Ford Motor Co.; General Motors Corp.; The Gillette Co.; Hyatt Corp.; IBM Corp.; JP Morgan Chase and Co.; Levi Strauss and Co.; Merrill Lynch and Co., Inc.; Motorola Inc.; Nike Inc.; Pfizer Inc.; Reebok International Ltd.; SC Johnson and Son Inc.; Sara Lee Corp.; Shell Oil Co. Starbucks Corp.; Subaru of America Inc.; Texas Instruments Inc.; Time Warner Inc.; UAL Corp. (United Airlines); Verizon Communications Inc.; The Walt Disney Co.; Wells Fargo and Co.; and Xerox Corp. For a complete list of companies, see The Advocate, October 12, 2004, pp. 38-44.

In widely publicized case, Microsoft Corporation reversed its April, 2005 decision to drop support for a Washington State gay rights bill. Accused of caving into pressure from Evangelical Christian Minister, Rev. Ken Hutcherson of Redmond, Washington, Microsoft Chief Executive Steve Ballmer told employees that management would publically support such legislation in the future: "After looking at the question from all sides, I've concluded that diversity in the workplace is such an important issue for our business that it should be included in our legislative agenda."

"Microsoft will continue to join other leading companies supporting federal legislation that would prohibit employment discrimination on the basis of sexual orientation, adding sexual orientation to the existing law that already covers race, sex, national origin, religion, age and disability. Obviously, the Washington state legislative session has concluded for this year, but if legislation similar to HB 1515 is introduced in future sessions, we will support it." Please see: Elizabeth M. Gillespie, "Ballmer Says Microsoft to Back Gay Rights," Associated Press, May 6, 2005; and Larry Buhl, "In Reversal, Microsoft Backs Gay Rights Bill," PlanetOut Network, May 6, 2005).

For Argentina and other Latin American governments, overall United States opinion regarding the issue of gay rights is not nearly as important as the opinion of Microsoft and other large international corporations. For countries such as Argentina who are absolutely desperate for foreign investment, passing a few laws is a very inexpensive way to convince international investors that they have indeed "seen the light" and are now implementing profound non-discrimination policies.

Moreover, like many nations in Latin America, Argentina is actively seeking more and more tourism to help the economy recover. One of the groups targeted by Argentina is the international LGBT community. The government is buying very expensive, full color ads and stories in Out and Advocate magazines. Public discrimination against the LGBT community would be disastrous for that effort. See, for example, a full-color, 15-page story on how attractive Buenos Aires is for the LGBT community, "What's New, Buenos Aires?" by Michael Luongo in The OUT Traveler (Winter, 2004), pp. 55-69.

Thus, the laws mentioned above are an attempt on the part of Argentina to improve it's human rights image, and, as such, are intended for foreign consumption more than internal change. If

Argentina is to recover economically and move forward in the 21<sup>st</sup> century, she needs a new image, to wit, anti-discrimination laws.

**74.** Passing laws, however, does not constitute the end of discrimination against or denial of the human rights of the LGBT community. An excellent analogy would be the civil rights struggle in the United States in the 1960s. I was in Mississippi, Alabama, Missouri, Kansas, etc. and it was well understood that the police of those states had absolutely no intention whatsoever of enforcing the 1964 Civil Rights Law or the 1965 Voting Rights Law. We could have demonstrations during the day, but we did not go out at night.

It takes many, many years for the public and the police to accept what they would see as radical behavior. Argentina has taken tremendous steps forward, but it will not be safe for a gay transvestite such as Mr. XXXX for decades to come.

**75.** Moreover, Mr. XXXX's economic situation is far graver. The vast majority of Argentine-owned large and medium firms and businesses, as well as most foreign companies and the maquilas in Argentina, will simply not hire obviously gay males. Not only is Mr. XXXX HIV+, he exhibits homosexual mannerisms which "proves" the Argentine dictum that all homosexuals are HIV+ (which they are not) and all individuals who are HIV+ are homosexual (which is likewise false). Given this prejudice AND, the horrendous economic situation in Argentina, there is no way that Mr. XXXX could earn enough money to feed himself adequately, let alone obtain any medical treatment he might need.

**76.** The natural result of such massive economic collapse as that described above is almost always a breakdown in law and order and a diminution of basic human and civil rights for all citizens, but most particularly for homosexuals and other perceived "enemies" of *La Patria*.

**77.** As the U.S. Department of State put it: "There were instances of killings and brutality by police and prison officials. Authorities prosecuted some police for such actions, although impunity continued, particularly in jails and prisons. Police corruption was a problem. Overcrowding in jails and prisons was a problem. Police sometimes arbitrarily arrested and

detained citizens. The judiciary showed clear signs of politicization. The judiciary continued to work through the legacy of human rights abuses of the "dirty war" of the 1976-83 military regime. Anti-Semitism remained a problem, despite steps to combat it. Domestic violence against women was a problem. Discrimination against racial and ethnic minorities persisted. Child labor was a problem. There were reports of trafficking in women and children" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2003-Argentina, February 25, 2004, p. 1. Hereafter cited as 2002 Country Report on Argentina).

**78.** That little had improved in the human rights arena is clear from the U.S. Department of State' 2004 Country Report on Argentina. "There were instances of killings and brutality by police and prison officials. Authorities prosecuted some police for such actions, although impunity remained a serious problem. Police corruption was also a problem, although the federal Government and the provincial governments in Buenos Aires and Cordoba removed corrupt police officials. Jails and prisons were often overcrowded. Police sometimes arbitrarily arrested and detained citizen. The judiciary continued to work through the legacy of human rights abuses committed during the 'dirty war' of the 1976-83 military regime, and the Supreme Court ruled that crimes against humanity were not subject to statutes of limitations. Anti-Semitism remained a concern despite government efforts to combat it. A Federal Court in Buenos Aires acquitted 22 defendants charged with the 1994 bombing of the Buenos Aires Jewish Community Center. Domestic violence and sexual harassment against women were problems. There were reports of trafficking for sexual exploitation and labor. Child labor was a problem" (U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices, 2004-Argentina, February 28, 2005, p. 1. Hereafter cited as 2004 Country Report on Argentina).

**79.** There was little improvement in human rights in 2005. As the U.S. Department of State states;

"The government generally respected the human rights of its citizens. The following human rights problems were reported:

- instances of killings and brutality by police and prison officials

- overcrowded, substandard, and life-threatening prison and jail conditions
- arbitrary arrest and detention
- domestic violence and sexual harassment against women
- trafficking in persons for sexual exploitation and labor
- child labor"

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2005 Country Report on Argentina, March 8, 2006, p. 1. Hereafter cited as 2005 Country Report on Argentina.

80. Routine torture by the police is of particular concern in Mr. XXXX's case. "Torture and brutality by police and prison guards continued to occur. Human rights organizations described police brutality, the occasional use of torture on suspects, and corruption within the prison and police forces. The Government investigated some past reports of police or prison brutality; however, few cases were tried and even fewer resulted in convictions. Threats to witnesses and advocates made prosecution of abuses and reform more difficult" (2003 Country Report on Argentina, p. 3).

Just two years ago, the Department of State noted that: "A January 2001 report of the U.N. Special Rapporteur on Torture recalled concerns raised in the U.N. Human Rights Commission's October 2000 review under the International Covenant on Civil and Political Rights. In particular, the Rapporteur noted concerns about allegations that torture and excessive use of force by police officials were 'a widespread problem and that government mechanisms established to address it are inadequate'" (2002 Country Report on Argentina, p. 4).

81. During 2004 the situation did not improve. "The Constitution prohibits such practices, and the Criminal Code provides penalties for torture similar to those for homicide; **however, some police and prison guards continued to employ torture and brutality.** Human rights organizations described police brutality, the occasional use of torture on suspects, and corruption within the prison and police forces. **The Government investigated some past reports of police or prison brutality; however, few cases were tried, and even fewer resulted in convictions"** (2004 Country Report on Argentina, pp. 1-2). Emphasis Mine.

82. Under the heading of "Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," The U.S. Department of State noted the following for 2005.

"Although the law prohibits such practices and provides penalties for torture similar to those for homicide, some police and prison guards continued to employ torture and brutality. Human rights organizations reported police brutality and occasional torture of suspects. While the government investigated reports of police brutality in prisons, there were few convictions in comparison to the number of complaints" (p. 2).

"In another case documented by the independent Buenos Aires Provincial Memory Commission, Cristian Lopez Toledo and Claudio Marquez Laineker, prisoners at the Buenos Aires provincial prison in La Plata, were tortured with electric shocks after they requested to meet with the Memory Commission during its visit to the prison in August. In the subsequent trial, expert witnesses verified the commission's claims" (2005 Country Report on Argentina, p. 2).

83. Police torture and abuse of the LGBT community is also a serious problem. "A 2000 Amnesty International (AI) report expressed concern over reports that police targeted, tortured, and harassed gays, lesbians, and bisexuals. The report included information regarding the 2000 death in police custody of a transvestite whose body showed signs of torture. AI noted that police bylaws and provincial codes of misdemeanors allow police to detain or sanction members of sexual minorities for actions that do not constitute a criminal offense" (2002 Country Report on Argentina, p. 10).

84. Also of great concern was police involvement in unlawful killings. "Police and prison officers were responsible for killings involving the use of unwarranted or excessive force. The authorities investigated, and in some case, detained, tried and convicted the officers involved; **however, impunity for those who committed abuses was sometimes a problem.** The Center for Legal and Social Studies calculated that in the Buenos Aires region there were 149 violent deaths, civilian and official, involving security forces in the first 6 months of the year" (2003 Country Report on Argentina, p. 1). Emphasis Mine.

85. There was absolutely no improvement in 2004. "There effectiveness of respect for human rights by different forces varied considerably. **Corruption was systemic in some forces, and impunity for police abuses was common.**" Emphasis Mine.

"Some of the most common abuses included contract abuses, extortion of and protection for those involved in illegal gambling, prostitution, and auto theft rings, as well as detention and extortion of citizens under the threat of planting evidence to charge them for crimes. Some police also were involved in drug trafficking and kidnapping. Addressing police corruption was difficult, in part, because the suspects intimidate whistleblowing colleagues, judicial officials, and civilian witnesses. Threats and beatings aimed to intimidate witnesses were common and, in some cases, occurred in connection with killings believed committed by members of security forces or their criminal allies" (2004 Country Report on Argentina, p. 3).

86. Human rights violations by the security forces of Argentina continued to be a serious problem in 2005:

"While the government or its agents did not commit any politically motivated killings, police and prison officers committed killings involving unwarranted or excessive force. The authorities investigated, and, in some cases, detained, prosecuted, and convicted the officers involved" (p. 1).

"The PFA [Federal Police] under the Interior Ministry has jurisdiction for maintaining law and order in the federal crimes in the provinces. Additionally, each province has its own police force that responds to a provincial security ministry or secretariat. Individual forces varied considerably in their effectiveness and respect for human rights. Corruption was endemic in some forces, and impunity for police abuses was common" (p. 3).

"The most common abuses included extortion of and protection for those involved in illegal gambling, prostitution, and auto theft rings, as well as detention and extortion of citizens under the threat of planting evidence to charge them for crimes. Some police also were involved in drug trafficking. Efforts continued in the province of Buenos Aires to remove and prosecute police for corruption and other offenses. In November the Buenos Aires

Province security minister fired 46 police officers under investigation for alleged abuse, corruption, extortion, and unjustified homicide, bringing to 935 the number of officers dismissed, suspended, or under investigation for malfeasance and criminal activity between May 2004 and November 2005. Other trials were pending" (2005 Country on Argentina, p. 3).

87. Added to that concern this year was concern about arbitrary arrest and detention by the police: "The Penal Code limits arbitrary arrest and detention, however, provincial police sometimes ignored these restrictions and arbitrarily arrested and detained citizens. In the past, human rights groups reported difficulties in documenting such incidents because victims were reluctant to file complaints for fear of police retaliation or inaction. There were reports that in some provinces paramilitary groups worked in conjunction with police elements" (2003 Country Report on Argentina, p. 4).

Arbitrary arrest and detention continued in 2004. "The Federal Code of Criminal Procedure limits arrest and detention without warrants to certain restricted situations, for example, criminals caught in the act, fleeing suspects, or overwhelming evidence of a crime being committed, and, while the Government generally observed these prohibitions, provincial police sometimes ignored these restrictions and arbitrarily arrested and detained citizens. **In the past, human rights groups reported difficulties in documenting such incidents because victims were reluctant to file complaints for fear of police retaliation or inaction**" (2004 Country Report on Argentina, p. 3). Emphasis Mine.

88. Arbitrary arrest and detention remained problems in 2005, a fact which is particularly important for Mr. XXXX since the police target the LGBT community:

"The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions; however, police occasionally arrested and detained citizens arbitrarily. In the past human rights groups reported difficulties in documenting such incidents because victims were reluctant to file complaints for fear of police retaliation or because of skepticism that police would act" (2005 Country on Argentina, p. 3).

89. In his presidential campaign, Nestor Kirchner promised to address these problems. Thus, a few weeks after having taken office President Kirchner moved to gain control over the nation's military and police forces which had been allowed to run themselves during the political crisis 2001-2003. He forcibly retired over two dozen army officers and announced that his government would appoint new chiefs for the 53 federal police stations in Buenos Aires. Many presidents had tried to dominate the nation's security forces, but all had failed in the end. Although it appeared initially that Kirchner would succeed, the staying power of the security forces became evident at the end of November when he began to receive anonymous calls on his cell phone threatening him and his family. Thus, it is extremely doubtful that the president will be able to clean up police corruption any time soon, certainly not soon enough to be of much good to Mr. XXXX should he be forced to return to Argentina. For a superb, in-depth analysis of this problem, please see: Héctor Tobar, "Argentina's New President Cleans House," *The Los Angeles Times*, June 5, 2003, and "Quiet Exit of Argentine Top Brass Says Much," *The Los Angeles Times*, June 8, 2003. See also Alistair Scrutton, "Argentine Leader Gets Threats in Cops Probe," *The San Diego Union-Tribune*, November 28, 2003, and Loveman, Davies, *The Politics of Antipolitics*, particularly pp. 3-14; 61-74; 158-170; 228-238; and 365-423.

90. Terrifyingly reminiscent of the past were reports of anti-Semitism and racism in the Argentina of 2003. "Acts of discrimination and violence against religious minorities, particularly the Jewish and Muslim communities continued. ... There were a number of reports of anti-Semitic acts and of threats against Jewish organizations and individuals during the year. **The most frequent incidents included the appearance of anti-Semitic and pro-Nazi graffiti and posters in cities throughout the country.**"

"Cemetery desecrations continued to occur. On September 20, a Jewish Cemetery in the Province of Santa Fe was desecrated."

"There were no developments in the desecration of approximately 150 tombs in an Islamic Cemetery in La Matanza in July 2002 nor in the case of an anti-Semitic note left with an anti-tank grenade outside a Jewish club in La Plata in November 2002."

"Racist incidents were underreported, and racism often was denied as a problem; however, members of racial minorities, such as those of African descent, reported frequent cases of verbal insults and, in some cases, physical assaults on the streets of Buenos Aires. Accounts by those who have been subject to incidents of racial prejudice indicated that the problem was more common than reported. Members of minority groups reported avoiding buses and other crowded public facilities out of fear of being subjected to racial harassment."

"Individuals of indigenous descent from the northern part of the country, as well as from Bolivia, Peru, and other Latin American countries, reportedly were subjected frequently to verbal insults because of their dark skin" (all of the above from the 2003 Country Report on Argentina, pp. 6 & 10).

**"In March 2001, the U.N. Committee on the Elimination of Racial Discrimination expressed concern regarding reports throughout the country of police brutality committed on a variety of pretexts on grounds of race, color, or ethnic origin"** (2002 Country Report on Argentina, p. 12). Emphasis mine.

**91.** There was no improvement in the areas of anti-Semitism and racism in 2005. According to the U.S. Department of State:

"Acts of discrimination and vandalism against religious minorities, particularly the Jewish community, continued. The government continued to support a public dialogue to highlight past discrimination and to encourage improved religious tolerance. In July the secretary of religion, together with the Universidad del Salvador and the Latin American Association for the Study of Religions, hosted the Third Latin American Colloquium on Religion and Society; leaders of the Christian, Jewish, Muslim, and indigenous communities attended the colloquium" (p. 5).

"The Jewish community was estimated to number between 280 thousand and 300 thousand. There were a number of reports of anti-Semitic acts, including threats against Jewish organizations and individuals. On December 29, in La Plata, a monument honoring former Israeli prime minister Yizhak Rabin was vandalized. In November fans of a basketball team playing against a team from the Zionist Youth Center of La Plata, chanted anti-Semitic epithets. The most frequent incidents included anti-Semitic and pro-Nazi graffiti and posters in cities

throughout the country and the proliferation of anti-Semitic publications in bookshops. Jewish organizations reported their continued concern but noted that there was no increase in incidents from the previous year" (p. 5).

"The constitution recognizes the ethnic and cultural identities of indigenous people and states that congress shall protect their right to bilingual education, recognize their communities and the communal ownership of their ancestral lands, and allow for their participation in the management of their natural resources. In practice, indigenous people did not fully participate in the management of their lands or natural resources, in part because laws did not specifically contemplate communal ownership. The National Institute of Indigenous Affairs is the government agency responsible for implementing these provisions" (p. 9).

"Poverty rates were higher than average in areas with large indigenous populations. Indigenous people had higher rates of illiteracy, chronic diseases, and unemployment. The lack of trained teachers hampered government efforts to offer bilingual education opportunities to indigenous people" (p. 9).

"Individuals of indigenous descent from the northern part of the country, as well as from Bolivia, Peru, and other Latin American countries, reportedly were subjected frequently to verbal insults because of their dark skin" (2005 Country Report on Argentina, p. 9).

**92.** Widespread discrimination against women, persons with disabilities and the indigenous continued in 2004. Indeed the Department of State used the same phrasing. "Domestic violence and sexual harassment against women were recognized as serious societal problems. The Inter American Development Bank estimated that 25 percent of women were victims of violence."

"The law prohibits trafficking in persons for the purpose of prostitution through fraud, intimidation, or coercion, or in the case of minors; however, trafficking occurred."

"The country was primarily a destination for men, women and children trafficked for sexual exploitation and labor. Most foreign victims were women and children trafficked from Paraguay, Bolivia, and Brazil. Victims within the country were trafficked

from rural to urban areas. Bolivians were trafficked into the country for forced labor."

"Trafficking victims generally were found in situations of prostitution, but there were also cases of other forms of forced labor, such as work in illegal textile factories. Traffickers may confiscate travel documents, which prevented victims from appealing to authorities for protection. Victims, particularly women and girls in prostitution, may be denied contact with the outside world. Victims were often threatened or beaten" (2004 Country Report on Argentina, pp. 7-9).

**93.** Domestic violence continued to be a problem in 2005:

"The law prohibits domestic violence, including spousal abuse, and provides for removal of the abusive spouse from the home, but it does not provide penalties unless the violence involves crimes against 'sexual integrity.' In this case penalties can be as much as 20 years' imprisonment. Domestic violence against women was a serious problem. In 2004 the Inter-American Development Bank estimated that 25 percent of women were victims of domestic violence" (2005 Country Report on Argentina, p. 6).

**94.** Moreover, prison conditions in Argentina are grim indeed. As the Department of State puts it: "Prison conditions were often poor. Some facilities were old and dilapidated, and many prisons and jails were overcrowded. A notable increase in crime and stricter provisions for early release, combined with a slow judicial system, led to overcrowded prisons and police stations. In September, a press report on Buenos Aires Province stated that there were 6,200 detainees in police station facilities designed for 3,000, and the 36 provincial prison units designed for 15,000 inmates held 22,000" (2003 Country Report on Argentina, p. 3).

In 2003, the Department of State reported that: "Torture and brutality by prison guards and officials remained serious problems. A number of prisoners who had previously filed complaints about torture and mistreatment were killed in prison in 2001 and 2002. ... There was no reported serious investigation of these cases by the penitentiary service" (2002 Country Report on Argentina, p. 5).

95. Although seemingly impossible, it could be argued that prison conditions worsened in 2004. "Prison conditions often were poor. Some facilities were old and dilapidated, and many prisons and jails were overcrowded. Higher crime rates and stricter provisions for early release, combined with a slow judicial system, aggravated overcrowding in prisons and police stations. A July report by the Center of Legal and Social Studies on Buenos Aires Province claimed that there were more than 5,400 detainees in police station facilities designed for 3,200 and that the number of minors detained had increased significantly. Juvenile detention centers also were overcrowded which often resulted in holding minors in police station facilities. **The overcrowding contributed both to security and to mistreatment of prisoners. On October 21, three juvenile detainees died in fire in Buenos Aires in the Quilmes police station and on November 13, another minor was found hanged in his cell under suspicious circumstances.**" Emphasis Mine.

"On October 28, the Buenos Aires Provincial Memory Commission released **a report detailing the overcrowding in the province's prisons, their substandard conditions, the mistreatment, abuse, and torture of prisoners by prison officers, and the lack of investigation and prosecution of prisons officials implicated in abuse and other illegal activities. On November 15, Amnesty International (AI) presented a report to the U.N. Committee on Torture that referred to the Government's 'inability and lack of political will to close the circle of impunity that exacerbates human rights abuses such as torture in every corner of the country.'** As an example, AI described a September 8 incident in Mendoza in which nine prisoners caught attempting to escape were repeatedly beaten, denied medical assistance, and kept naked or in their underclothing for several days." Emphasis Mine.

"**Impunity for corruption, torture, and brutality by prison guards and officials remained a serious problem. Prisoners who filed torture and mistreatment complaints were targeted for torture or killed. Mar del Plata Batan Penitentiary senior officials and guards were under investigation for allegedly torturing Claudio Benavides and other prisoners in May. Additionally, these officials were charged with threatening to kill the prisoners' families if the prisoners filed a complaint against them. The investigating judge stated that he was convinced that this was not an isolated incident, but rather reflected ordinary behavior in the penitentiary"** (2004 Country Report on Argentina, p. 3). Emphasis Mine.

96. There was no improvement in 2005:

"Prison conditions often were poor and life threatening. The Inter-American Commission on Human Rights stated that 'overcrowding, deficient health care, dilapidated and insufficient infrastructure, inadequate nutrition, and ongoing inhumane treatment of detainees...triggered violations of human rights' in detention centers. The commission added that violence in various prisons led to death and 'serious bodily and psychological harm to inmates.' The CELS 2005 publication *Collapse of the Prison System* cited a Federal Penitentiary Service report indicating that 28.5 percent of the federal penitentiaries were overcrowded and 40 to 45 percent were at capacity. In Buenos Aires Province, 54 percent of the provincial prisons were overcrowded, and 28 percent were at capacity."

"In February rioting in the San Martin prison in Cordoba led to the deaths of five prisoners, two guards, and a police officer."

"In April in the Coronada prison in Santa Fe, prisoners killed 13 other inmates in what was described as a 'settling of accounts' between rival gangs. On October 16, 33 prisoners died from inhaling smoke from a fire set in a prison dormitory during a disturbance at the Buenos Aires provincial prison in Magdalena. Victims' family members claimed the fires were reprisals because some of the prisoners in that dormitory had filed complaints. The Buenos Aires Provincial Memory Commission reported that its inquiry revealed official complicity in the deaths. The report stated that the emergency doors remained locked during the fire and that half the fire extinguishers had expired. The report also stated that guards used force, including rubber bullets, to prevent prisoners in neighboring cells from aiding the trapped prisoners" (2005 Country Report on Argentina, pp. 2-3).

97. It must be noted here that all prisons (including those in the United States) are particularly dangerous for homosexuals. Not only are they raped and gang-raped, beaten severely, even killed by other prisoners, but prison guards and other prison employees also harass, beat, rape, and force homosexuals to perform oral sex. The fact is that **HOMOSEXUAL PRISONERS are ALWAYS TREATED THE WORST IN ARGENTINE PRISONS**, a gruesome prospect for Mr. XXXX.

**98.** Given this scenario of life in Argentina, it would be absolutely impossible for Mr. XXXX to receive any type of protection from state security forces. If they wantonly torture, murder and illegally detain their citizens, otherwise violate basic human rights of women, children, and the disabled, how could anyone expect them to respect Mr. XXXX's rights as a transvestite homosexual? The answer is that they will not and they will harass and abuse Mr. XXXX physically, verbally and emotionally, perhaps even kill him, very soon after his arrival in Argentina.

**99.** As noted above, Mr. XXXX's homosexuality makes him a particularly high profile target. The Military, the Police, the death squads, even the gangs firmly believe that they are "cleansing" the body politic and therefore *La Patria* of all that is dirty, undesirable, and dangerous to the morality of *La Patria* and its children. Indeed, given the climate in Argentina and the role the authorities play in denying basic human and civil rights, it is my considered opinion that Mr. XXXX is at high risk for arrest at the airport and imprisonment. At best, there would be some form of preventive detention with the same end result: Mr. XXXX either going directly to jail or being tortured or killed "while trying to escape," or some such scenario. His chances of avoiding the authorities and detention are nil. Moreover, once incarcerated, the general prison population will immediately target Mr. XXXX for massive abuse and most probably death. As outlined below, neither the government nor the police can or will do anything to help Mr. XXXX.

**100.** Moreover, people in all cultures begin to look for scapegoats to explain THE CRISIS THROUGH WHICH THEY ARE PASSING AND ON WHOM THEY CAN VENT THEIR FRUSTRATIONS. Homosexuals have been singled out for centuries and it is no different in the Argentina of 2005. Mr. XXXX will be in danger not only from the security forces, but also from the mobs in the street which have become increasingly larger and bolder.

**101.** If not death, then jail, without medicine, without adequate food or any degree of safety, is the most likely fate for Mr. XXXX. Moreover, if Mr. XXXX is deported from the United States, his arrival will be well known to all relevant government agencies. His name will be on the flight manifest and if he

should enter by land, he will be logged in and his whereabouts known immediately.

**102.** Finally, there is a new element which has been added to all of the above, an element which could be even more dangerous to Mr. XXXX's safety than all the others. This is the change in United States's view of the respective roles of the military and the police in Peru and Latin America. On November 19, 2004, at a meeting of the Defense Ministers of the Organization of American States, United States Secretary of Defense, Donald H. Rumsfeld, told his counterparts that good progress had been on President George W. Bush's program for global peacekeeping, but added that "much work remains to better secure our region. The new threats of the 21<sup>st</sup> century recognize no borders. Terrorists, drug traffickers, hostage takers, and criminal gangs form an anti-social combination that increasingly seeks to destabilize civil societies. These enemies often find shelter in border regions or areas beyond the effective reach of government. They watch, they probe, looking for areas of vulnerability, for weaknesses, and for seams in our collective security arrangements that they can try to exploit."

Then in a paragraph which is still reverberating in Latin American capitals, Secretary Rumsfeld added: "The challenges we all face are complex and it is increasingly clear that there is no one nation that can meet these challenges alone. I repeat there is no nation that can meet these challenges by itself, it is simply not going to be possible. **Since September 11, 2001, we have had to conduct an essential reexamination of the relationships between our military and our law enforcement responsibilities in the U.S. The complex challenges of this new era and the asymmetric threats we face require that all elements of state society work together**" (Department of Defense Press Release, Quito, November 19, 2004). Emphasis Mine.

For over 20 years, the United States had sought to get the Latin American militaries to drop their Cold War "National-Security Doctrine," return to their barracks and leave matters of internal order to the police. Simply stated, the "National-Security Doctrine" held that "prolonged internal warfare placed a premium on surveillance of, and operations against, civilian opponents of incumbent governments as well as guerrilla combatants." Moreover, "military control and oversight of public policy gradually increased. By the mid-1970s military institutions were permanently concerned with defining 'national

objectives' and the strategies for their attainment; the distinction between politics and national security blurred. Almost any policy issued might have some national security implication, therefore requiring military scrutiny" (Brian Loveman, For La Patria: Politics and the Armed Forces in Latin America. Wilmington, Del.: Scholarly Resources, Inc., 1999, pp. 183-184)., 236-239).

Professor Loveman adds that "fighting insurgencies and subversives institutionalized repression, which was then justified by patriotism, national security, and a broader defense of the 'Western Christian way of life.' **Human Rights abuses were so widely denounced, so clearly documented, and so terrible and gruesome that the armed forces made themselves easy targets for international human rights watchdog organizations. They became, in the words of a former defense minister in Central America, 'international pariahs'**" (For La Patria, p. 184. See also, pp. 69, 185-188, 236-239). Emphasis Mine.

In fact, in the period from 1964 (the Brazilian coup d'etat) to 1996 (the Guatemalan Peace Accords), between 900,000 and 1.2 million people died in the civil wars and the thousands of military operations against "subversives" in Latin America (over 30,00 in Argentina alone, 1976-1983). Now the United States Secretary of Defense is calling for the military to assume internal control of their nations once more. Subjugation of drug traffickers, hostage takers, and criminal gangs is, after all, the duty of a nation's police, not the military.

Since the Latin American militaries and governments depend upon the United States for literally hundreds of millions of dollars in military and economic aid, Secretary Rumsfeld's comments are of enormous import. Latin Americans learned two centuries ago that it is counter productive to oppose United States policy in the Western Hemisphere. Therefore, Secretary Rumsfeld's words serve to enhance the power of the military in Peru and the rest of Latin America.

**103.** Exacerbating this tremendously is the fact the Supreme Court of Argentina declared unconstitutional all the amnesty laws passed in 1986 forbidding charges against military officers involved in the murders, disappearances, torture and other crimes to protect the military officers who committed such atrocities during the "dirty war" (1976-1983). Over 30,000 people died or "disappeared" and thousands more were tortured. It is my

professional opinion that the Argentine military will resist such charges and trials. Mr. XXXX was already in danger because of his homosexuality. If the Argentine military increases its power vis-a-vis the civilian government or actually takes power, the danger to Mr. XXXX will increase exponentially. Please see the World Briefing, *The New York Times*, June 15, 2005.

**104.** Regarding the question of whether or not Mr. XXXX could simply move to another region of the country, thereby evading the vigilance of his/her enemy, my response is an unequivocal and unqualified "NO."

**105.** Argentina, like all other Latin American republics, has an elaborate system of national identity documents which must be carried on one's person at all times. Although the exact terminology might vary from country to country, they all use the following: military ID (for males), electoral identification, and tax identification. All of these must contain current address information under penalty of arrest and incarceration. Argentine citizens may be and are stopped by security forces, AT WILL, and they had better have up-to-date documents or they will be sent directly to jail. Thus, Mr. XXXX's whereabouts will always be known.

**106.** In sum, then, due to that fact that he is an admitted homosexual transvestite who exhibits mannerisms on the effeminate end of the "masculinity" spectrum, Mr. XXXX is a high profile target who would clearly be in extreme danger if he were forced to return to Argentina. It is my considered, professional opinion that the Argentine military and police not only possess the desire to eliminate all criminals, gang members, undesirables and moral deviates (read homosexual) and thereby "cleanse" the polity, they have the power necessary to find and eliminate Mr. XXXX. Moreover, it is my judgment that they will indeed kill Mr. XXXX either in the short run or the long run, with a high degree of effectiveness.

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## THE MEANING OF MACHO

Some years ago, the great Chicano writer and thinker, Rudolfo Anaya, wrote: "The word *macho* has one of the shortest definitions in the Spanish language dictionary, and yet the cult of macho behavior (machismo or the macho image) is as ambiguous and misunderstood as any aspect of Hispanic/Latino culture. To be macho is to be male, that's simple, but when the term is applied to Hispanic male behavior, then the particulars of the role are defined according to the particular culture. From Spain to Latin America, from Mexico to the Chicanos in the USA, one gets a slightly different definition of the macho image at every turn" (see Rudolfo Anaya, "'I'm the King:' The Macho Image," in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 59).

In Anglo-American culture (i.e., The United States), *machismo* is usually defined simply as male domination of females, or as Omar S. Castañeda noted, "reduced to self-aggrandizing male bravado that flirts with physical harm to be sexual, like some rutting for the right to pass on genes" (see Omar S. Castañeda, "Guatemalan Macho Oratory" in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 37).

In the end, the complexity of the word *macho* derives from the fact that it can be used in both a negative and a positive manner. In a brilliant book on the subject, Alfredo Mirandé offers two very contradictory lists of descriptors:

Bravado	Brave
Cowardly	Courageous
Irresponsible	Responsible
Disrespectful	Respectful
Selfish	Altruistic
Pretentious	Humble
Loud	Soft-Spoken
Abusive	Protective
Headstrong/Bullish	Intransigent
Conformist	Individualistic
Dishonorable	Honorable

Hombres y Machos: Masculinity and Latino Culture. Boulder: Westview Press, 1997, p. 78.

Stated simply, "historical" *machismo* is actually male dominance of other males in all aspects of life: bravery, fighting, drinking, gambling, domination of females, etc. This concept, however, is changing in the "cradle" of *machismo*—the nation of Mexico. See Matthew C. Gutmann, The Meaning of Macho: Being a Man in Mexico City. Berkeley: University of California Press, 1996. Still, as is often the reality in matters of ideology, the "taught" have lagged behind the "teacher."

Moreover, of tremendous importance for this case is the warped definition of *machismo*, often held by police and the military in Latin America, which holds that harassment, abuse, assault, even rape of homosexual males somehow makes a man even more *macho*. One must remember that these attacks also serve as "reassertions" of the absolute and unmitigated control over all people sought by security forces in Latin America. See Brian Loveman and Thomas M. Davies, Jr., The Politics of Antipolitics: The Military in Latin America. Third Edition, Revised and Expanded. Wilmington, Del.: Scholarly Resources Press, 1997;

Use of *machismo* by Latino gangs in the United States is very similar, but even more exaggerated. Perhaps Rudolfo Anaya said it best: "As more Chicano families become single-parent families, the traditional role of the father and the extended-family males will not be as influential in shaping the behavior of boys. The boys are being conditioned instead by the behavior they see on TV, in movies and music videos. Boys loose in the hood are being shaped by the gang instead of the father. *La Ganga* shapes behavior, provides initiation, belonging, *la vida loca*, cruising, drinking, drugs, and guns" (see Rudolfo Anaya, "'I'm the King: The Macho Image,'" in: Ray González, ed., Muy Macho: Latino Men Confront Their Manhood. New York: Anchor Books Doubleday, 1996, p. 64).

## HOMOSEXUALITY AND PSYCHIATRY

Latin American parents/families (like their counterparts in most of the world) have often sought to "cure" their gay/lesbian relatives by sending them to psychologists/psychiatrists for medical "treatment." Beginning in the 1930s, homosexuality was formally defined as a mental disorder, a type of psychopathic personality disorder. In 1952, in its first *Diagnostic and Statistical Manual of Mental Disorders* (DSM), the American Psychiatric Association (APA) "included a category called sexual deviation as a subtype of sociopathic personality disturbance. Homosexuality was mentioned as one example of the sexual deviations. In the second edition (*DSM-II*), published in 1968, the reference to homosexuality continued to be included under the heading for personality disorders, a type of sociopathic personality disorder, and specifically as one of the sexual deviations."

Then, "the APA reviewed the findings from more recent research on gay men and lesbians. Following a period of intense political engagement and of considerable scientific evaluation, the Board of Trustees of the APA voted in December 1973 to remove homosexuality from its list of mental disorders. ... Remnants of the diagnosis of homosexuality as a type of disease were finally removed from the official list of diagnoses in 1986, and currently sexual orientation is not a consideration in defining mental health or illness in American psychiatry."

"Hostility toward homosexuality persisted among some psychiatrists after the nomenclature change and is maintained today by groups of psychiatrists and other mental health professionals who continue to advocate an illness model of homosexuality and offer treatment for it. These professionals do not represent the official view of American psychiatry regarding homosexuality and gay men and lesbians" (see Terry S. Stein, M.D., "Psychiatry and Homosexuality," in Bonnie Zimmerman and George E. Haggerty, The Encyclopedia of Lesbian and Gay Histories and Cultures, Volume II, George E. Haggerty, ed., Gay Histories and Cultures: An Encyclopedia, New York: Garland Publishing Inc., 2000, pp. 713-715). See also Dr. Stein's articles "Psychological and Psychoanalytic Perspectives on Homosexuality," and "Psychotherapy" in ibid, pp. 715-718.

On May 17, 1990, the General Assembly of the World Health Organization (WHO) removed homosexuality from its list of mental

disorders. This action served to end more than a century of medical homophobia in the world at large.

Then in July, 2004, in a complete and final reversal of the American Psychiatric Association's 1952 position, the American Psychological Association announced at its annual convention that it would take a leadership role to help repeal laws that make marriage for gay couples illegal. The group said the fact that gay couples can't marry could psychologically harm the individuals, as well as their relationships. "Discrimination of all kinds takes a toll on people's health and psychological well-being" (Jen Christensen, "U.S. Psychologists Favor Marriage Equality," PlanetOut Network, July 29, 2004).

In another landmark step, the American Counseling Association elected an openly gay male, Mark Pope, as the Association's 2004 President. See The Advocate, December 9, 2003.

Psychiatrists, psychologists and other health professionals in Latin America, however, continue to view homosexuality as a "treatable, curable illness," and families continue to seek medical treatment for their families and friends. I personally know of members of my extended family in Peru who have been sent to psychiatrists and psychologists to "be cured." Moreover, just last year (2004) my Mexican-American son-in-law's mother wanted to send her younger son to a psychiatrist for that same reason.

## HOMOSEXUALITY AND THE ROMAN CATHOLIC CHURCH

There exists a voluminous literature on the Roman Catholic Church and homosexuality, but one must begin with Joseph Cardinal Ratzinger's two Letters to the Bishops of the Catholic Church. Cardinal Ratzinger, then Prefect of the Congregation for the Doctrine of the Faith and now Pope Benedict XVI, issued the first on October 1, 1986. Entitled "Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons" it is the document most often cited by people on both sides of the controversy: "Explicit treatment of the problem was given in this Congregation's 'Declaration on Certain Questions Concerning Sexual Ethics' of December 29, 1975. That document stressed the duty of trying to understand the homosexual condition and noted that culpability for homosexual acts should only be judged with prudence. At the same time the Congregation took note of the distinction commonly drawn between the homosexual condition or tendency and individual homosexual actions. **They were described as deprived of their essential and indispensable finality, as being 'intrinsically disordered,' and able in no case to be approved of.**

In the discussion which followed the Declaration, however, an overly benign interpretation was given to the homosexual condition itself, some going so far as to call it neutral, or even good. **Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.**

**Therefore special concern and pastoral attention should be directed toward those who have this condition, lest they be led to believe that the living out of this orientation in homosexual activity is a morally acceptable option. It is not."** Emphasis Mine.

Appended to the Letter is the following statement: "During an audience granted to the undersigned Prefect, His Holiness, Pope John Paul II, approved this Letter, adopted in an Ordinary Session of the Congregation for the Doctrine of the Faith, and ordered it to be published."

The second Letter is entitled "Letter to the Bishops of the Catholic Church on the Collaboration of Men and Women in the

Church and in the World," was published on May 31, 2004, and stated the Question as follows:

"Recent years have seen new approaches to women's issues. A first tendency is to emphasize strongly conditions of subordination in order to give rise to antagonism: women, in order to be themselves, must make themselves the adversaries of men." ...

"A second tendency emerges in the wake of the first. In order to avoid the domination of one sex or the other, their differences tend to be denied, viewed as mere effects of historical and cultural conditioning. In this perspective, physical difference, termed *sex*, is minimized, while the purely cultural element, termed *gender*, is emphasized to the maximum and held to be primary. The obscuring of the difference or duality of the sexes has enormous consequences on a variety of levels. **This theory of the human person, intended to promote prospects for equality of women through liberation from biological determinism, has in reality inspired ideologies which, for example, call into question the family, in its natural two-parent structure of mother and father, and make homosexuality and heterosexuality virtually equivalent, in a new model of polymorphous sexuality.** Emphasis Mine.

Appended to the Letter is the following statement: "The Sovereign Pontiff John Paul II, in the Audience granted to the undersigned Cardinal Prefect, approved the present Letter, adopted in the Ordinary Session of this Congregation, and ordered its publication."

Pope John Paul II was a strident foe of homosexuality as indicated by his approval of Cardinal Ratzinger's two Letters and this statement in his last book, published just before his death in April, 2005: "Nor are other grave violations of God's law lacking. I am thinking, for example, of the strong pressure from the European Parliament to recognize homosexual unions as an alternative type of family, with the right to adopt children. **It is legitimate and even necessary to ask whether this is not the work of another ideology of evil, more subtle and hidden, perhaps, intent upon exploiting human rights themselves against man and against the family**" (Pope John Paul II, Memory and Identity: Conversations at the Dawn of a Millennium. New York: Rizzoli International Publications, Inc., 2005, p. 11).

For a recent Latin American example, one only need to cite Cardinal Javier Lozano Barragán, a prominent member of the Mexican Church hierarchy, who, in October, 2004, denounced a Spanish proposal to legalize same-sex marriages, saying it would be like considering cats or cockroaches part of a family. "They even give cockroaches the rank of family now because they live under the same roof. If there's a cat, a dog, two lesbians and everything living there, it's a family" (*The Los Angeles Times*, October 13, 2004).

Moreover, Roman Catholic clergy all over Latin America have publically supported and adhered to a recent publication in Peru. At the request of the Cardinal of Lima, Archbishop Juan Luis Cipriani Thorne, the Pontifical Catholic University of Peru (*La Pontífica Universidad Católica del Perú*) published (2002) a pamphlet entitled *Identidad Sexual: ¿Es Posible Escoger?* ("Sexual Identity: Is It Possible to Choose?") which describes homosexuality as a curable illness: "There are innumerable psychological studies from the past 40 years that describe childhood problems that form part of the history of persons with homosexual inclinations: distorted maternal and paternal role models; peer group problems in childhood; sexual abuse in childhood, among others. ... Like any other behavioral problem, homosexuality can be reversed" (Centro de Asesoría Pastoral Universitaria de la Pontífica Universidad Católica del Perú, 2002).

The concept that homosexuality is "curable" is common in Argentina. Please see my short description of "Homosexuality and Psychiatry" which is appended to this declaration.