
REPORT FROM THE EDUCATION IN TRANSGENDER ISSUES PROJECT

Saturday, August 28, 1993

Second Annual International Conference on Transgender Law and Employment Policy

PROJECT MODERATOR: Sharon F. Kahn (awaiting results of bar exam)

By Phyllis Frye:

The second report is Education in Transgender Issues in the Law. I wish to introduce to you Sharon Kahn. She's a very recent law school graduate, and she has just taken her State Bar exam. In fact, she took it with Tish Frederick, our guest from last night. They're both awaiting their results.

And she — it is very interesting — she is a pinch-hitter, and she's done an admirable job. We had someone else scheduled for this and that person couldn't come, but that person sent me some of her material. I'm sitting there thinking, "Oh, my gosh, what am I going to do for this?" And Sharon called me on the phone and said, "I just finished doing a paper. I don't know if you're interested in it, but I did it for my law class, and it's kind of dealing with your issues. Would you mind reading it."

Bless her heart; she has a lot more on the ball than she gives herself credit for. Sharon, you poor-mouthed it so bad that I almost didn't read it. It was a illuminating. It was exciting. It was educational. It was to the point. It was a wonderful paper. [Note: It is reprinted in the Appendix 3.] I called her, and I said, "Guess what? It's right in line with the vacancy, will you do it?" She says, "Yes." She's a pinch hitter, and I want you to listen to what she says because she's going to speak from wisdom. You do have wisdom my friend. Give her a round of applause.



Sharon F. Kahn, Law Graduate and awaiting bar results,
Education in Transgender Issues Project Moderator

By Sharon Kahn:

Actually what I have is a severe case of heartburn, I think. There is a convention — if you've ever worked on a student paper or been a journalism student. They say in order to convey a story effectively, you got to tell your audience who and what and when and why and how. And the "how" that I'd like to focus on at this point is, "How did I get roped into this?" I don't know anything about transgender issues. I really don't. I had some questions, so I wrote a paper. The truth is that I find Phyllis sort of frighteningly persuasive. When she called me, I didn't feel as if I could say anything but yes.

But I am, or at least I was, incredibly ignorant in this area. I am a board member of the Bar Association for Human Rights. Phyllis is also a member of that. And my involvement up until this weekend has been to sort of dutifully add the word, "transgendered," to every invitation that I would send out — say to law students — inviting all gay, lesbian, bisexual, and, dutifully add transgendered, law students to our functions. Never encountered any. Phyllis was our only member, but I did it.

The whole area of education in transgender issues, I think, is incredibly significant, because one of the things I have discovered about myself — despite my liberal upbringing and my commitment to causes of all kinds — is that I have inside me a grain of bigotry. I believe to my sadness that we all do. I know that there is some distance between the transgender community and the gay/lesbian community, which I think is a crying shame.

But I think we need to acknowledge it before we can move past it. You need to acknowledge it in your community; I need to acknowledge it in my community. We need to set up a dialogue, and we need to do it quickly, because I have been, in effect, transformed by this weekend.

I feel as if our causes are one, and I did not feel that way before. I did not see the merit of uniting the causes. I did not really comprehend the importance of dovetailing these issues. And I am, in microcosm, the effect or the outcome that you are seeking. What needs to happen is an expansion of this process to whatever way possible to make that happen on a large scale.

What the committee did was I said, "We have a river, and it's a journey. We need to come from here to there. I've got a boat, and I have no idea how to steer it or paddle it. Give me some oars." So, everybody sort of contributed an oar. "Well, put this in the water, and it will get you a little bit further." And that's what we're going to talk about.

Now, I like the convention, actually, of the what, where, who, why, when, how and so on and so forth. But before I get into that, I thought I'd spend a few minutes on — since this is a law conference — on the legal aspects that do have an influence on this. One of the things that's significant is that we have a right to form associations. That's a constitutional right. It's very fundamental, it's very important and it's very protected.

There's a whole slew of cases, mostly of campus organizations, that sort of reiterate the ability to form a campus organization, to get it funded, and to get official recognition. You've got Gay-Lib versus University of Missouri, Gay Rights Coalition versus Georgetown University, Gay and Lesbian Student Organization versus Gome, Gay Student Services versus Texas A&M, The Gay Student Organization versus Bonner, and The Student Coalition for Gay Rights versus Austin P.D. State University. All these cases say the same thing. You have the right to form the association. It doesn't matter if there's a sodomy statute in the states and that what you're supposedly promoting is an illegal action. That is not material. What's material is the right to associate freely, and the right to receive funds.

This is useful. Lots of other people make it useful. These cases are now forming the basis of suits that are being brought by fundamentalist Christian groups to organize, and by the KKK to use student facilities for rallies. They can be used by anybody. This is a legal right that's extremely important. Clearly there are organizations. There probably should be more and there probably should be a push for student organizations

and an encouragement of people who are on campus right now to start early and to start forming associations. There's a great deal of power in unity and there's a great deal that can be accomplished by an organization that exceeds, I think, the grasp of an individual.

With that, let me go back to the who, what, where and why. The "why" I think is very simple. Education is empowerment. And empowerment is the goal. The message is not a complicated one. The message is both a very personal one, and it's also a very political one. The personal one is, we are not a threat. You do not need to fear us. We are this way either by choice or by nature; it doesn't matter. We are this way. Deal with us as we are. We have a right to all of the freedoms and the rights and the privileges and the powers of every other citizen in this United States. We have a right to the obligation of the law equally to us. In order to achieve having people to understand, that there is a body of people that is in some way being denied certain privileges, they have to become educated in the issues. That can be a tall order.

This is a wonderful conference. But basically, when it gathers and speakers come and you talk to each other and we talk to each other, we're preaching to the choir. I don't see in the audience today the kind of people or enough of the kind of people that need to be hearing the message. Now, that's partly a function of time. That will happen over time, but there's certain things that need to be done in the meantime to make it happen.

You can do it with a long-term vision, but you have to have short-time goals. I really like what Marian was talking about, about an actual strategy, perhaps something that's an ad hoc or a standing committee that can formulate objectives and create a plan to get there and to make that happen. When you make progress on the short things, you end up making progress on a long term and in some ways you can get the vision itself. But you got to take care of what's happening from day to day.

Now, the target group is "who" needs the message. Well, everybody needs the message. That's real clear, but there are also three distinct categories of hearers. One is the transgender community itself, and it needs to be more outreached within the community. To shift from, what is already shifting from, a heavy grapevine communication to a more formal means of communication. In a sense it reminds me of like the Mattachine Society and the Daughters of Bilitis back in the fifties which was the way that gays communicated at that point. It was more underground than above ground. There needs to be more above ground effort at this point.

So, you have the community itself. I think there needs to be a very special relationship developed with a gay/lesbian community, because the issues are so very similar; and the progress that has been made in that community is so much further along on a path that you can save, I think, a lot of time and a lot of effort by coat tailing it. That's why I think an increased dialogue is absolutely essential. For my part, personally, one of the things I'm going to do is start introducing chunks of things that I have read and things that have happened here in our newsletters just to our members. It's not much, but it's a start. And I think any kind of connection that you can make for shared material between gay/lesbian newsletters and the ones that you produce are real important. And I think it should be coming into you as well as going out from you. We're going to marry the causes. That's one of the ways to do it.

The second group is people who are going to have an impact on our lives in a very real and practical way. That's attorneys, judges, marriage and sex counselors, human resources professionals, psychiatrists, and medical professionals. Very special efforts need to be made to target those people and to get information to them. The "how" within that group, I think, is just more of the same that's been done. What people mentioned during the committee workshops was the presence of hot lines, support groups, of course the newsletters that go out, and the creation and distribution of pamphlets. I think there was one woman who said when she's given a question about being transgendered, she just hands one over. "Here, this will answer your question."

There was also something that I thought was extraordinarily creative — I think its a wonderful idea — and that is the putting up of business cards that use the organization's name and provide a phone number and put them in the literature. Go to public libraries, go to alternative book stores, go to medical libraries, go to law

libraries. Go anywhere that you can find resource literature about anything that has to do with transgender issues and stick those cards in there.

An alternative suggestion — and of course, all of this is limited by your amount of time and effort and money and how much you can spend and how wisely you think you can spend it — is if you've got the money and the time, be liberal with it. Buy a resource library, as it were, of the best source books available. Go get some of those nifty labels, paste them in there so that they're permanent, there's not cards that can fall out. Donate the whole set to some reasonable library. In some cities that would be the public library. In other cities that might be post graduate program for psychology students, maybe one that emphasizes sexuality. Donate a clutch of books that have an imprint or seal so that you are part of a permanent library and can be contacted in that way.

Another thing to do is, in a sense, act as a missionary, if you will. Familiarity does not breed contempt: it breeds acceptance and understanding and working toward a common cause that has nothing to do with self interest. It is also something that's very useful. Volunteer! Volunteer as a transgendered person, so that the people that you're working with — the people who can appreciate your competence and your effort — know that they're dealing with someone who is transgendered. You do this one person at a time, and it makes a difference. One drop into the river and the ripples just keep going out and out and out.

As far as outside groups, these are some of the strategies that were mentioned during the meeting. One is to send a copy of your newsletter to all gay and lesbian groups. Another is to simply exchange information back and forth and to actively court gay and lesbian groups to set up some kind of a panel or a cross dialogue or a cross conference or something that addresses all of our issues at the same time and the same place instead of separately.

You can set up a speaker's bureau. You can do it locally, or you can do it nationally. There is some discussion about how it's difficult to speak to outside groups if you're very much in the closet, but the closet can change its dimensions. The closet can change its dimensions or not become one if you're not in your home territory. If I live in Atlanta and you live in Baltimore and if there's a group in Baltimore that wants to hear you and my group in Atlanta wants to hear me and neither of us is comfortable doing that, then switch. I'll go to your city, you come to mine. You're not known here; I'm not known there. We can go as transgendered people. Be not out-of-the-closet but be safe-as-far-as-we-feel and yet be doing something that's necessary that may not be able to be done in home territory.

Go and talk as you have been to human sexuality classes. Go and talk at universities that have any kind of psychology classes that deal with human sexuality. Grab medical students and psychology students and psychiatry students while they're captive audiences. Grab them while they're students. Call up the professors. Ask to get on the agenda, ask to be part of the course. Go in and spend some time there.

We were talking about purchasing small libraries. Do the same thing with the "Proceedings" from the conference and donate these to law libraries, and if there's enough money, to every law library in town. If there's not, then send one to Harvard. Send one to the primary law schools wherever you think the true movers and shakers are in terms of civil rights. But send something, send something. Ideally, have one copy locally and then send a letter to everybody in the judiciary where you live and say, "Guess what we have available for you? If anybody ever comes through your courtroom and has a transgender issue, we've got this wonderful resource material. Here's where it is."

Send a conference brochure to the local members of human resource professional groups. Now, I don't know what those groups are. I call my brother. He's one of the resource professionals. I said, "Say, Eddie, what do you belong to?" He said, "What do you mean?" I said, "Well, what's an organization for Human Resource professionals?" He said, "Well, which one?" I said, "I don't know which one, that's why I'm asking." So he says, "Well, let's see. There's the Society of Industrial Organizational Psychologists, American

Management Association, then there's the Society of Human Resource Managers, and the Organizational Development Network, and I also belong to the Equal Employment Opportunity Advisory Counsel."

And I thought, this is five organizations that are national. One of them is bound to have a local chapter in your city. If there's not a local chapter, there's bound to be something else. Find out who it is. Find out who runs it. Get a copy of the mailing list. Invite these people to come to the conference. Offer them your services as some sort of an educator. People are always looking for an extra slot to fill. Another half hour, another hour. They need presenters. Be a presenter. Get the issues out there and get them to the people who make decisions about hiring and firing. They're critical.

Oh, there was another suggestion from my brother. Get a list of the Fortune 1000s. Send them a letter, address it to the diversity manager or the EEO Director. Again, talk about some TG conference that's available, perhaps the annual IFGE.

You can sometimes offer to sponsor MCLE events for local bar associations that might be particularly useful with a local section of the civil rights or sometimes it's called the Human Rights section of the local bar association. They again are usually looking for presenters or for some sort of program. Create one.

Someone suggested that during the annual law conference, one thing that could be offered would be a parallel program that deals with legal issues. Perhaps a panel of transgendered attorneys who deal with legal issues beyond the ones that occur to people more commonly, like personal identification papers where some of the criminal law aspects is so much in the law that touches on transgender issues. To have a panel that is doing that, I think would be extremely helpful. Again, that focuses on the community but it also would be available to attorneys to attend and as a parallel to the annual meeting I think could be very helpful.

There is of course the court of last resort which is the appeals court. There is some hope in the law. There's not a great deal of it because so far the judiciary has done some interesting tap dancing to change definitions. It's kind of like Alice through the Looking Glass. The queen waves her wand — you need it so because she said it is so. So, the courts will look at discrimination against someone who is transsexual and say, "No, no, no, no, no. This is not discrimination based on sex. This is discrimination based on behavior. They change their sex and that's why they're being discriminated against." Now, that distinction is lost on me, but it's made routinely in the courts. Not always however.

There's beginning to be some hope. There was a case a number of years ago called Loving versus Virginia, that dealt with miscegenation, the inability in some southern states of blacks and whites to marry. And the court listened to the same argument. The state said, "No, no, no. This is not discrimination based on race because whites and blacks are equally disfavored. Neither of them can marry someone of the opposite race and therefore this is not racial discrimination."

Well, the Supreme Court didn't buy it. They said, "Of course this is discrimination," and they struck down the state law. That case was used in the Hawaii decision recently when it was dealing with the state statutes regarding same-sex marriages. The state used the same argument, "No, no, males and females are equally disfavored by this statute, therefore it's not sex discrimination." And the Hawaiian courts said, "Poppycock, of course it is. You have a right to marry that is being infringed upon because of the sex of the person that you want to marry. That is discrimination based on sex plain and simple." It more or less ordered the state to come back with the compelling reasons for maintaining such a law. And we'll see what happens there.

What's important about that is the shift and willingness on the part of the court to take what is established law, and apply it to the racists and apply it to the sexists. I think the outcomes that are possible from that have a lot of impact on the gay/lesbian community and on the transgendered community as well.

The other case that I think is real interesting in this area is Price Waterhouse versus Hopkins. A woman

was fired from Price Waterhouse because she was too macho. The gentleman who fired her suggested that she should look more femininely and talk more femininely and go to charm school. Well, a court looked at that and ruled it as outrageous. In their discussion of the case they said, "We want to eliminate, not just discrimination based on sex but, discrimination based on sexual stereotypes across the board; all ends of the spectrum continuing from the beginning to the end." That's great news. That is excellent news if you discriminate against someone because they are transsexual. If that isn't discrimination based on sexual stereotype then what is? And therefore there are some arguments in the law that can be used to our advantage.

I was thrilled yesterday by Judge Parrot's warnings. And one is to be patient, to be persistent, to prepare for, expect, and deal with failure and to keep going back and to use the language that the court understands. Those are wonderful words, like equal protection, and these great cases do offer some hope.

That's all I have right now. If there was anybody who was in these meetings, if I've left something out that's significant, if I have put a spin on something that you think doesn't represent some of the things we talked about, stick a hand up in the air, and we'll talk about it. And if not, I do want to wrap up by saying one thing.

I'm not as sure of myself as Phyllis is, but I've spent a lifetime being out of the mainstream. It's a pain in the butt being a Jew especially at Christmas time when you're seven years old. But you learn that you have to cherish your difference, and for some reason, because of that, I was not afraid to be out as a lesbian. I'm sort of with Phyllis — if you're in the closet, try to come out. Try to give yourself more reasons to come out than reasons to stay in. The reasons to stay in, God knows are valid. There are real consequences. There are real people out there and they would really like to kill you.

But that's not everybody and that's not a likely consequence. I cannot kill parts of myself and do for them what they would like to do for me. If I spend my life not being myself, then in effect, I am half dead. I was not willing to do that, and I don't believe that I have paid a price. If I've paid it, it's not even known to me and so I, in effect, have not paid it at all.

My issues are not exactly the same, but I felt the same fears. I worried about the same consequences, and I didn't experience them. There's a wonderful freedom in being "out". If you can do it, do it. It'll be wonderful not just for the community, but for yourself. Thank you.

By Phyllis Frye:

I thought you were going to be boring and dry. You'd almost reconvinced me that you were going to be boring and dry. You were terrific.

CHILL THE INDIFFERENCE IN YOUR AREA

By Phyllis Frye:

I want to add one thing. I want to add one thing on her strategy of the mail outs and contacting the human resources people and such. Each of you, before the third law conference, will get a brochure. Cynthia and Linda will make sure you get one. Take that brochure, get hold of that mailing list, go buy some stamps and anonymously — if you have to, although I'm a big out of the closet person, anonymously — if you have to, make sure that every human resources person, every person in the personnel section of the companies in your city get an invitation to this conference. Are they going to come? Probably not. I hope they do, but probably not.

It's going to do something very significant. It's not going to chill bigotry, because bigotry is a different bear.

But it will chill indifference. These personnel people will see the Third International Conference on Transgender Law and Employment Policy, policy is part of our name. They will see it as the third, and they will see that it's been given MCLE hours, and they will see that we've got all these attorneys involved, and blah, blah, blah. What's going to happen is the next time a transgendered person within their company wants to transition on the job or wants to be hired by them, instead of being indifferent to them when the boss comes saying, "What do we do with this freak?" that person is going to say, "Whoops boss, we better go real careful on this because those people are organized. They got a team of attorneys. They got a big law conference going on every year in Houston." You're going to make them think twice. They might catch their breath and they might give this transgendered a chance.

So what this mail out does, which you can do anonymously, is tend to chill indifference in your community. And if one of them comes, suddenly you know a personnel person who's "open" for a company that's "open" so that if you want to go to work for that company you can openly.

Another good source for mailing lists for your brochure for the third law conference brochure is to contact your local bar association. Whether they're large or small, get a list of those attorneys that do labor law. You can even get the labor law section from your state bar. And those people could certainly use one of our brochures. Now, I'm going to charge each of you here: when you go to your home state and you get your brochure that you take it upon yourself as a personal project to make your own personal area that much better — to not only get the human resources people but to get the labor law section of your local and your state bar and make sure they get a brochure also.