Practice Tips for Working with Transgender Clients

Transgender people experience discrimination in most every area of their life from schools, shelters, walking down the street, using the bus, senior citizen homes and many other places. Transgender people make less than $10,000 per year according to Injustice at Every Turn, the National Transgender Discrimination Survey (NTDS) conducted by the National LGBTQ Task Force and the National Center for Transgender Equality in 2011. Transgender people suffer unemployment at twice the rate of the general population according to the NTDS. This same survey shows that 90% reported experiencing harassment, mistreatment or discrimination on the job or took actions like hiding who they are to avoid it.

I’ve been working with transgender clients for over twenty years now. I’ve represented transgender people when others turned away transgender clients. I represented transgender people along with many other underrepresented people in my practice because I was transgender and black and because it was the right thing to do. The NTDS reported that the combination of anti-transgender bias and persistent, structural racism was especially devastating. I was constructively discharged from my corporate job which allowed me the opportunity to open up my law practice. I have worked with a close network of attorneys that have represented transgender clients over the years and hope to share some things that I’ve learned along the way. The statistics should help put into perspective some of the population but population, but just as every human being, not every transgender person is the same. There is also a new survey being conducted this year and as the population has changed. I am sure that the survey results will have changed.

The first recommendation is that if you have any questions or reservations, there are plenty of resources available for you. It’s better to ask the question ahead of time than to damage or ruin someone’s opportunity to something that means something so dearly continued on page 6.
Greetings! Welcome to *The Equalizer*, the newsletter of the American Bar Association's Commission on Sexual Orientation and Gender Identity (SOGI)!

First, allow me to introduce myself. I was privileged in the Fall to take over as the new Chair of the SOGI Commission. After 25 years as a family law litigator, I recently accepted a position as the new Deputy General Counsel for the Oregon State Bar. As a family law attorney, I have been involved with the legal issues surrounding sexual orientation and gender identity for many years.

2015 was a truly remarkable year for LGBT rights. The first edition of *The Equalizer* celebrated the historic Obergefell marriage decision, and since then the Federal government has been proactive in providing further protections to LGBT Americans, including a directive from the Department of Justice confirming that married same-sex couples would receive all federal benefits regardless of their states of residence; an EEOC decision in *Baldwin v. Foxx*, which found that sexual orientation discrimination in employment is a form of sex discrimination and is prohibited under Title VII; and the White House’s support for the Equality Act, a federal bill that would prohibit discrimination based on sexual orientation and gender identity in employment, housing, credit, education, public accommodations, federally funded programs, and jury service.

Notwithstanding these successes, we still have many battles to fight at both the state and federal levels:

Many States are gearing up to try and pass so call Religious Freedom Acts that would, in many cases, allow open discrimination against LGBT persons.

Our LGBT youth still face terrible bullying, educational, and homelessness issues. Additionally, while a few states have addressed the issue of “conversion therapy” by passing bills to ban this discredited practice, the federal companion bill has stalled.

Our transgender family continues to face even greater challenges. The Department of Defense’s extended non-discrimination protections did not include transgender individuals, and Houston voters rejected moves to enact protections for transgender and gay people after a divisive campaign that lasted more than a year and portrayed the LGBT community as “bathroom predators.”

The SOGI Commission is dedicated to combating these and other issues still facing the LGBT community. In this newsletter you will read about just a few of the projects and programs the commission is working on. In addition, here are just some of the other things that are going on that you should know:

**Model Rules of Professional Conduct:** We continue in our efforts to amend the Model Rules of Professional Conduct to prohibit discriminatory conduct by attorneys, including harassment and intimidation as a form of bias. Harassment and bullying of witnesses, employees, and opposing counsel on the basis of sexual orientation and other protected categories should not be tolerated. SOGI Commissioners, liaisons, and friends will attend another open hearing at ABA Midyear, hosted by the ABA Standing Committee on Ethics and Professional Responsibility, to argue the case for change.

**Publications:** “Out and About,” our publication in partnership with the National LGBT Bar Association, which shares the experiences of lesbian, gay, bisexual, and transgender attorneys, academics, and jurists in the profession, was released in September and is available for order at the ABA web store.

**CLE:** On Tuesday, February 23rd we will cosponsor a CLE program exploring whether sexual orientation discrimination in employment is a form of sex discrimination and prohibited under Title VII. The program will be led by EEOC Commissioner Chai Feldblum.

**Law Students:** We are continuing our efforts at securing inclusion and recognition of lesbian, gay, bisexual, and transgender law students through revisions to Law School Standard 206. SOGI is working with the Commission on Disability Rights to ensure that law school admissions policies reflect the ABA’s Goal III.

We on the SOGI Commission continue to work hard on behalf of the LGBT community. In its young life, the SOGI Commission has established itself as one of the most influential bodies within the ABA, and we look forward to continued success. We have been and will continue be instrumental in directing both internal and external ABA policies and leading efforts for full LGBT inclusion.

If you are interested in being a part of this very exciting and essential work, please do not hesitate to contact me, or any member of the Commission, our liaisons, or our outstanding staff.

Onward!

MARK JOHNSON ROBERTS
Chair, ABA Commission on Sexual Orientation and Gender Identity
The Nashville Scene has recently dubbed civil rights attorney Abby Rubenfeld as “the warrior,” referencing her pivotal role in the recent marriage equality victory. Those of us who have known Abby for more than five minutes, and the more of us who have known of Abby and benefitted from her hard work and dedication, congratulate the Nashville Scene for pointing out the obvious. With all due respect to the Nashville Scene (and seriously, major respect is due to the Scene for its outstanding homage to Abby), the term “warrior” is a grave understatement. Perhaps one of the best terms that could be used to describe Abby Rubenfeld is “champion.”

Abby was fighting for LGBT equality before it was cool. Abby enrolled in Princeton University which with the desire to be the first woman to serve as the President of the United States. She played basketball and served as the school’s first female student body president. When Abby realized she was a lesbian, she discounted a career in politics and decided instead to do everything in her power to ensure that a woman would one day serve in the post of President. From her enrollment in the Boston University School of Law to her present day law practice in Nashville, Tennessee, Abby has been our champion.

Of course, Abby has not just battled for women’s rights, but for equal rights for all people under the law. Her resume is impressive: A former director of Lambda Legal Defense Fund, board member for the Human Rights Campaign, chair of the ABA Section on Individual Rights and Responsibilities, and deep partnerships with the Tennessee Equality Project, the American Civil Liberties Union, and the National Center for Lesbian Rights, among many other organizations. Throughout Tennessee, the southeast, the nation, and the world, Abby’s influence and dedication is both taken to heart and celebrated. Abby has truly made this world a better place for everyone.

Of course, her most recent achievement has been the marriage equality victory. But her entire life and career has been a testimony to the significance of equality and justice. She served as a voice for the voiceless during the AIDS crisis. She has stood beside parents who lost legal rights to their children because of intolerance for the parent’s sexual orientation. She has represented those who have lost their jobs because they were LGBT. She led the successful charge to have Tennessee’s sodomy law overturned.

And of course, Abby is a mother, a spouse, a teacher, a mentor, and a friend to so many people. She is a role model for those who pursue justice and equality. She is deeply loved and respected, both for her efforts to make this world a better place and for being the tremendous human being that she is.

Please join me in congratulating Abby for her receipt of the ABA Commission on Sexual Orientation and Gender Identity’s prestigious Stone-wall Aware. The fight is far from over, but with Abby and so many other champions on our side, we can have high hopes for our future.

JOHN T. RICE
SOGI Liaison from Young Lawyers Division
Victor M. Marquez, a 2016 Spirit of Excellence Award Winner

MD: Victor, congratulations on being one of four recipients of the American Bar Association’s 2016 Spirit of Excellence Award. What was your reaction when you learned that you were receiving this prestigious Award?

VM: Thank you, Marvin. And thank you for all the work you are doing within the ABA. I was ecstatic when I received a call from Will Gunn, the Chair of the Commission on Racial and Ethnic Diversity in the Profession. I felt extremely humbled and honored to have been selected for the Award. It is truly a huge honor because it is coming from my peers. I genuinely feel that this recognition comes with even greater responsibility to raise my level of advocacy in advancing equal treatment and inclusion of diverse law students, young lawyers, as well as seasoned lawyers at all levels of our profession, including in the public interest arena, the judiciary, and academia.

MD: When and why did you decide you wanted to be a lawyer?

VM: I knew early on when I was just a teenager that I wanted to be a lawyer when I grew up. When I was in Venice High School in West Los Angeles, I had the destiny of meeting Tom Bradley, the first black Mayor of Los Angeles. He was the first person who brought the legal profession onto my radar. I was an impressionable young boy trying to figure out who I was and where my life could take me. I walked up to him and introduced myself. My friends made fun of me for going up to the Mayor, and I was teased for talking to a black man. Race relations at the time were strained between African Americans and Hispanics in my neighborhood and our two respective communities were not really talking to one another. There were a lot of riots and fights between us. I always intuitively knew it was wrong.

I remember asking the Mayor what he did for a living. He responded that he was Mayor. I told him that I already knew he was Mayor, but I wanted to know what was his profession. He said that he was an attorney. Then I asked why “we” had never had a Hispanic Mayor since there were many Mexicans living in Los Angeles. His response was that I could become the first Latino Mayor of Los Angeles. I then told him that I did not think that is what I wanted to do, but that I would become an attorney just like him. He smiled and said, “You will.”

MD: In 1987 you earned your B.A. in Law and Society from the University of California at Santa Barbara. In 1990 you received your law degree from Santa Clara University School of Law. Where did you work after you passed the bar?

VM: I began my legal career as an associate attorney in 1990 working in the business real estate group of Gordon & Rees in San Francisco. In mid-1993, I decided to go to work in the public interest sector and took the position of Executive Director of S.F. La Raza Centro Legal providing legal services to the poor.

MD: Why did you start your San Francisco law firm?

VM: After considering returning to a mid-size to large firm, I decided to start my own practice to give me the flexibility to dedicate a good portion of my practice to providing legal services to individuals who might not otherwise be able to afford to pay. I also wanted to continue to work closely with the community and, in particular, non-profit organizations.

MD: You’re a strong advocate for immigrant rights and for the rights of lesbian, gays, bisexual and transgender (“LGBT”) individuals. Why are you passionate about these issues?

VM: I’ve lived the life of an immigrant and I’m openly gay and married to my partner of 24 years. It is both who I am and what I am. I find intense gratification in knowing that not only am I giving back to my respective communities but that I’m
constantly striving to find ways to reach across the aisle and work with as many diverse communities as I can. To me, it’s a calling and a duty to advocate and sometimes fight for a more inclusive tolerant society.

MD: What are some of the other issues that you’re passionate about as an attorney?

VM: One issue is mentoring. I’ve worked with dozens of law students, young lawyers, and my peers in helping to shape their professional careers. I’m also passionate about increasing diversity in the judiciary. I’ve also walked many precincts and contributed to elect many ethnically diverse women, men, and LGBT persons to office, in California and other parts of the country.

MD: You’ve been recognized as “One of the Most Influential San Francisco Bay Area Latinos” by the S.F. Chamber of Commerce and as “One of the Most Influential Hispanics in America” by Hispanic Business Magazine. You have extensive experience at providing government relations services at local and state levels throughout California. Why did you get involved with advocacy and lobbying work?

VM: There’s a huge need for people who come from diverse backgrounds to undertake advocacy work. “Growing up” professionally, I could count on one hand the number of ethnically diverse lobbyists in my area. There was and is a gap in this arena, and I feel compelled to try to make a difference to ensure some level of a fair playing field for our respective ethnic communities.

MD: Victor, you were elected as the National President of the Hispanic National Bar Association (“HNBA”) from 2007 to 2008. You were the first openly gay President of the HNBA and you established its LGBT Law Section. What path did you take to reach the Presidency of HNBA and were there any obstacles that you had to overcome?

VM: As a Latino openly gay man, I’ve encountered racism in the LGBT Community and conversely I have encountered homophobia in the Hispanic Community. I could have easily walked away, but I chose to stand up and “fight” for what I believe all people want, which is to be treated fairly for who they are and what they are. I’ve chosen to serve to help make a change for the better and I’ve wanted to pave a path so that others that follow will not have to face the level of blatant discrimination. I’ve had folks who were initially reticent to accept me for who and what I am, but who later came around to understand that in the end, we are all striving for a more inclusive and just society.

MD: You’re currently a SOGI Commissioner. Why did you become involved with SOGI?

VM: After working for over 20 years on advocacy within the Hispanic community and to some extent within the LGBT community, I felt it was time for me to devote more time to LGBT issues and to work on reconciling the gaps in advocacy between the LGBT rights and those of ethnically diverse communities. There’s a lot of work to do and I’m up for the task.

MD: What are some of the activities you’ve worked on for SOGI?

VM: I helped to organize the first Annual Advocacy Day on the Hill in 2015 to advocate at the White House and in Congress on LGBT issues. I’m a constant voice for inclusion of ethnically diverse points of view on our SOGI Commission as we work to expand the ever-evolving LGBT rights for us all, including advocating for transgender rights which continues to be one of the most disenfranchised parts of our LGBT family. I’m also extremely sensitive to issues affecting young LGBT members of our community.

MD: What do you think about SOGI’s accomplishments and its potential?

VM: We’re doing amazing, impactful work at the SOGI Commission. I’m blessed to be working with such a truly unequivocally committed group of distinguished and accomplished members of our community and allies. I’m touched by the passion and compassion of my colleagues, and the liaisons who are such a pivotal and active part of our Commission. And our staff is truly, truly amazing. While we’re doing incredible work, there is so much more to do. I welcome anyone interested to help advance LGBT rights to reach out to any one of us. We would love their support!

MD: Can you please share some information about your family?

VM: I’m happily married to my husband, Dr. Matteo Garbelotto. He’s an Extension Specialist and full Adjunct Professor in the Department of Environmental Science, Policy and Management at U.C. Berkeley. We met in November of 1991 at one of San Francisco oldest gay bars, the Stud. We’ve been together ever since and got married on September 28, 2008 on the steps of City Hall in San Francisco. We also had a ceremony in Venice, Italy in 2007. We have two loving labs, Scooby and Angelica, since they were pups and are now 13 and 10, respectively. We have a huge family in the U.S., Mexico, Italy, and Brazil.

MD: Thank you, Victor, for a most enlightening interview.

VM: Thank you, Marvin, and I look forward to continuing to work with you on a common goal to help develop a more inclusive and tolerant legal profession.

INTERVIEW CONDUCTED BY

MARVIN S.C. DANG

Liaison to SOGI from ABA Senior Lawyers Division; Secretary, ABA Senior Lawyers Division; member, Council of ABA Fund for Justice & Education
Practice Tips
continued from page 1

to them such as a gender and/or name change. This may not mean as much to other people, but to transgender people it means the world! The name and gender change are things most have waited a lifetime to have happened and have saved, borrowed or fundraised to make these events happen. This has plays a large part in our gender identity and the way we express ourselves. I’ve sometimes heard other attorneys say, “I don’t see what the big deal is? It’s just a name change.” Well, obviously, the person that said this wasn’t transgender. It means everything to a transgender person seeking it.

There are some jurisdictions reluctant to do this and of course state statutes vary from state to state as to whether a gender marker can be changed or amended. There are advocates that have been doing this work now for decades that have some helpful tips that they can share. They do this work every day and are happy to speak with you. I will share resources with you below.

Maintaining confidentiality of your client and not judging your client. We should never disclose someone else’s transgender status. It is that person’s right to choose when and where they disclose their transgender status. This is whether we have a legal relationship with them or not. Honoring this will go a long way with building trust with your client unless it’s part of the case itself. Then it should only be discussed within those bounds. Transgender people feel scrutinized and judged so do no judge the individual on their dress or behavior. If we cannot separate our personal feelings, then perhaps the case isn’t one for us to take. Transgender people to over simply are born in a body different than their soul. All transgender people aren’t a like but all transgender people are human beings. Please use common courtesy with transgender clients as with any client and treat transgender people with dignity and respect.

This includes using proper pronouns to address your client. It is proper to ask the client what pronouns they use and to share your pronouns, such as she or he. You may need to update your office forms so that it can allow for more genders. This may be confusing but more and more young people identify outside of the gender binary of female and male. You may need to think about adding transgender, gender nonconforming or options once you’ve done a little research with female and male on your forms. There are many that use he or she but many are gender fluid or gender non-conforming and use alternative pronouns which can span from “them, they, ze, zhe,” and numerous others.

It will be necessary to make sure opposing counsel and the court address your client appropriately. You as the representative set the tone for this in your demeanor and pleadings. In most transgender cases unlike other cases, you will need some type of medical evidence whether it’s a name change or a criminal trial that substantiates your client is transgender. You want to be prepared and be the expert and let the court know you’re the expert. Medical evidence can range from an affidavit to having various types of medical experts testify. This is why a simple case can turn out to be not so simple. You will need to know when to use this evidence and how to use the evidence. This is of course in addition to any other evidence you would submit in a similar case.

Everyone has a gender identity, but for transgender people’s gender identity as I explained earlier is incongruent with the soul. Here are some great sources for you to use.

The American Medical Association has gone on record indicating this is a medical condition and has advocated for transgender health and civil rights. The two other most important organizations have gone on record as well supporting the health care and civil rights of transgender people which are the American Psychiatric Association and the American Psychological Association. The organizations that sets the standards of is the World Professional Association of Transgender Health.

One last major tip is not to get stuck on whether someone has had surgery or not. This may be a statutory requirement, but this doesn’t determine whether someone is transgender. First, there are numerous surgeries and not just one
transgender people undergo. They haven’t been covered by insurance in the past and are expensive, so the surgeries are cost prohibitive to some. Others choose not to have them for a variety of reasons health concerns, cannot afford them, fear and many other reasons. Additionally, people tend to forget that the brain is a sex organ.  

I hope these tips have helped you as transgender people become more visible with Chaz Bono coming out, Laverne Cox on the cover of Time and Caitlyn Jenner coming out in your practice with transgender clients and attorneys. The key is to treat everyone with respect and dignity. If you need assistance because there may be nuisances to a transgender case, there are plenty of resources to assist you. Please seek out advice. Ask the individual the pronouns that they wish to be called rather than assume and share your pronouns too. Know the law in your area as each state is different and become the expert for the court. Use medical evidence and experts when and where necessary in addition to any other evidence. Remember being transgender isn’t about the anatomy but about the individuals being. We are all human beings.

Endnotes

KYLAR BROADUS
Policy Counsel and Motivational Speaker

OUT AND ABOUT: THE LGBT EXPERIENCE IN THE LEGAL PROFESSION

Out and About: The LGBT Experience in the Legal Profession is a collaboration between the American Bar Association Commission on Sexual Orientation and Gender Identity (SOGI) and the National LGBT Bar Association (LGBT Bar). Both SOGI and the LGBT Bar went to great lengths to identify and encourage authors to share their stories. This joint publication is an anthology of first person narrative accounts. These moving accounts introduce new insights and perspectives. Out and About is a primer that will inspire new conversations and shine light where it has not shone before. This unique book is of interest to both LGBT and non-LGBT readers alike.

While developing this book, SOGI and the LGBT Bar sought diversity in all its forms—differing sexual orientation and gender identities as well as differing ages, races, geographic locations, practice settings, law schools, years of experiences, and more. This book’s goal is to promote full and equal participation in the legal profession by persons of differing sexual orientations and gender identities.

To order, call the ABA Service Center at (800) 285-2221 or visit our website at www.ShopABA.org/outandabout
Publication Orders, P.O. Box 10892, Chicago, IL 60610
SOGI’s Antibullying Roundtables

The SOGI Commission has been studying laws and programs designed to prevent bullying against all students. In light of our particular mission, we have concentrated on Antibullying efforts impacting LGBT youth. To that end, we have spearheaded an Antibullying Roundtable Program beginning in August 2014 during the ABA’s Annual Meeting in Boston. Since that time we have held such Roundtables in Houston, Texas (ABA MidYear Meeting, February 2015) and in Chicago, Illinois (ABA Annual Meeting, July 2015). Our fourth Antibullying Roundtable will take place on February 4, 2016 during the ABA’s Mid-Year Meeting in San Diego, California.

The SOGI Antibullying Roundtables are forums where ABA leaders and SOGI Commission members gather with thought-leaders and stakeholders who have been on the forefront of Antibullying efforts in their communities, in order to share ideas and fashion solutions. Our roundtables coincide with ABA meetings in various locations around the country, and are conducted for a three-hour period during an afternoon. The participants discuss positive accomplishments, as well as goals that still need to be achieved. Our roundtables have resulted in amazing exchanges between governmental leaders, elected and appointed, who have sponsored Antibullying legislation or work to implement it, school administrators, teachers, attorney advocates for students, community advocates, social service providers, parents, students and others who care about our children. These Roundtables have focused on the bullying of LGBT children from kindergarten through college. We will recreate the prior Roundtables in San Diego on February 4, 2016 by gathering together prominent individuals, both in the government and private sectors, to talk about what is being done in California, and in particular in the San Diego community, to prevent the bullying of LGBT youth.

Topics we have discussed include: state legislation addressing bullying issues, including specific language regarding bullying of LGBT students; rules and regulations passed to implement Antibullying laws; state resources devoted to Antibullying efforts; specific school-based Antibullying programs; resources and support for teachers to prevent bullying in their classrooms; legal remedies for children who have not been protected from bullying in their school environment; educating teachers, parents, and students to enable better understanding and acceptance of each individual child’s sexual orientation and gender identity and expression; challenges that transgender students face in the school environment; and other important issues.

We have worked our way across the country beginning in Boston on the east coast to California on the west coast. Each location has contributed something new and significant to the discussion of how to address this crucial problem throughout the United States, and beyond. We hope to build upon these Roundtables by holding similar events in other areas of the country where the ABA gathers, and ultimately to promote a model for national laws and programs. ABA immediate Past-President William Hubbard and our current ABA President Paulette Brown have participated in these Roundtables and expressed their strong commitment and support to this issue. We look forward to working with other groups within the ABA to eradicate bullying against all youth in our schools and in our country. Together, we can make a difference.

HON. MARGARET J. FINERTY
Partner, Getnick & Getnick LLP

Using education and training to open hearts and minds

According to the National Association for Law Placement, the percentage of lawyers who openly identify as LGBT has been steadily increasing, and is about double that reported in 2002. With more openly LGBT lawyers, and employees generally, there is a greater need for LGBT Ally training.

ambar.org/ally
History of Bullyproof

Bullyproof was the idea and creation of former YLD Chair Mario Sullivan, who at the ABA 2013 Annual Conference in San Francisco, launched Bullyproof as his featured 2013-14 ABA YLD Public Service Project. At the same Conference, the YLD Assembly unanimously approved and adopted YLD Resolution 6YL, which highlighted the history of the ABA’s efforts to address the growing bullying epidemic in the U.S. What’s more, the Resolution recommended that federal, state, territorial, and local officials and administrators specifically address bullying and make available programs like mentoring and counseling for students, teachers, administrators and families involved in bullying incidents.

In the YLD, there were three primary pillars to Bullyproof, which together and apart, sought to educate and empower the bar, schools, and communities in an effort to end the bullying epidemic:

1. **Education for Lawyers**: CLE, teleconferences, and programming to educate young lawyers on the legal rights and responsibilities in representing school systems, insurance carriers, students, parents, and teachers/educators who are faced with charges and cases involving allegations of bullying;

2. **Educating School Administrators, Teachers, Parents and Students**: Young lawyers implementing Bullyproof in schools to discuss identifying bullying as it’s happening, the effects of bullying on victims, their parents, and those around the victims and accused, and resources for combating bullying; and,

3. **Legislation**: Bullyproof collected a plethora of materials and best practices for young lawyers to lobby and seek laws and policies that sufficiently address bullying and how to end it in our schools and communities.

In support of Bullyproof, the YLD also created a diverse web-site containing the Bullyproof project video, materials, resources, links, and a toolkit for implementation of the project.

In fact, Bullyproof was welcomed and implemented in schools and youth programs across the country including, Arizona, Pennsylvania, Colorado, Illinois, and Massachusetts, amongst others. Additionally, numerous jurisdictions across the country also adopted Bullyproof as their own public service project, including the Kansas Bar Association Young Lawyers Section, the Kansas City Metropolitan Bar Association Young Lawyers Section, the Wisconsin State Bar Young Lawyers Division, the Kentucky Bar Association Young Lawyers Division in conjunction with the Kentucky Bar Foundation, and the Oregon Bar Association. Furthermore, Bullyproof won the 2014 SOC Outstanding Collaboration Award.

**CR&SJ BULLYPROOF COMMITTEE**

At its Fall Meeting in Nov. 2014, the Section of CR&SJ voted to adopt Bullyproof as a full-fledged committee in the Section. In connection with Bullyproof’s continued development, it has created three sub-committees:

1. **Programming**, focusing on creating relevant and essential content regarding issues and the law surrounding bullying in the U.S.;

2. **Implementation**, carrying forward Bullyproof’s history of on the ground presentations with children and adults regarding the bullying epidemic and what can be done to help; and,

3. **Publications and Social Media**, writing and sharing information about bullying.

If you are interested in joining the CR&SJ and / or Bullyproof, please visit [http://apps.americanbar.org/dch/committee.cfm?com=IR640001](http://apps.americanbar.org/dch/committee.cfm?com=IR640001) where you can sign up and join one of Bullyproof sub-committees. For more information and for questions and comments, please contact Mario Sullivan at marioasullivan@yahoo.com or Courtenay R. Dunn at courtenay.r.dunn@gmail.com.

**COURTENAY DUNN**
Counsel, MERSCORP Holdings, Inc.
The Section of Civil Rights & Social Justice: 50th year of service to the ABA

The Section of Civil Rights & Social Justice is celebrating its 50th anniversary this bar year. Our original name—the Section of Individual Rights & Responsibility—was one forged in compromise. As noted by Former Chair, Father Robert Drinan, in a 1991 Human Rights Magazine article: “The name ‘Section of Individual Rights’ was chosen to avoid the anticipated resistance to the use of ‘civil rights.’ The term ‘Responsibilities’ was added on the floor of the House and was agreed to by the sponsors simply to avoid controversy and to ease the birth of the section.”

In other words, after years of effort, the Section was finally created, albeit with a name that in many respects had to hide the civil rights agenda that the founders were forging. In essence, the founders sacrificed a piece of their identity in order to finally move forward with their substantive agenda as a recognized entity within the American Bar Association. This type of compromise is likely familiar territory for many who are dedicated to their vision of a world in which LGBT civil rights are no longer an aspirational goal, but a dream realized.

Notwithstanding a name that sometimes caused confusion to ABA members uncertain about the Section’s role, members have always been proud of the work they do and the tag line the Section earned as: “the Conscience of the ABA”. This alternative name should have a particular resonance to the dedicated and courageous members who have played a role in the Section’s SOGI Committee over the years.

Here, too, the Committee’s name when it was created in 1983 reflects the times: the IR&R Committee on the Rights of Lesbians and Gay Men. Once formed, its founders immediately began to implement a systematic and strategic plan to expand the ABA’s policies on LGBT issues. This strategic focus was identified as including:

- Positions urging the enactment of laws and policies prohibiting discrimination on the basis of sexual orientation and gender identity in employment, housing, public accommodations, education, and judicial proceedings.
- Policies supporting equal treatment by the government of family relationships involving gay men and lesbians, including those involving adoption, second parent and joint adoptions, child custody and visitation rights, foster care, and crime victim compensation funds.
- Efforts to amend the U.S. Constitution to prohibit marriage for and to preclude the provision of the “incidents of marriage” to same-sex couples.
- Special efforts to eliminate discrimination against lesbian, gay, bisexual, and transgender people who are or wish to become attorneys.

Mark Agrast, a former Committee member and Chair, reflected on his 25 years of leadership roles in the ABA working to secure the organization’s support for the human rights of LGBT persons. In praising the wide range of activities and dedication demonstrated by the Committee’s early pioneers, including Dan Bradley and Abby Rubenfeld, he noted efforts to: “...advance a series of initiatives, including policies and amicus briefs in support of nondiscrimination legislation in employment, housing, public accommodations, and the military; adoption, custody and visitation rights; and marriage equality.” Further commenting on those early years he stated: “In the early 1990s, Abby and I also organized a campaign that ultimately brought about the admission of the National Lesbian and Gay Law Association (now the National LGBT Bar) as an affiliated organization of the ABA with a seat in the House of Delegates.”

For decades, the agenda of the SOGI Committee within IR&R was far-reaching and its work was comprehensive, yet more was needed from the American Bar Association. Even as the Committee could celebrate its many successes, an additional strategic focus was warranted. Former Chair Agrast observed: “Despite the Committee’s many gains, the ABA’s own diversity and inclusion efforts did not yet fully embrace the LGBT community. As chair of the Program Committee of the Board of Governors in 2007, I had the opportunity to work with ABA President Karen Mathis to establish a new Goal III Commission to promote the full inclusion of LGBT lawyers and law students within the ABA, the profession, and the justice system.”

In expressing pride in the SOGI Committee’s work, Agrast reflected: “The SOGI Committee was a beacon of hope and inspiration for those working on the front lines of the struggle for LGBT rights. The Committee’s achievements have been instrumental in advancing the cause of LGBT equality and have had a profound impact on the American Bar Association and the legal profession as a whole.”
Commission's accomplishments, he further noted the original goal for the fledgling Commission: "My hope was that the SOGI Commission would help consolidate and extend the gains we had made in securing the ABA's support for the rights and dignity of LGBT persons." Those hopes were transformed into a string of successes and stunning societal changes. For example, in 2006, the ABA House of Delegates passed a Resolution urging federal, state, local, and territorial governments to enact legislation that would prohibit discrimination on the basis of actual or perceived gender identity or expression in employment, housing, and public accommodations. And last year, The Commission and the Committee celebrated the Supreme Court's recognition of marriage equality, as ABA leaders proudly touted the citation of its amicus brief in the Supreme Court's Obergefell decision.

As we look back on this significant progress, and the ABA's recognition of LGBT rights as an essential aspect of its Goal 3 efforts, we should also recall that these issues were once considered controversial, and many within the ABA were apprehensive about taking positions protecting the rights of LGBT persons. These are moments of pride built from long periods of dedicated attention to goals.

Properly observed, anniversaries are milestones that offer an opportunity to be reflective, to celebrate accomplishments, and, most importantly, to develop a strategic direction for the future. It should never be enough to sit back and focus on the past, because there are always more challenges ahead. Marriage equality, for example, is a wonderful moment to celebrate, but it still exists in a nation that offers little or no protection from being fired as a result of one's sexual orientation or gender identity. This is why rest is not an option. Identifying strategies for overcoming the next set of challenges is our obligation and our opportunity.

The Section on Civil Rights & Social Justice, together with its SOGI Committee, will continue to work closely with the SOGI Commission in the fight for LGBT civil rights and equality. Our efforts should focus on a unified goal: to ensure that, at our next anniversary milestone, we can write about the historical work undertaken jointly by the Section's SOGI Committee and the SOGI Commission, and celebrate that both entities no longer need to exist.

LAUREN STILLER RIKLEEN
Chair of the Section of Civil Rights & Social Justice, is president of the Rikleen Institute for Strategic Leadership
The Undocumented Gay Migrant – Opportunities for Pro Bono Legal Assistance?

On June 26, 2015, the lesbian and gay community saw the making of history. On that summer day Justice Kennedy, the noted swing vote on the U.S. Supreme Court, who wrote the majority opinions in cases like Romer v. Evans (1998) and Lawrence v. Texas (2003), announced for a majority in Obergefell v. Hodges that the constitution could not deny a lesbian or gay couple the fundamental right to marry.

Lawyers and activists who had fought against mean spirited laws like Colorado’s Amendment 2, or Texas’ gay targeted sodomy law, could celebrate as Kennedy affirmed that the right to marry first pronounced as a fundamental right for interracial couples in Loving v. Virginia (1967) despite existing racist state law, extended as well to the same sexed couple applying for a marriage license.

But that day something else was happening further South from Washington D.C. and the celebrations outside the nation’s courthouse that affected my own celebratory mood over marriage equality.

As the Court was convened to read the Obergefell opinions, our President was delivering an eulogy in South Carolina for a minister who had been among the nine black people senselessly murdered by a white supremacist inside their church.

As someone whose legal career began with writing about and speaking against AIDS related discrimination, especially when race, culture and class issues intersected with fears about homosexuality and a disease without a cure, I was sensitive to this ironic pairing of national events. I so wanted Kennedy’s appeal of a right to human dignity to feel meaningful for all sex and gender minorities everywhere. But I was also sad that as we were celebrating sexual freedom, racism still prevailed, and the memorial service was a sober reminder that there is much work to do for social justice in this country.

One phrase in Kennedy’s opinion provided us with a breathtaking view of the trust we should place in our constitutional sense of freedom and equality. “The nature of injustice is that we may not see it in our time,” Kennedy wrote as he explained why it was so unfair to deny gay citizens the right to love, marry, and form families. They were words, however, that can be read to transcend the agenda of gay marriage equality and should affirm our sense of anyone’s right to human dignity here and in other parts of the world. A promise of justice and freedom that needs the full embrace by the members of this profession who have not only the privilege to practice the law but also to promote access to justice and reform where there is injustice.

Right now public policy is being shaped at the state and local level amidst a culture of fear over terrorism and the refugee crises connected to the bombings in Paris and the civil war in Syria. Fear mongering produces bad laws for civil and human rights and threatens the values of an open society. The culture of fear is especially threatening to social minorities who can be easily scapegoated.

Some forms of injustice are invisible because we do not know or because we don’t want to know. That should not be the case for lawyers whose professional responsibilities include assuring that there is access to the halls of justice for all, even those who cannot pay.

Among those whose situations need to be made visible are undocumented residents in this country who are gay, and detainees in immigration jails needing help from good lawyers who can represent them in immigration court.

We know that our nation survives on the labor of millions of who are undocumented residents. Some get caught without papers and end up in detention facilities. Some of them are gay. Some end up in a detention center because they got here alone and don’t have the money or connections to get legal services. What they do know is that they are afraid and they want to feel safe. They are detainees who are the minority among the minorities, because their plea for asylum and compassion involves a story about how they are running away from violence and persecution for simply being gay or transgendered.

The undocumented migrate to the U.S.A. for a number of reasons, including the desire to live one’s life as a gay person freely as promised by the majority in Obergefell, not a life filled with examples of public humiliation or acts of violence that go unpunished because where they live it is still a crime to enjoy gay sex. Ask anyone who grew up in the pre-Stonewall era to recall life before the decriminalization of homosexuality. Survival meant being
in the closet, hiding one's life partner, risking the loss of job, homes or family to being outed. A late night out near a gay bar could invite beatings and harassment. The typical stereotype of a gay or lesbian was pedophile and a pervert who threatened children and families. That kind of life is still the norm for LGBTs many parts of the world.

Seeking asylum in this country is not a crime. Yet today every asylum seeker who is detained is often treated as if they were a criminal since the majority of immigration facilities are operated by the CCA or GeoGroup2, two major contractors for the DHS immigration operations. In 2014, I saw first hand work at a huge Texas detention facility near San Antonio. Twelve of us came on a tour to learn more about the immigration system. Officials let us meet and talk to several dozen detainees. Among them were five openly gay men from Central America.

It must take a lot of courage for an openly gay migrant to make a journey in search of basic human dignity and safety. It must be a scary and treacherous journey filled with the hope of safety and yes, even the freedom to love and marry. Imagine being from a country that has been affected by civil wars, social and economic revolution connected to the introduction of free trade agreements, or from the power struggles between drug cartels and government. Imagine never knowing when a relative is going to be kidnapped for money, or blackmailed and threatened if they don’t participate in organized crime networks in their communities. Imagine living where there are no good jobs, where the police can be bribed easily not to see crimes and where being gay means being harassed regularly or being beat up in public by the military or being kidnapped and then gang raped. It isn’t so hard then to imagine that every wave of migrants to the U.S. includes an LGBT person who is scared and wants to live in a place where queer doesn’t automatically signify criminal. They too may appear like the typical migrant fleeing their country for lack of jobs or civil wars or corruption; but they might also have the same goals and desires for love and family as the plaintiffs in all of the U.S.’s major marriage equality cases.

Getting asylum in this country is not easy. An applicant has to prove “credible fear” that they are the victim of persecution in their own country based on a narrow set of categories (e.g., religion, ideology) or “membership in a particular social group.” The detainees we met described being financially exploited by human traffickers, being charged outrageous amounts for a journey that could easily end up in violence, death or capture by the border patrol. All of them spoke of police corruption, extreme poverty and threats to them or their relatives from cartels for not doing jobs for the gang. Being openly gay meant never feeling safe. Ariel, from El Salvador told us, “my own nephew hired someone to have me killed for being gay.” One time he was harassed, beat up and gang raped and the police refused to help. Arnaldo, from Honduras said that soldiers regularly beat up gay people and a very common fear among the gay migrants was that of being kidnapped and gang raped.

But the gay detainees had more problems once they were housed in a detention center. Many complained of shocking conditions and treatment by the border patrol and in the detention centers they were systematically marginalized, segregated or otherwise the subject of homophobic taunting by detention staff.

Lawyers in search of pro bono opportunities might consider volunteering for the hard work of representing detainees in immigration court or in the reform work around challenging the way in which the government is dealing with either refugee crises from abroad or here at home near our borders. There is something wrong when the feel of a civil detention center looks like a prison, and when for-profit companies can generate huge profits for their shareholders as they treat civil detainees like presumptive criminals and dole out attitudes based on the socially constructed view of a new criminal identity—the undocumented migrant.

Endnotes

1. This essay is based on a forthcoming article in the University of Missouri Kansas Law Review (2016) entitled “Queer, Undocumented and Sitting in an Immigration Detention Center: A Post-Obergefell v. Hodges Reflection.”

2. Corrections Corporation of America and GeoGroup are the major providers in this country and in the world for prison services. See http://www.cca.com and http://www.geogroup.com

BY ELVIA R ARRIOLA
Esq., Austin, TX
The SOGI Commission also wishes to recognize and thank our donors for their generous financial contributions and support. We commend all our donors' efforts to help achieve full and equal participation in the legal profession by persons of differing sexual orientations and gender identities and applaud their commitment to diversity and inclusion.

If you like and support our work, please make an ABA Funds for Justice and Education contribution to the Commission.

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Evening Reception

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ABA Section of
Civil Rights and Social Justice
Honoring Our Past, Charting Our Future
1966 - 2016

American Bar Association

Spirit of Excellence Awards

Saturday, February 6, 2016
Noon – 2:00 p.m.
(Doors open at 11:30 a.m.)

ABA Midyear Meeting
San Diego, CA
Manchester Grand Hyatt San Diego
1 Market Place

Sarah Deer
Professor of Law
William Mitchell College of Law
Saint Paul, MN

Hugo Chaviano
Illinois Director of Labor
Illinois Department of Labor
Chicago, IL

Victor M. Marquez
Principal
The Marquez Law Group
San Francisco, CA

Joanne A. Epps
Dean, Professor of Law
Temple University Beasley School of Law
Philadelphia, PA

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LGBT Calendar of Events

**LGBT ABA MIDYEAR EVENTS**
**Thursday, February 4**
**Hot Topics in Diversity Law: Same Sex Marriage and Employee Benefits Discrimination**
4:30 PM – 6:00 PM
Manchester Grand Hyatt San Diego
2nd Level, Harbor Tower, Ballroom C
*Section of State and Local Government Law*

**Friday, February 5**
**The Impact of School-to-Prison Pipeline on LGBTQ Youth and The Launching of the School-to-Prison Pipeline Preliminary Report**
8:30 AM – 10:30 AM
Manchester Grand Hyatt San Diego
Harbor Ballroom A

**Friday, February 5**
**Diversity Expo**
11:00 AM – 12:00 PM
Manchester Grand Hyatt San Diego
2nd Level, Seaport Tower, Seaport Ballroom A/B

**Friday, February 5**
**The Intersection of Religious Freedom and LGBT Rights: A Slow Motion Car Crash?**
3:30 PM – 5:30 PM
Hilton San Diego
3rd Floor, Aqua Salon A/B
*Section of Civil Rights and Social Justice*

**Saturday, February 6**
**LGBT Caucus**
3:00 PM – 5:00 PM
Marriot Marquis San Diego Marina
3rd Floor, South Tower, Balboa/Mission Hills

**Saturday, February 6**
**Stonewall Reception**
5:30 PM – 7:30 PM
Manchester Grand Hyatt San Diego
2nd Level, Seaport Tower, Seaport Ballroom A/B

**Sunday, February 7**
**SOGI Business Meeting**
11:00 AM – 2:30 PM
Marriot Marquis San Diego Marina
3rd Level, South Tower, Marina Ballroom F

**ABA ENTITY LGBT EVENTS**

**BEYOND MIDYEAR**
**Tuesday, February 23**
**Sexual Orientation: The Legal Case for Coverage Under Title VII**
12:00 PM – 1:30 PM
Webinar
*SOGI/CRSJ CLE*

**Wednesday, April 6**
**Sexual Orientation: The Legal Case for Coverage Under Title VII**
12:00 PM – 1:30 PM
Webinar
*SOGI/CRSJ CLE*

**Wednesday, April 6**
**Diversity Networking Reception**
6:30 PM – 8:00 PM
Fairmont Queen Elizabeth, Montréal and Hotel Bonaventure Montréal
Montréal, QC, Canada
*Business Law Section*

**Thursday, March 3**
**“Transgender and Intersex Legal Developments,” The Conference on Emerging Issues in Healthcare**
San Diego, CA
*Health Law Section*

**April 6-8**
**31st Annual Conference**
Bethesda North Marriott, Hotel & Conference Center
Bethesda, Maryland
*Intellectual Property Law*

**Wednesday, April 6**
**LGBT Diversity Dessert Reception**
9:30 PM – 11:30 PM

**May 12-13, 2016**
**Real Property, Trust & Estate Law 2016 Spring Symp**
**Business Law Fellows Program**
Boston, MA

**Friday, May 13**
**Equal Justice Under Law: Nationwide Marriage Equality (Almost) One Year Later**
9:45 AM – 10:45AM

**Friday, May 13**
**Elimination of Bias in the Profession: An LGBT Ally Toolkit**
1:45 PM – 3:00 PM

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