
REPORT FROM THE INTERVENTION LAW PROJECT

Saturday, August 28, 1993

Second Annual International Conference on Transgender Law and Employment Policy

PROJECT MODERATOR: *Keith K. Stewart, Attorney*

By Phyllis Frye:

Our next subject is Intervention Law. Come on up Keith while I introduce you. This is Keith Stewart. He's one of our very successful female-to-male transsexuals. [By Keith Stewart: Yeah, right.] Actually, he's so hopelessly gay. As a gay male I don't know if he has time to be transsexual. Keith is a corporate lawyer and he was a presenter last year in the area of Housing Law. He's a special person in my heart because when he was an undergraduate student at Texas A&M University, he was a named — by name named plaintiff in the lawsuit that forced Texas A&M University to allow gay students to meet openly on campus which went all the way to the United States Supreme Court.

As a member of ACT-UP, he was active last year in the demonstrations at the Republican Convention. He was one of the people who Pat Buchanan, bless his heart, was fussing about. What better person to give you the legal details of Intervention Law.

By Keith Stewart:

Good morning. I really feel privileged to be here for my second conference. I know those of you who heard me last year are probably running in your mind, "Oh, my God, what's this crazy queer going to talk about today?" Well, last year — I can't promise you that this time I'm going to be as excitable as I was last time. I had just come off the Republican Convention and being charged by



Keith K. Stewart, Attorney,
Intervention Law Project Moderator

fascist police officers on foaming-at-the-mouth horses. I nearly got run over and nearly got killed. So I was a little on edge last year. I'm considerably calmer this year and so, at least on the outside.

The topic that I have today to discuss with you is intervention. In thinking about this, the term is a little bit misleading. What we are going to discuss is specific strategies, or general strategies in terms of affecting change, that are needed within our system, our political system and our legal system. I don't think I need to stand here and preach on the issue that change is needed; I don't think any of you would be here today if you didn't believe that.

I'm going to talk basically about two kinds of interventions. One is within the system. By that I mean legislative issues, judicial issues, issues regarding the media, coalition building and education. The other type of intervention, as it were — I've even put in quotation marks in my outline — is outside of the system. I put next to that civil disobedience kinds of things.

One thing you have to realize is despite what you may hear from my compatriots in ACT-UP, they did not invent civil disobedience. Civil disobedience has been around a long time, at least since they threw the tea into Boston Harbor. A more clear act of disobedience I can't imagine. So, when we think of civil disobedience as being on the outside of the system banging on the door, that's not exactly right. This, the American legal tradition in the American legal political system, has always had civil disobedience in it. There's always been a place for it. It's been more acceptable during certain periods of times than others, but it's always been there. So, when you say that it's outside the system, it's really not. It's still within the system. Now anarchy is outside the system; there may be some need for that, too.

In terms of legislative issues, I don't know how many of you work or are involved with any kind of political organizations in your local area or in your state. Probably the place to start and the easiest way to do it is to establish a personal relationship with your legislator. You need to let your legislator know that you, by name, vote. That may take some time; they have a lot of constituents. But there are a lot of ways to do it, and you should utilize all of them.

Letter writing. A lot of letter writing. And don't use form letters. Use actual, your own personal, letters. They don't have to be written like war and peace. Just get your point across. And you have to keep in mind that your legislator is very busy and, as legislators go, probably not real intelligent. You're going to have to keep it short and succinct. That's one way.

If you live near your state capital, collar your legislator on every possible occasion. When you see your legislator at political functions that you may attend collar him or her and say, "Hi, I'm in your district and this is who I am and this is what I'm about." Over time, your legislator will finally recognize what your name is.

Another effective thing that I have found is when getting to know your legislator, discuss other issues than transgendered issues with him or her. Legislators, when you approach them on a special interest issue, will pigeon hole you and assume that that's the only issue that you're concerned about. We're not all concerned about this issue only. We're all concerned about crime. We're all concerned about the economy. We're all concerned about health care reform. Discuss those issues with your legislator. That's the only way he's going to get to know you or you're going to get to know her. That's really important. That's really lobbying.

On lobbying, we have this idea of these paid people that live in Washington, D.C. or live in Austin, Texas, or live in Baton Rouge, Louisiana, and they get paid to live there and to wine and dine these people. That's not what we're talking about here. If you have that kind of money, you need to see me after the presentation. What we're talking about is making your case known to your legislator. And believe me, one voice sometimes is all it takes. And certainly one voice is a start.

You want to, in your local area, make a determination as to what your goals are. What do you want to do?

If there are laws on the books that criminalize any aspect of a transgender issue, my perspective is that's where you may want to start. Get that decriminalized or to get that off the books. Work in that context first, and you surely should be able to find something. With this legal system being run by white heterosexual males for the past 350 years there has got to be something on the books that's offensive to you. I think the effective way is to approach that issue first. And there are clearly gaps in the law that don't cover issues that are of concern to you. Perhaps you need to propose legislation on those. Now, you're going to get a lot further with this if you already know your legislator. So, that's a prerequisite. But just keep in mind that there are two issues here. Laws on the books that need to be removed and laws that need to be placed on the books.

One suggestion was made in our committee that's real important in my work. In AIDS activism this has just been tremendously helpful. It's really important to set up some kind of legislative watch network. By that I mean a group or a person charged with the responsibility of reviewing or looking at legislation that is being proposed in your state to make sure there's not anything in there that throws the clock of time back 40 years. And when those issues do arise, and they will, to immediately begin the process of networking with your allies and your friends and to get that stopped.

What you want to avoid doing is having to work on it once the legislature has passed it; you want to stop it in committee. You want to stop it perhaps before it gets to committee. Clearly you need to know what the legislative process is. It doesn't differ very much from state to state, but there are some differences. So you'll need to know what the legislative process in your jurisdiction is. Get it before it comes out of the legislature or you're going to have to work against already enacted legislation. That's a lot harder to do.

Part of this networking on legislative watch requires fund banking. We had an instance of that this summer. I don't know if it was in June or July, but it was this summer. The Texas Legislature was revising the state penal code. Sodomy is against the law in the State of Texas. *[Editor's note on the term "sodomy": homosexual conduct never appears in the listing of the sins of Sodom in Ezekiel 16.]* The law doesn't keep any of us from doing it, but it's against the law. So, there was a move afoot to try something different. Instead of challenging the statute in the courts where it had been upheld, instead of doing that all over again, let's just get them to take it out of the penal code when they revise it. Great idea, and it almost worked. The committee that was working on it, we lobbied them and convinced them not to put it in. But the collective body put it back.

Watch for crazy things that are going on up there and nip them in the bud before they happen. The Texas Senate, we didn't have too much problem with. It was the representative side that we had the problem with. There was a legislator over there who realized, he must have had some glimmer of a first year Constitutional Law course at law school, that he couldn't just criminalize this behavior for only homosexuals. If they don't criminalize it for heterosexuals, too, then we have an equal protection argument. The law can be challenged on that basis. So he just proposed to make all of those acts illegal for heterosexuals too. Needless to say, that didn't get passed. But that's the kind of crazy way they think and the crazy things they do. If you know what they're going to do, and if you know what they're working on, then you can nip it in the bud before it gets out. You're going to be a lot better off.

The other area that you need to look at in terms of working within the system for change is in the context of the judiciary, and there's several specific issues in that regard. It is advisable in your locale — whether that's on a local level or state level or a geographic area, New England — to set up a network of cooperating attorneys. It's important not only to working within the system, but it's important, as I'll mention briefly in a minute, with regard to confrontive issues, civil disobedience kinds of issues.

I got on my soap box, which I don't normally do, the last couple of days, and I gave my little lecture on attorneys having the ethical, moral and professional responsibility to be involved. I have an ethical and professional responsibility to my community — the HIV community and the lesbian/gay community. Transgendered attorneys have the same obligation. I understand that many transgendered attorneys are in different processes of being out. But we need you out all the way, and we need you out as quickly as possible.

Sometimes, we ~~all~~ have to assume risks that we may not want to assume in order to effect the change. And if you know of a transgendered attorney who is perhaps dragging his or her feet in coming out, you might want to start doing a little bit of pushing. Test cases are won by attorneys. You're going to need attorneys. The easiest attorneys, the obvious attorneys, to get first are transgendered attorneys.

But also network with attorneys from other communities. There are still plenty of attorneys out there who will take a case just because it's the right thing to do. I'm going to take this opportunity to congratulate Anthony Griffin for taking the Klan case. That was quite courageous. He's also the General Counsel for the NAACP and he's representing the Klan for free. That is professionalism. That is what being a lawyer is all about, beginning and end. *[Note: He was fired by NAACP in early October, 1993.]*

In addition to this network of cooperating attorneys there was suggested, and this is really a wonderful idea, to have central repository of legal documents, of pleadings that have been successful, and of briefs that have been successful or not successful. You may find an attorney in your area who is quite willing to assist you but who doesn't know dippity-do-dah about what arguments to make. The law is so vast there's no way that all of us can keep up. There's no way that we can all keep up with all of it. That would be very helpful to have. Whether that's a project that perhaps this conference wants to take on or whether that's something that you want to do on the local area, it is something that you need to consider.

One issue that's really important and it's often overlooked is judicial screening and selection. This is only going to have application primarily in states where your judges are elected. In those jurisdictions where you elect your judges, your judges are politicians just like everybody else. They go to see the League of Women Voters and hope for their endorsement, and they want the Mexican-American Bar Association to endorse them and all that.

Now, let's be realistic. They are not going to come screen for any transgendered group, period. That's not going to happen any time soon. That doesn't mean that you should not participate in the screening and selection process through other organizations like the League of Women Voters or like your local gay and lesbian organization. Present your issues to the judge or the perspective judge, and be real blunt about it. And you want specific answers to specific questions. They're not going to react in the same way the Supreme Court Justices do. The people on the Supreme Court have this idea that they're Gods on Olympus, and they shouldn't discuss these legal philosophical issues. Your local judges really have no such compulsions.

They want to get elected because they're tired of practicing law. So, you're going to get a more receptive audience among those people. I really encourage you to do that because your issues are not going to be raised by anyone else but you. And that's just the bottom line. But they're not going to come solicit your endorsement either. So you're going to have to work with an established organization that have that kind of a process.

Even if you're in a jurisdiction where your judges are appointed, you can always influence the people who do the appointment. There is some kind of an evaluating process in place whether it's just a bar association rating or whatever. If you know what that system is, you need to take it upon yourself to influence it in the process.

The final thing, clearly the most obvious in terms of judicial issues, is test cases. You need your cooperating attorneys. You need attorneys who are willing to work for free and you need plaintiffs. When I sued Texas A&M, I was 18 years old. I had just come out. It was a really, really scary experience, and I don't want to minimize that. I remember it. I remember it well. Now, we were getting death threats. My mother was getting the death threats. It was horrible, but I was young and stupid. I felt at the time, and I feel now, that it was something I had to do. There was nobody else to do it, and I had a responsibility. Sometimes that's just what it takes. You just sort of say, "All right, fuck it, here we go." Just jump into it.

Not everyone is at a point where they're able to do that. If you are at a point where you are out, make it

known that you're ready to start kicking some butt. People will find you. We all know that Phyllis is ready to kick butt. She's been doing it for a while. People know her. So that's where you have to get on that. You need plaintiffs and you need cooperating attorneys.

Don't forget the administrative issues, administrative hearings on driver's license, social security, all of that kind of stuff. The process with respect to that is not vastly different from the legislative process, except they don't have statutes. They have rules. Learn the rules; review the rules. Stop proposed changes that you don't like, propose changes that you want. Very often in these administrative hearings, this is something that you can do yourself, because you really don't always need representation by an attorney. Sometimes you may be better off without an attorney, because if you have an attorney, the whole panoply of the legal rules of evidence and all that stuff may apply. If you don't, it may not. So, don't overlook that. I realize that you can't go home and set this deal up all over night. I mean it's going to take some time, but these are just some of the things you need to start on.

Real important issue; real important, media. Mr. Levine is here today from "Mother Jones". I want to commend him for being here. This expresses something about you, and I'm going to give you a call. Media, I have found, can either make or break your issues depending upon how you manipulate the media. We have learned in the past several years some very hard lessons about the media.

It was suggested in our workshop sessions — I had never thought of this because I don't tend to think in terms of education; I tend to think in terms of bashing people intellectually — seminars to educate the media. Invite your local media to seminars on your issues so that they understand the background. If an issue is a little bit uncomfortable or unusual or odd or something, and a journalist is reluctant to write on it to begin with, then clearly the journalist will not write on it if the journalist doesn't know anything about the background of the issue. So that's one way to educate them is by doing seminars.

When you're dealing the media, you're doing two things. If you're reacting to bad press — number one, letters to the editor that go off on all this Bible stuff — react to it immediately, quickly. Write your response immediately and fax it to them to say this guy is full of shit and this is why. And not just letters to the editor but to every and all press that's negative. You need to react to it immediately. Don't let time go by because people won't remember it.

In doing that, you also do the second thing with the media. Create press. Create publicity. Start an issue. Create a controversy. That is how you get press. That is how you get the word out. That is how you get your name in the paper, even though you may not want it in the paper sometimes. You create your issues when you can. In that vein, if you have an issue that you want to get out, create the issue. Create a controversy about it. Write the newspaper article yourself and send it to the reporter and say I just thought you might be able to use this. Press releases have their advantages, but by nature, they have to be short and succinct and just a one line sort of thing.

You can write the issue and we've had moderate success with this. Some reporters have published some of the things we have sent them. Some have reworked it, but they're not going to be offended if you do that. You're actually helping them out because they've got a lot of work to do. That's a deadline profession and we all know what working under deadlines is like. Prepare everything for any issue that arises. You need to make sure that the media is communicated to about it. And the best way to do that is the context of a press packet. We've had a lot of success with the press packets. The media appreciate that. That means they have to ask less questions. You have all your background information in press packets. We create quotes. I'll go to one of my colleagues in ACT-UP and say, "Give me a quote." So ACT-UP spokesperson said, "This and that, you know." Put a packet together that explains this issue, and when you're working on a given issue, appoint a spokesperson for that issue.

We always get in trouble in ACT-UP because it's not even a democratic organization. It's an anarchy

organization. We have no officers; we have no leaders; we have what are called facilitators that are chosen from week to week. There's no continuity. So we are real concerned about someone going out into the community and addressing an issue and speaking on our behalf. Nobody speaks on our behalf unless the group has had an opportunity to vote on the issue, and we have a consensus. We do it for every action that we undertake, and I use action in a broad sense. I'm talking about in the context of addressing any issue. You need to do that.

Finally, let me just say something that I think is real important for y'all's work. You really need to do coalition building. That's going to be a really difficult process. There is a lot of prejudice out there, and you've experienced it. A lot of it, a lot of it's in the lesbian and gay community. Gays and lesbians are your natural allies, and you're going to have to work with those folks, and you're going to have to educate those folks. You're going to have to go into those situations in coalition building knowing exactly what your goals are. What do you want out of that coalition. How much you're willing to scratch their back, and what you want for them to do in return. Don't have any unrealistic expectations about this.

That's why you concentrate on goals. You concentrate on specific, achievable goals, not on philosophical issues like justice or fairness. Now, those are all well and good, but that's not how the system works. To achieve you concentrate on specific goals. You can tell your lesbian and gay allies this is what we want you to do. We want you to appear at a demonstration at noon on Saturday in front of the federal building to protest this. That is a specific goal. And you can work on that basis. All right. But if you go into a lesbian and gay organization or feminist organization, or anything like that, with just broad principles and stuff, then you make an agreement, but you won't get anybody to follow you on a picket line or join you in a lawsuit or anything like that. Coalition building is really important. You need to know the limits of the coalition.

Finally you need to — I don't like this word but I can't think of another one — you need to infiltrate professional organizations. I have these images of communists running around forming cells and infiltrating everything. You need to get involved, as yourself, as a transgendered person, in professional organizations. I use "professional" in the broad sense; not like lawyer, doctor, or CPA, that sort of thing. But within your occupation, within your profession, and civic associations — you know all of that sort of stuff. Have people get to know you.

There was a recent survey done. Still over fifty percent of the American public believes that lesbians and gay men should not have certain basic civil rights. The interesting thing about the survey was that, of those people who personally knew a lesbian or gay person, gay men, seventy-nine percent said that we should have the same rights as everybody else. What that says is when people get to know you as a person, you can change everything. Because it's harder to discriminate against someone that you know, than it is against someone that you don't know.

That's all I have. I appreciate your allowing me to talk again. It's always a privilege and it's always good seeing some of you that I talked with last year and I made new friends this year. Good luck and have a great rest of the seminar.

by Phyllis Frye:

I need to add just a quick word. The League of Women Voters does not endorse candidates. The Women's Political Caucus endorses candidates and the National Organization for Women endorses candidates, but the League of Women Voters does not endorse candidates. They publish all candidates with all their statements to educate the voters so the voters can make up their mind.