



# OPENING DOORS FOR LGBTQ YOUTH IN FOSTER CARE

*A Guide for Lawyers and Judges*

MIMI LAVER AND ANDREA KHOURY



American Bar Association





# OPENING DOORS FOR LGBTQ YOUTH IN FOSTER CARE

*A Guide for Lawyers and Judges*

MIMI LAVER AND ANDREA KHOURY

*Edited by Claire Chiamulera*

Copyright © 2008 American Bar Association

This book was made possible through a grant by an anonymous donor.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association or the anonymous donor and should not be construed as representing the policy of the American Bar Association or the anonymous donor.

Library of Congress Cataloging-in-Publication Data

Laver, Mimi, 1965-

Opening doors for LGBTQ youth in foster care : a guide for lawyers and judges

Mimi Laver and Andrea Khoury.

p. cm.

ISBN 978-1-60442-073-9 (pbk.)

1. Foster children—Legal status, laws, etc.—United States. 2. Sexual minority youth—Legal status, laws, etc.—United States. 3. Legal assistance to children—United States. 4. Stigma (Social psychology) I. Khoury, Andrea. II. ABA Center on Children and the Law. III. Title.

KF3736.5.L38 2008

344.7303'2733—dc22

2008010635

Portions of this book appeared in a different format in *ABA Child Law Practice*, published by the ABA Center on Children and the Law.

Graphic design by Kimberly Ridge, Hasten Design Studio, Washington, DC.

# TABLE OF CONTENTS

Introduction ..... 1

Acknowledgments ..... 3

Defining Terms ..... 5

*Chapter One*

Your Role in Protecting LGBTQ Youth ..... 7

BY ANDREA KHOURY

- *Raising Awareness of LGBTQ Issues: An Interview with Judge William Pocan* ..... 15
- *Making it In and Out of Foster Care: An Interview with David Ambroz* ..... 17

*Chapter Two*

Examining Your Attitudes and Beliefs ..... 19

BY MIMI LAVER

- *Representing LGBTQ Youth: Challenging Assumptions: An Interview with Krista Predagovich* ..... 29

*Chapter Three*

Building Strong Client Relationships ..... 33

BY ANDREA KHOURY

- *Creating a Safe Environment for LGBTQ Youth: An Interview with Kristin Kimmel* .... 41
- *Meeting LGBTQ Youth Where They Are: An Interview with Shawndelle* ..... 45

*Chapter Four*

Improving Your Legal Advocacy and Decision Making ..... 47

BY MIMI LAVER

- *Courtroom Strategies for Supporting LGBTQ Youth: An Interview with Judge Janet Albert* ..... 57
- *Listening to and Learning from LGBTQ Youth: An Interview with Dominick MaGee* .... 59

Appendices

A: Resources ..... 61

B: Legal System’s Approach to LGBTQ Youth in Foster Care:  
Select Findings from Attorney/Judge Survey ..... 70

C: Case Law on LGBTQ Youth Rights and Protections ..... 75



# INTRODUCTION

The Opening Doors Project started with the idea that lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in foster care are disadvantaged for many reasons and judges and lawyers can help them. We knew that a number of child welfare agencies and national organizations that work with agencies were improving the situation for LGBTQ youth in foster care, but little was being done to help judges and attorneys do their jobs better. We've created this book, and the trainings that go with it, to help judges and lawyers.

As we started our research, we learned some statistics like:

- 70% of LGBTQ youth in group homes reported violence based on LGBTQ status.
- 100% of LGBTQ youth in group homes reported verbal harassment.
- 78% of youth were removed or ran away from placement because of hostility to LGBTQ status.
- More than 4–10% of youth in state care identified as LGBTQ.
- 30% of LGBTQ youth reported physical violence by their family after coming out.
- 80% of LGBTQ students reported verbal harassment at school (70% feel unsafe; 28% dropped out).

LGBTQ youth are:

- Punished for expressing LGBTQ status
- Not allowed to participate in programming
- Told “you are going to hell”
- Not allowed to dress or groom as they prefer

We were moved by those numbers and convinced our project was going to make a difference for real kids. It was not until we met some of those “real kids” that we truly understood what happens for LGBTQ youth. One of the first steps we took in this project was to travel to five cities (Denver, Colorado; Jacksonville, Florida; Nashville, Tennessee; New York, New York; and Seattle, Washington) to conduct listening forums with LGBTQ youth who were in or recently out of foster care, and judges and lawyers from those cities. We talked with the participants for a couple of hours and heard some upsetting and inspirational things:

- We met a transgender young woman who felt safer at school than in her “temporary” shelter that she had been in for months.
- We talked to a young man who had been in 37 homes and was told he was gay before he even knew what the word meant.
- We met young people who felt disrespected by the judges who heard their cases, and youth who questioned why professionals in the child welfare system did not treat kids well.

- We also met a lesbian young woman whose lawyer was her best friend and the person she trusted the most.

You'll learn more about these and other young people we met later in the book.

During these forums we also met lawyers and judges who cared deeply about the youth on their caseloads. In every forum the professionals had honest questions for the youth and us, and they struggled with how to do their best for the LGBTQ kids with whom they worked. Some lawyers and judges already followed best practices and shared them with their colleagues. In each forum, we left feeling the people in the room had learned from each other — and taught us — and would make changes to their practices.

The results of the forums mirrored the results of a national survey we conducted with lawyers and judges. (See appendix B.) While our return rate was low, we learned that judges and lawyers across the country do not have the knowledge or resources they want to help the LGBTQ youth they serve.

We also conducted a “snowball survey” of people who are leaders in providing assistance for LGBTQ youth. We spoke to a state legislator, some judges, some provider agency staff from progressive state and private agencies, and others to learn about best practices. We've passed on some of their ideas throughout the book.

Finally, we conducted in-depth interviews with some youth, lawyers, and judges we met during the listening forums. They are included throughout this book and we think their experiences will help you better represent LGBTQ youth and make decisions about their lives.

After gathering this information, as well as information from books already written about LGBTQ youth in foster care, we wrote four articles for the ABA Center on Children and the Law's *Child Law Practice*, which are collected in this guide. They focus on improving practice and outcomes for LGBTQ youth. The first provides background and context for the issue. The second addresses negative attitudes professionals may have, and how they can overcome those attitudes to benefit youth. The third discusses building a strong lawyer–client relationship to provide the best possible representation. The last builds on the third and provides practice tools for judges and lawyers throughout the life of a case. Each article emphasizes improving practice to help youth overcome the statistics above.

We know this can be a difficult topic. Some judges and lawyers are uncomfortable thinking about LGBTQ issues. Others feel they have so many kids on their caseloads, and they are unable to pay special attention to a few. Some people we've talked to don't want to know anything about the sex lives of the young people on their caseloads, whether they are straight or LGBTQ. What we learned, though, is it is essential to consider whether a youth identifies as LGBTQ and if so, how that status is impacting his experience in foster care. LGBTQ youth are less safe in care than other kids. They have less of a chance of being reunified with their families or getting adopted, and their health, emotional health and educational needs are not being met. They need your help. We hope this book helps you offer that help in a meaningful way.



# ACKNOWLEDGMENTS

We want to thank a number of people who helped make this project and this book a reality. First we wish to acknowledge our generous anonymous donor who made this project happen.

Thanks to our advisory board for all your help. You provided input on the project overall as well had helpful insights on the survey, article content, and the nitty-gritty details requiring clarification. An especially huge thanks to Rob Woronoff and Rudy Estrada who believed in us from the beginning and supported us every step of the way. Your warmth, enthusiasm, knowledge and energy have been an inspiration.

We want to acknowledge all of the people who made the listening forums a reality including those of you who organized and everyone who participated. We found the soul of our project in your generous sharing.

We also want to thank everyone who spent time filling out our survey, talking to us during the snowball survey and sharing your stories during interviews. The depth of our knowledge increased greatly because of you.

To Sarah Caverly and Sharon Elstein — thank you very much. You helped design the survey, made sense of the numbers, and then made sense of the information so we could understand it all. As far as we can tell, you are magical.

Thanks to Shante Bullock for your help in so many ways from accomplishing administrative tasks to sharing your artistic talent in designing our beautiful brochure. We appreciate your excitement about the project and your willingness to help whenever we needed it.

Melissa Colangelo, what can we say? You were the intern extraordinaire who we wouldn't let leave! We appreciate your upbeat personality, shining smile and most importantly, incredible work. You helped us think through ideas and made them stronger, did our research, designed some presentations and conducted interviews. Congratulations on your graduation, you will make an excellent lawyer who we know will change the lives of many.

There are no satisfactory words to thank Claire Chiamulera, our wonderful editor. She joined our small team enthusiastically and provided much of the project's creative energy. She is organized and focused and was able to keep us on task. She assisted us in conducting a web cast, knowing neither of us had a clue about the technology involved. Claire is kind, calm and unflappable. She has an amazing way with language and truly brought out the best in each of us.

Finally, we want to thank each other. We learned a lot and had tons of fun on this journey. Creating this book together was a pleasure.

We dedicate this book to all the LGBTQ youth in foster care and hope you can use this book to help them have positive experiences.

MIMI LAVER | ANDREA KHOURY

## Advisory Board

David Ambroz

*Los Angeles City College Foundation*

The Honorable Ann Butchart

*Philadelphia Court of Common Pleas, Family Court Division*

Colby Berger

*The Home for Little Wanderers*

Amanda Donnelly

*Formerly of the National Association of Counsel for Children*

Rudy Estrada

*Formerly of Lambda Legal Defense & Education Fund*

Tracy Flynn

*Formerly of National CASA*

Cornelius Furgueson

*Juvenile Forensic Behavioral Health Services, Philadelphia Family Court*

Candace Gingrich

*Human Rights Campaign*

Matt Kailey

*Author, Speaker, and Gender Diversity Consultant*

D'Arcy A. Kemnitz

*National Lesbian & Gay Law Association*

Gary Mallon

*Hunter School of Social Work, National Resource Center for Foster Care and Permanency Planning*

Jody Marksamer

*National Center for Lesbian Rights*

Magistrate Judge Juliet McKenna

*District of Columbia Family Court*

Shannon Minter

*National Center for Lesbian Rights*

Caitlin Ryan

*César E. Chávez Institute, San Francisco State University, College of Ethnic Studies*

Dean Spade

*Sylvia Rivera Law Project*

Theresa Spahn

*Colorado Office of the Child's Representative*

Shannan Wilber

*Legal Services for Children*

Rob Woronoff

*Formerly of the Child Welfare League of America*

# DEFINING TERMS

Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) people are a diverse group who have struggled with issues of sexuality and gender identity, and may therefore feel a sense of kinship. LGBTQ people are diverse in terms of race, ethnicity, age, education, political affiliation, income, and the degree to which they identify with other LGBTQ people.

## *Lesbian*

A lesbian is a female whose primary sexual and romantic attractions are to other females. Some lesbians have romantic attractions to males and some don't. It is important to note that some females who have sexual or romantic attractions with other females, sometimes exclusively, may not call themselves lesbians.

## *Gay*

A gay male is a male whose primary sexual and romantic attraction is to other males. He may have sexual and romantic attractions to males currently or in the past. Some gay males may never have had sexual or romantic attractions to other males for a host of reasons (age, societal pressures, lack of opportunity, fear of discrimination), but nonetheless realize that their sexual and romantic attraction is mainly to other males. Some gay males have sexual and romantic attractions with females and some don't. Note that some males who have sexual and romantic attractions with other males, sometimes exclusively, may not call themselves gay.

"Gay" is also used as an inclusive term encompassing gay males, lesbians, bisexual people, and sometimes even transgender people. In the last 20 years, this has become less and less common and "gay" is usually used currently to refer only to gay males. The term is still often used in the broader sense in spoken shorthand, as in "The Gay Pride Parade is at the end of June."

## *Bisexual*

Bisexual males and females have sexual and romantic attractions to both males and females. Depending upon the person, his or her attraction may be stronger to females or to males, or they may be equal. Some people who have sexual and romantic attractions to both males and females do not consider themselves bisexual. Bisexuals are also referred to as "bi."

## *Transgender*

People who identify more strongly with the other gender than the one to which they were assigned (e.g., females who feel like males, or males who feel like females) are called "transgendered." Some transgendered people may "cross-dress" or "do drag" regularly or for fun (and many of these people are comfortable in their assigned gender). Other transgendered people may take hormones of the opposite gender and/or have surgery in order to change their bodies to reflect how they feel

inside. These people are also called “transsexual.” Transgendered people may identify as heterosexual, homosexual, or bisexual.

### *Questioning*

Refers to a person for whom a fixed sexual orientation and/or gender identity is not clear. Some questioning individuals may ultimately “come out” as LGBT, whereas others may be seeking additional resources to help address their internal questions. It is not developmentally uncommon for adolescents to question their sexual orientation or gender identity.

### *Heterosexual*

A heterosexual male or female’s primary sexual and romantic attraction is to people of the other sex. She or he may or may not have had romantic contact with another person, but still realize that his/her sexual and romantic attraction is mainly to people of the other sex. Some people who consider themselves heterosexual have or have had romantic contact with people of the same sex. Heterosexual people are also referred to as “straight.”

### *Gender Identity*

At birth, we are assigned one of two genders, usually based on our visible genitals. For many people this gender assignment fits and feels comfortable and they never think about it further. Others do not feel as comfortable with their assigned gender, either because they find the two-gender system too limiting or because they feel more identification with the gender opposite that to which they were assigned at birth. People deal with this discomfort in many ways, sometimes only in personal ways, and sometimes in ways visible to others.

### *Sexual Orientation*

Sexual orientation refers to one’s sexual and romantic attraction. Those whose sexual orientation is to people of the opposite sex are called “heterosexual,” those whose sexual orientation is to people of the same sex are called “homosexual” (or lesbian or gay), and those whose sexual orientation is to people of both sexes are called “bisexual.” The term “sexual preference” is misleading because it implies that this attraction is a choice rather than an intrinsic personal characteristic. Sexual orientation is not necessarily the same as sexual behavior.

### *Queer*

Some LGBT people, particularly young people living in the coastal U.S., use the term “queer” to encompass the entire LGBT community. For these people, the term “queer” is positive and empowering. Other LGBT people find this term degrading.

Source: These definitions were adapted from definitions prepared by the Seattle & King County, WA Public Health Department, and the Child Welfare League of America.



## Chapter One

# YOUR ROLE IN PROTECTING LGBTQ YOUTH

BY ANDREA KHOURY

- Some studies suggest lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are two times more likely to attempt suicide than their heterosexual peers.<sup>1</sup>
- Between 11% and 40% of homeless youth are LGBTQ.<sup>2</sup> Over half of homeless youth have spent some time in foster care.<sup>3</sup>
- LGBTQ youth are two times as likely to be threatened or injured with a weapon at school and two times as likely to skip school because they feel unsafe.<sup>4</sup> 69% of LGBTQ youth reported experiencing some form of harassment or violence.<sup>5</sup>

The reality is the statistics and stories are mostly grim for LGBTQ youth in foster care. Whether they enter foster care because their parents reject them due to their LGBTQ status or they disclose their LGBTQ status while in foster care, these youth face discrimination, harassment, and violence because of their sexuality or gender identity.

*“Ignorance can only be remedied with knowledge. The system is broken; the only way to change it is through advocacy.”<sup>6</sup>*

*“I use gender-neutral language when asking my clients about their dating life.”<sup>7</sup>*

*“I have a folder on my bench with resources for different issues (e.g., domestic violence). If I had resources for LGBTQ youth, I would include them and give them to people that need it.”<sup>8</sup>*

Lawyers and judges can help change these statistics. Lawyers who develop relationships with LGBTQ clients and provide appropriate representation can make a difference for these youth. Judges who ask the right questions and insist on appropriate services and fair and respectful treatment can protect this vulnerable population and help them become successful adults. This chapter discusses the risks facing LGBTQ youth in foster care. It also describes the roles judges and lawyers must play in these young people's lives to protect them from these risks and help them succeed.

## A Life of Risks

LGBTQ youth have special risks related to their sexual orientation and gender identity that set them apart from non-LGBTQ youth in foster care. The social stigma attached to LGBTQ people causes these youth to hide their identities, fear for their safety, and often turn to drugs to cope. Higher suicide rates and violence in schools are two of the many risk factors to be aware of when working with LGBTQ youth in foster care.

### *Suicide*

Studies show LGBTQ youth are twice as likely as non-LGBTQ youth to attempt suicide. Others put the number closer to four times as likely.<sup>9</sup> Aside from typical adolescent turmoil, LGBTQ youth face significantly greater conflict due to their sexual orientation or gender identity. They don't have the same feelings as their peers about sexual attraction or sense of identity. During adolescence, youth explore their identities and find where they fit. LGBTQ youth struggle with loneliness and feeling different: *"I knew that I was different, no one ever told me, but I just knew."*<sup>10</sup> This feeling, coupled with being in foster care and having limited support, makes some youth think they have no way out. One youth explains it: *"As I got older through high school, it started to get even worse because I attempted suicide many times. It was too much. It was like at first I did it because I wanted people to say hey look, you know, look at me, pay attention to me. But after that I was placed at St. Jude's, and that's when I started to realize and accept that I was gay."*<sup>11</sup>

### *Homelessness*

When youth disclose their LGBTQ status to their parents or foster parents, the result is sometimes devastating. They are often rejected by people they rely upon for housing, food, and unconditional love and acceptance. Some youth voluntarily leave to escape the harassment or violence they experience at home. Some youth are forced to leave because the family does not accept their LGBTQ status: *"One day my father heard me talking on the telephone to a guy who I had met. When I got off the phone he just went crazy on me.... He told me to get out and literally threw me out the front door. I was devastated and didn't know where to go."*<sup>12</sup> Some youth travel from sofa to shelter to street corner. They often have no permanent place to call home. On the streets they are more susceptible to violence and crime.

### *School*

Youth spend the majority of time at school. It is supposed to be a place to feel safe and accepted: *"Safety holds different meaning for LGBTQ kids: School is hard. Any situation can mean danger. Just because they are in stable placement doesn't mean they are safe. We are quick to assume that the world likes gay people. [The] simple fact of being queer puts people at risk (physically and mentally). Judges and lawyers should start with these understandings and then take the step to question safety."*<sup>13</sup>

School is the place where youth learn to interact with peers and form trusting relationships that often last into adulthood. LGBTQ youth in foster care have the added burden of moving from placement to placement and changing schools. They experience harassment and rejection through multiple school placements. They often do not

have supportive teachers or counselors to turn to for help. Many end up dropping out or doing poorly in their studies.

## Prejudicial Treatment

Seventy-four percent of LGBTQ youth in foster care believe they experience prejudicial treatment by service providers because of their sexual orientation or gender identity.<sup>14</sup> Youth often believe professionals accept people regardless of their differences. Sometimes they are wrong. Many youth in foster care find the professionals who work with them are just as harmful as the parents who abused them or the peers who harassed them. This realization is harmful because youth feel they have no where to go for support. The people who are supposed to support, care for, and provide treatment are often the perpetrators of the harassment, intolerance, and sometimes violence.

One LGBTQ youth reported that he was in a religious foster home where it was not OK for him to be gay: *“I had my own lock box with my stuff in it. They broke into it one day while I was at school. When I got home, they had me all packed up, because I was gay. I left town.”*<sup>15</sup> Another youth reported: *“When I was in a group home, I was assaulted because I’m gay. I didn’t appreciate that I had to take it. The staff knew what was going on but they didn’t try to stop it.”*<sup>16</sup>

Still another youth reported that although most staff did not say anything to his face he overheard staff saying things like: *“That new fag kid that just came in. Why do they make us put up with these gay children? Why do they ship them here? No wonder their parents get rid of them.”*<sup>17</sup>

## Substance Abuse

LGBTQ youth are twice as likely as heterosexual youth to abuse alcohol, and eight times as likely to use cocaine/crack.<sup>18</sup> Using and abusing illegal substances is a common way that youth escape their troubles. LGBTQ youth in foster care have especially high rates of substance abuse due to their circumstances. Isolation, rejection, harassment, and violence can all be forgotten by getting high. *“...pot, acid, ecstasy, speed...I did it all. I just wanted to kill the loneliness I felt inside. I really didn’t care if I lived or died. Trying to deal with my identity was a really difficult time for me.”*<sup>19</sup> They have limited exposure to positive coping tools and turn to substances to deal with the problems in their life.

By becoming aware of the risks associated with LGBTQ youth in foster care, lawyers and judges can take steps to address these issues. The fact that a youth is LGBTQ will factor into placement, permanency, services, advocacy, and court rulings.

## Legal Roles

Youth in foster care interact with social workers, foster parents, mentors, court appointed special advocates (CASAs), therapists, teachers, and other professionals. These

### A NATIONAL CALL TO END DISCRIMINATION

The following child welfare and mental health organizations condemn discrimination against LGBTQ youth and reject efforts to change their sexual orientation:

American Psychiatric Association

American Psychological Association

National Association of  
Social Workers

American Medical Association

American Academy of Pediatrics

American Counseling Association

professionals try to do what is in the child's best interests. Lawyers and judges have unique roles when the sexual orientation or gender identity of a client is an issue in a case. Judges and lawyers should not leave this issue up to the child welfare agency and other professionals to address.

## Judges

The judge is the gatekeeper for a youth's safety, permanency, and well-being. Everyone follows the judge's lead. The judge is unbiased and objective and decides what is in the child's best interests. The judge decides whether the child comes into care, services for the child, visitation with parents and relatives, the child's permanency plan, and whether the agency has made reasonable efforts to prevent removal and finalize a permanency plan. If the judge creates an open and supportive courtroom for all youth (including LGBTQ youth), insists the agency keep the youth safe, finds an appropriate placement, and asks all parties to respect the youth, then other professionals will follow the judge's lead.

## Lawyers

Lawyers or guardians ad litem (GAL) who represent children in dependency cases provide the voice of the child. The youth depends on the lawyer's ability to know the system and advocate for her. Lawyers meet with the child, establish a lawyer-client relationship, request services from the child welfare agency, negotiate with parents, and advocate for the youth in court proceedings.

Sometimes youth only disclose their LGBTQ status to their lawyers because they are the only ones whom youth trust. Lawyers can help normalize the youth's feelings, request LGBTQ-specific services, and address any unfair treatment. If the agency is not placing youth in supportive homes or getting appropriate services, lawyers can make reasonable efforts and cultural competency arguments. Finally, the lawyer can appeal unjust rulings. Lawyers need the tools to successfully address all issues that a youth may face. The youth must depend on the lawyer to have this knowledge and experience.

There is a problem when youth say: *"I never got to go to court, I never even saw my lawyer" and "I wanted to speak on my own behalf...but I did not get to go [to court]. If I'm not there, present, my words can get twisted...I felt I was in care for longer because of this woman (GAL)."* These youth need to be confident that their lawyers will advocate for them and that they will be involved in the process. One youth felt this way and revealed she had her lawyer's cell phone number and could call and rely on her for anything. Because of the trusting relationship with her lawyer, this youth could tell her she was a lesbian. She felt heard and supported.<sup>20</sup>

LGBTQ youth endure out-of-home placement in foster care and the stigma of being LGBTQ. They cannot always rely on the agency to make things better. Judges and lawyers can make a difference in their lives.

## Interacting With Youth

Judges and lawyers need to closely watch how they interact with LGBTQ youth. The following list is not exhaustive and should be supplemented based on your comfort level and knowledge of LGBTQ issues.



## Attitudes

Whether known or not, lawyers and judges have preconceived notions when representing a child client or presiding over a dependency case. Some are appropriate, for example:

- Children shouldn't live in unsafe homes.
- Youth are generally better off in family-like settings.
- Children need stability and permanency in their lives.

These notions are based on knowledge of the child welfare field, child development, and the best interests of children.

*“If a youth feels she is being judged based on her sexual orientation, or her advocate has negative beliefs about homosexuality, she is likely to withhold information that may jeopardize her safety and permanency.”*

Some preconceived notions, however, can harm a youth and/or family. Some can be based on a lack of understanding and information. Judges must understand their own beliefs about sexual orientation and gender identity when presiding over dependency cases. They must learn the issues facing LGBTQ youth in foster care. Remaining objective does not require a judge to be free of these beliefs; it requires a judge to recognize them and to make rulings without imposing them on children and families. For example, a judge may feel uncomfortable with gender nonconforming behavior but have to remain objective when determining how to keep a transgender girl safe in a group home.

When interviewing and representing youth, lawyers should recognize their beliefs about sexual orientation and gender identity and not allow them to impact their representation. Developing a trusting relationship with a client is critical. If a youth feels she is being judged based on her sexual orientation, or her advocate has negative beliefs about homosexuality, she is likely to withhold information that may jeopardize her safety or permanency. For example, a youth who is being physically assaulted in her placement because she is a lesbian may not disclose the abuse to her lawyer if she thinks her lawyer has negative beliefs about homosexuality. She may become depressed and attempt suicide or run away to live on the streets instead of seeking a supportive environment with help from her lawyer. (See Chapter 2)

## Language (verbal and nonverbal)

One way a youth decides whether to trust a person is by observing that person (and his surroundings) and listening to his words.

- Is he polite?
- Does he explain who he is and why he is here?
- Does he take time to ask the youth questions to get to know the youth?
- Does he encourage the youth to talk?
- Does he have pictures of children and family around?

- Does he have books and posters around his office that signal inclusion and respect?

Lawyers have the ability within the first several minutes to establish the base for a trusting relationship.

Judges often have the opportunity to speak with youth during court hearings. Like lawyers, they can quickly show a youth whether the courtroom is safe.

- Does the judge address the youth?
- Does the judge speak with the youth respectfully and understand what the youth has had to endure?
- Does the judge let the youth speak?

Lawyers and judges must tailor their language so youth will feel comfortable opening up and disclosing their LGBTQ status. Knowing a youth's LGBTQ status may help advocate for services and safety measures. (See Chapter 3 for more guidance on building trusting relationships).

## Confidentiality

Children's lives in dependency cases are often publicized for many to examine. The social worker knows about the youth's home life, school progress, doctor appointments, test results, friends and social activities, and frequency of therapy appointments. Foster parents get reports about youth before they come into their homes. These reports are filled with details about the youth and the birth family. *One youth reported that his foster parents were given a report when he was placed in their home at age six stating that he was gay. He expressed dismay because at six years old he did not know what being "gay" meant.*<sup>21</sup> The lawyers know most things that the social worker knows and have read and discussed the results of health professionals' reports. The judge hears it all. Although hearings may be closed, inevitably people who don't know the youth hear the most intimate details.

Sexual orientation and gender identity are intimate issues. Heterosexual youth have trouble discussing these issues. For LGBTQ youth, the situation is worse. Because stigma is often attached to LGBTQ people, youth may not disclose their status for fear of others finding out. Constantly living under this fear can spiral into any number of common risks facing LGBTQ youth. Lawyers and judges can help lift the fear and stigma by keeping communications confidential.

When representing a youth, the lawyer should explain that all communications (except a few circumstances) between the youth and lawyer are confidential and that the youth should feel comfortable telling the lawyer anything. The lawyer must stick to that promise. Many times lawyers with good intentions disclose information to social workers, foster parents, the judge, and others because they think it is in the best interests of the child. If youth are promised confidentiality, they may be more likely to disclose their LGBTQ status. The lawyer and the youth can then work together to decide if and when the youth should tell others.

If a youth is represented by a GAL or CASA, there is no confidentiality requirement. The GAL or CASA must discuss confidentiality with the youth and explain what communications will and will not be shared.

## Conclusion

*“I think foster care is hard enough in the best cases. LGBTQ youth already feel estranged and foster care does nothing to make them feel like they belong.”<sup>22</sup>*

LGBTQ youth experience harassment, violence, homelessness, and rejection. Lawyers and judges can ensure this does not continue by using the legal system to make LGBTQ clients safe, give them permanency, and ensure their well-being.

- 
- <sup>1</sup> Russell, Stephen T. and Kara Joyner. “Adolescent Sexual Orientation and Suicide Risk: Evidence From a National Study.” *American Journal of Public Health* 91(8), August 2001, 1276–1281.
  - <sup>2</sup> Wardenski, Joseph J. “A Minor Exception?: The Impact of *Lawrence v. Texas* on LGBT Youth.” *Journal of Criminal Law and Criminology* 95, Summer 2005, 1363.
  - <sup>3</sup> Mallon, Gerald P. *We Don’t Exactly Get the Welcome Wagon: The Experience of Gay and Lesbian Adolescents in Child Welfare Systems*. New York: Columbia University Press, June 1998.
  - <sup>4</sup> Massachusetts Department of Education. *2001 Massachusetts Youth Risk Behavior Survey Results*, September 2002. Available at [www.doe.mass.edu](http://www.doe.mass.edu)
  - <sup>5</sup> GLSEN National. *The 2003 National School Climate Survey: The School Related Experiences of Our Nation’s Lesbian, Gay, Bisexual, and Transgendered Youth*, 2003. Available at [www.glsen.org](http://www.glsen.org)
  - <sup>6</sup> Judge statement, Opening Doors Project listening forum, Jacksonville FL, October 12, 2006.
  - <sup>7</sup> Lawyer statement, Opening Doors Project listening forum, Denver, CO, July 28, 2006.
  - <sup>8</sup> Ibid.
  - <sup>9</sup> Healy, P. “Suicides in State Top Homicides.” *Boston Globe*, February 28, 2001, citing Massachusetts Department of Public Health study, cited above.
  - <sup>10</sup> Youth quoted in Mallon, Gerald P., 1998, 22.
  - <sup>11</sup> Ibid., 28.
  - <sup>12</sup> Ibid., 50.
  - <sup>13</sup> Scheyd, Karey, Deputy Director of Parent Recruitment, New York Administration for Children’s Services.
  - <sup>14</sup> Wilbur, Shannon, Caitlin Ryan, and Jody Marksamer. *CWLA Best Practices Guidelines: Serving LGBTQ Youth in Out of Home Care*. Washington, DC: Child Welfare League of America, 2006, 6. Available online at [www.cwla.org/pubs/](http://www.cwla.org/pubs/)
  - <sup>15</sup> Youth statement, Opening Doors Project listening forum, Jacksonville, FL, October 12, 2006.
  - <sup>16</sup> Youth quoted in *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care*. Washington, DC: Child Welfare League of America and Lambda Legal Defense and Education Fund, 2006, 22.
  - <sup>17</sup> Youth quoted in Mallon, Gerald P., 1998, 62.
  - <sup>18</sup> CWLA/Lambda Joint Initiative. “LGBTQ Youth Risk Data.” Available online at <http://www.lambdalegal.org/take-action/tool-kits/getting-down-to-basics/risk-data.html> (citing Garofalo, R., Wolf, R., Kessel, S., Palfrey, J., DuRant, R. “The Association Between Health Risk Behaviors and Sexual Orientation Among a School-based Sample of Adolescents.” *Pediatrics* 101(5), 1998).
  - <sup>19</sup> Youth quoted in Mallon, Gerald P., 1998, 30.
  - <sup>20</sup> Youth statement, Opening Doors Project listening forum, New York, NY, November 29, 2006.
  - <sup>21</sup> Youth statement, Opening Doors Project listening forum, Denver, CO, July 28, 2006.
  - <sup>22</sup> Lawyer’s quote from ABA Opening Doors Project National Attorney Survey, Fall 2006.



## *Raising Awareness of LGBTQ Issues*

AN INTERVIEW WITH JUDGE WILLIAM POCAN

Judge William Pocan was appointed to the Milwaukee County Circuit Court in 2006. Although state law requires judges to rotate through different divisions, Judge Pocan has been inspired by his time in children's court. He now works on termination of parental rights (TPR) cases. Before his appointment, Judge Pocan spent more than 20 years in trial and appellate practice at a private firm, specializing in consumer and family law. Judge Pocan is also a founding board member of the Milwaukee LGBT Community Center.

### **How many child welfare cases do you carry that involve LGBTQ youth?**

In TPR cases, there are none. Most of the children are just too young and sexuality is not an issue. However, I am aware that there is a higher percentage of LGBTQ youth represented in the child welfare system because these children have family difficulties more frequently.

### **What is your impression about the needs related to serving LGBTQ foster youth compared to their peers in foster care?**

I can't pick up a publication and not hear that despite all the positive movement, the suicide level is higher for this segment of the population. I think Milwaukee is an urban island in a rural state. I can't imagine what it must be like in a northern Wisconsin town. I'm well aware that LGBTQ youth have additional difficulties, and that few services can be provided there. Community centers across the state are just beginning to develop services for these youth. One positive thing is that with any element of diversity, we help educate each other. Colleagues can really help each other raise the level of understanding and should be doing that.

### **What are some possible roadblocks to providing effective advocacy for LGBTQ youth? Have you observed any positive changes in the legal community's handling of LGBTQ foster youth?**

We never hear about the positives — that needs more attention. So often, people doing good lack the resources or PR talents for photo ops or publishing positive stories that could be an inspiration to other advocates. The negative is that the system relies heavily on social workers. These social workers need to be trained because often

there's a limit to what judges do and therefore they rely on everyone else. The greater community needs to be aware of what services are out there and then advocate for what should be out there. One critical missing piece is the recruitment of LGBTQ families for adoptive and foster parents.

**Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?**

I'm lucky to work in Milwaukee. Wisconsin in general is an enlightened area. The entire process is LGBTQ-friendly for the most part. One does not see a great deal of discrimination. People work hard for the best interest of the kids.

**What advice do you have for other adults working with LGBTQ youth?**

Listen to the kids. Listen to what their needs are. When in the courtroom, we all need to work hard for the best interest of the child. Even in 2007, people have strong feelings about this. You have to set aside your personal politics. Whether you're happy they're gay or not, we want happy kids. We need to have people keeping an eye on what the real issue is: *How can we create a system that cultivates well-adjusted, educated, and happy kids.* If we can just stay out of the political fray and consider what is good for real live breathing kids in our community, we'll all be better off. These youth are out there and they need their legal advocates to help them by providing information about mentors, gay-friendly organizations, and gay-friendly community centers.

*Interview conducted by Melissa Fay Colangelo*

## *Making It In and Out of Foster Care*

AN INTERVIEW WITH DAVID AMBROZ

After graduating with honors in political science from Vassar College, David Ambroz studied for a year at Oxford, England, then to UCLA School of Law. As a practicing attorney in California, he worked on one of the largest child welfare class action lawsuits ever brought in California.

Mr. Ambroz has also served as Managing Director of EPG Inc., a consulting firm concerned with land use in Hollywood, and as Director of Public Policy for the Hollywood Chamber of Commerce. He is currently the Executive Director of the Los Angeles City College Foundation and continues to advocate for the welfare of foster care youth. Mr. Ambroz was in the foster care system from age 11 to 17. He has written about living on the streets with his mother and siblings, transitioning to life in foster care, and life after leaving the system.

### **Has your sexual orientation affected your foster care experience?**

The nonexistence of something is powerful: homosexuality doesn't exist in foster care. There was never a box to check; I was never asked; I was never given support; I was never spoken of as a gay youth and my homosexuality was never discussed even though I knew I was gay. I was 11 years old when I entered foster care. Eventually, after a series of tests as part of my foster care therapy, I was diagnosed with gender identity disorder. They knew I was gay, but no one ever brought up the word gay. (I got my file when I was emancipated in 1997 and that is how I saw the diagnosis.) It was obviously an 'off' diagnosis, because it is usually reserved for transsexuals, but most foster care psychotherapists paint with a broad brush. They're underpaid, and if they last at all, it's for one to three years.

I've learned that in all foster group homes, sexuality is stifled. I saw many youth in same-sex relationships who weren't gay. Foster care forces people to grow up in homes where they can't express their sexual identity. You get a broad spectrum of sexuality in foster group homes, but we're not allowing these kids any privacy or any time to develop their own sexual identity at a time when their hormones are changing. This is an at-risk population, some of them coming from violent or sexually abusive homes. Then they enter a system in which they do not receive any sexual education that is age-appropriate or any opportunity to date in a normal setting. Sexuality in foster care is an issue for all youth. No one wants to talk about youth and sexuality, regardless of

whether it's same-sex relationships or not. This is a non-starter. No one wants to deal with this topic and it's not politically popular. (I wish I could offer a solution, but I think doctors and therapists would have to work together on this issue.)

## Did you feel your sexual orientation should have affected your interaction with lawyers who represented you and gave you legal information?

We still live in a homophobic, racist society. Differences are differences and people do not feel comfortable facing them. Do best practices even really exist? Maybe, but many foster parents aren't well equipped to deal with this issue and don't want to deal with sexuality of the children in their homes. Ultimately, they don't have to deal with it, they just have to be good people.

We need to question if we really want the teen's lawyer to know everything about a kid, or just work with the social worker. We don't want attorneys pressuring kids to come out in court. It's too much to ask them to do that on the record. Attorneys need to support any kid who is willing to do it. That youth needs to be directly connected to support services and the lawyer needs to follow up with a placement that is gay-friendly. The youth must immediately connect with other resources. If they're willing to come out, you need to honor and respect their dignity and privacy. Remember, you don't accompany these youths home at the end of the day. These kids are going to a largely inhospitable world. Any issues of difference create conflict, and so attorneys should tread carefully in this arena.

## What advice can you give on improving legal representation for LGBTQ youth?

The best skill you can give these youth is the ability to advocate for themselves. Adults should be empowering these youth. Teach them to advocate and that skill will have tentacles that bleed out into other subjects, although you don't have to start with such a sensitive subject as sexuality.

Don't endanger them. Best practices and reality are mine fields apart. I have heard social workers say out loud, without fear of reproach, that they wouldn't place a kid because he was gay. I know that I felt outing myself in foster care would be suicide. The bottom line is no one wants to project differences in an inhospitable space. Remember, the road to hell is paved with good intentions: outing someone, thinking you're helping them, could be dangerous. Attorneys should be cautious and remember that half the time, at age 11, 12, even 16, teens really aren't sure what they are or where they are on the spectrum of sexuality. Once a youth is labeled as gay, that is a tough label to shake, and of course, no one ever has a hearing about heterosexuality! Sexual identity may not even be appropriate to discuss in an open courtroom, but *it should* have a place for safe discussions and it needs to be dealt with.

This problem is going to take a long time to fix: homophobia will pass as time passes. One can parallel this struggle with integrated schools and racism. We'll get there, but this will take time. Let the youth have safe spaces now. Organizations such as Green Chimneys are great for right now and there are far too few of them. It takes people continually asking for space in those homes to start the conversation about *why* these separate places are desperately needed.

*Interview conducted by Melissa Fay Colangelo*





## Chapter Two

# EXAMINING YOUR ATTITUDES AND BELIEFS

BY MIMI LAVER

We come to our jobs with ideas and attitudes about many topics. We reach these ideas based on how we were raised, religious beliefs, politics, interactions with people, and books we've read. As child welfare professionals, we bring these ideas and attitudes to our relationships with children, youth, and their families. Young people know when the adults who are working with them don't like them or are uncomfortable with them, and they react to those negative feelings. It is important to explore our attitudes about people who differ from us based on race, gender, socioeconomic class, sexual orientation or gender identity. Once we identify those attitudes, we must consider whether they have a negative impact on our relationships with children and youth.

When speaking about staff at his group home, Maurice said:

*"The best staff are those that respect you for who you are, rather than judge you for what you do. They don't have to be gay, they don't have to be straight, they just have to listen without judging. People who are nasty and have nasty attitudes make me feel uncomfortable, you know the people who just work for the money, not to help the kids."*<sup>1</sup>

This chapter explores the attitudes child welfare lawyers and judges expressed about LGBTQ youth during five listening forums held around the country. It discusses how attitudes and words can impact LGBTQ youth and suggests ways we can all try to be the people who work to help the kids, not make them feel uncomfortable.

## Acknowledging Attitudes

You've heard the terms "we're only human" and "no one is perfect." These are so true. Everyone makes mistakes, does or says things they feel sorry for after, forgets things, or holds beliefs that others find troubling. Being human may explain certain attitudes, but it cannot excuse actions or words that hurt others, especially if the others are children. LGBTQ youth report a high level of verbal and physical abuse. They are often belittled by the adults around them, including parents, foster parents, caseworkers, group home staff, judges and lawyers. All of these adults are human and many believe being gay is "wrong,"<sup>2</sup> but they may not want to harm the youth. Even those who don't share that belief can learn to be more caring of the LGBTQ youth.

## ON POINT

### **Lawrence v. Texas Prohibits Judicial Bias Based on Sexual Orientation**

In 2003, the United States Supreme Court decided *Lawrence v. Texas*,<sup>1</sup> a landmark case that should make judges more aware of their attitudes and actions towards LGBTQ people. *Lawrence* overturned a Texas sodomy law because it infringed on a homosexual individual's constitutional right to make personal choices. It overturned *Bowers v. Hardwick*,<sup>2</sup> which framed the issue as one of public morality. Its tone and language differed from *Bowers* and its effect was to permit judicial decision making on the basis of a party's sexual orientation. *Lawrence* took the issue away from public morality and reframed it to one of individual choice and privacy.<sup>3</sup>

*Lawrence* should result in less biased decisions by judges. Tobin Sparling writes, *Lawrence*: Amends the Code of Judicial Conduct of every state that does not already plainly enumerate sexual orientation bias as a violation of a judge's ethical duties. No longer can any judge lawfully brand a homosexual person as a criminal because of that person's sexual orientation alone. No longer can any judge lawfully treat a homosexual litigant any less respectfully than he or she would treat a heterosexual person standing in the same shoes. No longer is there any excuse for a judge to demean or slur homosexual persons by his or her out-of-court actions or words...<sup>4</sup>

There are still cases in which LGBTQ individuals suffer discrimination by judges. In family cases, such as custody and adoption, LGBTQ parties continue to lose rights to children because of their LGBTQ status.<sup>5</sup> The *Lawrence* case, though, can help when bringing a judicial bias claim and can be used when discussing attitudes toward LGBTQ youth with judges and lawyers.

<sup>1</sup> 539 U.S. 558 (2003).

<sup>2</sup> 478 U.S. 186 (1986).

<sup>3</sup> Sparling, 2004.

<sup>4</sup> *Ibid.*, 307.

<sup>5</sup> See Fedders, Barbara. "Coming Out for Kids: Recognizing Respecting and Representing LGBTQ Youth." *Nevada Law Journal* 6, Spring 2006, 774, 799- 801 for discussion of post-*Lawrence* cases.

### **From our Listening Forums**

This project involved five listening forums with LGBTQ youth, children's lawyers, and child welfare judges.<sup>3</sup> At a forum in one southern state, a group of child welfare professionals explained the reasons that LGBTQ youth were having difficulties. One lawyer said, "*Honey, you are in the buckle of the bible belt.*" She explained she was not surprised that a foster parent refused to adopt a child once she came out as a lesbian or that other youth did not want to reveal their LGBTQ status to the adults in their lives. Putting the common attitude "on the table" was useful and helped the group address the issues honestly. A first step in any group discussion about working with LGBTQ youth in foster care is sharing attitudes held generally by the community and by individuals.

This is not an isolated example. During another listening forum we heard that a judge told a lesbian youth that he was surprised that both the youth's birth parents and adoptive parents were interested in her given her lesbian identity. A different judge belittled a gay young man by implying in open court that the youth's identity was just "a fad" by saying "*So you're gay now.*" More typically, our listening forums revealed lawyers and judges lack enough information to adequately address the needs of

LGBTQ youth and wanted to learn more about working with them. Some participants had questions about how they should interact with these youth, and were open to learning.

## Impact of Negative Attitudes

When talking about the adults in his life during foster care, Carl said, “*Do you know how it feels? I mean I couldn’t live at home with my own family because of who I am and then to get treated like that by people who are suppose[d] to be professional and deal with kids. I just don’t think it’s fair. It’s just not right.*”<sup>4</sup>

We heard similar outrage by youth at our listening forums. They were confused and hurt that the lawyers and judges who they viewed as experts in dealing with kids either ignored them, or worse, were disrespectful. LGBTQ youth often feel beaten down. They try different strategies to cope, but outcomes for these youth are poor compared to heterosexual youth in foster care. Many of them have been verbally harassed by enough adults and peers that they hide their sexual orientation or identity. But hiding one’s identity can only go on for so long and often leads to low self-esteem or low self-worth. For many, this leads to increased drug abuse, prostitution, aggressive behaviors, or suicide attempts. Many LGBTQ youth leave their foster or group homes and live on the streets. They report feeling safer on the streets than in their placements.<sup>5</sup>

### GROUND RULES FOR DISCUSSION

This listening forum is a **SAFE** place to be whoever and or whatever you want to be. The forum offers a **NONJUDGMENTAL** environment.

All participants have the **OPPORTUNITY** to talk in the forum. Whether a person chooses to talk or not to talk is okay.

Complete **CONFIDENTIALITY** is kept by everyone. No names, words, or stories are told to anyone outside the group.

Members show **RESPECT** for each other and for what is said in the forum.

Personal information is shared **VOLUNTARILY** without pressure from other members.

Members use “**I**” statements, taking **RESPONSIBILITY** for their own feelings, actions, thoughts, and words.

*And Remember...*

**THE OUCH RULE** – If you are upset by something someone says, say “ouch” and explain.

**STEP UP AND STEP BACK** – If you talk a lot, step back and give others a chance to speak. If you have not spoken, step up and let your voice be heard!

**AGREE TO DISAGREE**

Source: Adapted from the Jacksonville Area Sexual Minority Youth Network, Inc. (JASMYN, Inc).

## THE GLBT YOUTH SUPPORT PROJECT PERSONAL COMFORT ASSESSMENT TOOL

	AGREE	DISAGREE	NOT SURE
I am comfortable using the words "gay," "lesbian," "bisexual," and "transgender."			
I am comfortable addressing and talking about GLBT issues in general.			
I address homophobic behavior/language exhibited by colleagues.			
I address homophobic behavior/language exhibited by youth/clients.			
I make an effort to use GLBT-inclusive language in conversation.			
I would be comfortable having a GLBT co-worker.			
I would be comfortable having a close friend who is GLBT.			
I would be comfortable if my child, niece, or nephew "came out" to me as GLBT.			
I ask GLBT co-workers or clients about their partners or families just as I ask heterosexual co-workers or clients about their partners or families.			
I do not assume that a gay, lesbian, or bisexual client or co-worker is attracted to me.			
I would be comfortable if a client came out to me as GLBT or questioning.			
I make an effort to use a person's preferred gender pronoun and name, even if I previously knew him or her by a different pronoun or name.			
I would be comfortable displaying a GLBT Safe Space sticker or other visible sign of support for GLBT people.			
I would be comfortable if someone thought I was GLBT.			
I feel that being GLBT is a healthy expression of human sexuality.			
I am willing to put aside my personal beliefs to help a client find the best solution for his or her own life.			

Source: The GLBT Youth Support (GLYS) Project, a program of Health Care of Southeastern Massachusetts, Inc. [www.hcsm.org/glys.htm](http://www.hcsm.org/glys.htm)  
Ph.: 800/530-2770; E-mail: [glys@hcsm.org](mailto:glys@hcsm.org)

When describing the harassment he endured at a group home, Angelo said, *“That’s when I decided to leave. They had me to the point where I was crying inside, but I wouldn’t let them see it.”*<sup>6</sup> No child in the foster care system should be crying inside, and it is the professional’s job to end not cause it.

Youth hope child welfare lawyers and judges will be open to hearing their wishes and accepting them for who they are. At our listening forums we heard about the good and the not so good. The latter was expressed by a youth who said, *“The judges aren’t welcoming if they know you’re gay. No one seemed interested in working with me.”*<sup>7</sup> Even if a judge has negative feelings for LGBTQ youth, it is the judge’s duty to welcome the youth and find out what services or assistance the youth needs. *“Judges and attorneys are in positions of power. They need to communicate with kids in a way that will allow kids to be honest so the judges and lawyers can do their work.”*<sup>8</sup>

## Projecting Positive Attitudes

In responding to a question about the unique needs of LGBTQ youth, one lawyer said: *“Their sexual identity has to be nurtured, not suppressed and they should never be made to feel ashamed of their orientation in foster care.”*<sup>9</sup> Another lawyer, in answering a question about why LGBTQ youth have more placements than other youth answered: *“Youth often experience rejection or mere tolerance instead of nurturance and celebration from foster care family members and sometimes parents and sometimes their sibs.”*<sup>10</sup> What can you as judges and lawyers do to nurture and celebrate a LGBTQ youth’s identity?

Examining our attitudes, deciding to change those attitudes, and actually changing them takes time. It takes courage and honesty to admit to ourselves and others that there are things we want to change. Sometimes, changing attitudes is not as important as changing behavior and working more closely with LGBTQ youth and their families.

Two studies of counselors in training show how analyzing attitudes leads to change. In the first study, a student moved from never wanting to work with a gay or lesbian couple to understanding her feelings and being more open to counseling such a couple.<sup>11</sup> Through written dialogue with her professor, the student realized her beliefs conflicted with her professional ethics and discriminated against LGBT families.<sup>12</sup> Once she realized this, she was able to find ways to treat gay couples. The study concluded that dialogue, while requiring patience and continuous effort, helps challenge biases.<sup>13</sup>

In the second study, 10 heterosexual counselors-in-training joined a year-long course in which they heard speakers, discussed readings, and shared their beliefs about sexuality, homophobia, and gay and lesbian development.<sup>14</sup> By studying their own sexuality and sexual differences, many of the students came to value LGB people and understand their struggles. The study concluded that creating a safe and trusting environment for self reflection about biases and sexual identity promotes change.<sup>15</sup>

## Identifying and Changing Attitudes

To promote positive attitudes, the child welfare community must create a setting where child welfare professionals examine their views of LGBTQ youth and how they

can become more affirming. At first, this may be difficult and feel uncomfortable, especially for lawyers and judges who may not want to acknowledge that feelings can affect their job performance. Several tools are available to help this process.

Before using these tools or other approaches such as training, creating task forces or having brown bag lunches on this topic, it helps to establish rules for discussion. The Jacksonville Area Sexual Minority Youth Network (JASMYN) read several statements at the start of each meeting to remind participants to respect and listen to one another. As you engage in group discussions about your attitudes about LGBTQ youth, consider reviewing the statements in the box on page 21, or creating your own set of “norms” to guide your way.

The following three tools may help you identify and discuss your views with others as you start to explore and improve your attitudes and actions toward LGBTQ youth:

### *ABA Codes of Conduct*

In drafting the Model Code of Judicial Conduct and the Model Rules of Professional Conduct, the ABA has acknowledged that judges and lawyers are human, but they may not let their attitudes impact their cases. Discussing these sections of the codes may assist judges and lawyers understand that improved practice toward LGBTQ youth is rooted in their ethical responsibilities.

Canon 3 of the Model Code of Judicial Conduct is entitled **A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently** and in part reads:

Judicial Duties in General. The judicial duties of a judge take precedence over all the judge’s other activities. ... In the performance of these duties, the following standards apply.

Adjudicative Responsibilities

\*\*\*

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, ... sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge’s direction and control to do so.

Similarly, Rule 8.4 Misconduct, Model Rules of Professional Conduct, reads in part:

It is professional misconduct for a lawyer to:

\*\*\*

(d) engage in conduct that is prejudicial to the administration of justice;

The comment to this section says:

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, ... sexual orientation ... violates paragraph (d) when such actions are prejudicial to the administration of justice.

While states must enact specific rules to make the model rules enforceable, most jurisdictions have incorporated at least the general language about prohibiting bias and prejudicial words or conduct.<sup>16</sup> Lawyers and judges may think and believe what they want, but those thoughts may affect their treatment of clients and litigants.

## ATTITUDE CHECKLIST

Read the statements below and respond according to how you personally feel about the suggested situations. Circle the letter under the description of the response you feel most closely represents your current attitude – or in some situations, your projected future attitude.

### For Me Personally

	ACCEPTABLE	NOT SURE	UNACCEPTABLE
1 To have an openly gay, lesbian, bisexual or transgender person as a close friend would be:	A	NS	U
2 To allow an openly gay, lesbian, bisexual or transgender person to serve in the military is:	A	NS	U
3 A constitutional amendment banning gay marriage is:	A	NS	U
4 To have gay, lesbian, bisexual and transgender people be encouraged to be parents or to adopt is:	A	NS	U
5 To have an openly gay, lesbian, bisexual or transgender teacher or bus driver for my child would be:	A	NS	U
6 Supporting gay, lesbian, bisexual and transgender people who “come out at work is:	A	NS	U
7 Confirming an openly gay, lesbian, bisexual or transgender person to serve as a leader in my church mosque or synagogue would be:	A	NS	U
8 To have an openly gay, lesbian, bisexual or transgender child is:	A	NS	U
9 To share a room overnight with an openly gay, lesbian, bisexual or transgender person would be:	A	NS	U
10 To have an openly gay, lesbian, bisexual or transgender person as a physician would be:	A	NS	U
11 To have an openly gay, lesbian, bisexual or transgender person serve as President would be:	A	NS	U
12 To have an openly gay, lesbian, bisexual or transgender supervisor or boss would be:	A	NS	U

## Riddle Scale

One useful tool to guide this exploration is the *Riddle Homophobia Scale about Lesbian/Gay/Bisexual Identity*.<sup>17</sup> The scale involves four homophobic levels and four positive levels of attitudes about LGB people. (See box, p. 27) As you review and discuss the scale, you could identify actions to take at each level to improve outreach toward LGBTQ youth in your system. As you continue your discussions, perhaps you

and others would move up the scale, and take more steps toward nurturance. For example, for someone at the following levels:

**Repulsion or Pity** — The youth will know. They will see you rolling your eyes, moving away, refusing to shake hands, using derogatory labels and language, ignoring their basic needs and showing other signs of disrespect. Recognize the limits these attitudes place on your advocacy and decisions. Despite these attitudes, try to represent your client competently as a lawyer and make impartial decisions as a judge. If you cannot, refer clients/cases to others without expressed bias.

**Tolerance** — Learn about the joys and struggles LGBTQ youth face and acknowledge there are LGBTQ youth on your caseload. They may be hiding because they are uncomfortable discussing their identities with you, but LGBTQ youth live in your jurisdiction. Think about the Model Rules of Professional Conduct and the Model Code of Judicial Conduct and be sure personal attitudes do not compromise representation of LGBTQ clients, or impartial decision making if you are the judge. Resist attempts to make those youth invisible, and do not ignore their needs for safety, caring environments, and due process.

**Acceptance** — Let your clients, or the youth appearing before you, know you are interested in them. Be open to talking about any part of their life that is important to them and respond without bias. Learn the difference between sexual identity/homosexuality and sexual molestation (pedophilia).

**Support** — *Lawyers:* Develop trusting relationships with your clients. Advocate for your client to be in a safe setting, even if that means going against the recommendation of the child welfare agency. Know who in your community provides services in an LGBTQ-affirming manner and advocate with the agency and the court to have your client receive services from these providers.

*Judges:* Have resources ready to share with LGBTQ youth, their families, and their lawyers. Insist the agency care for the youth in an affirming way and if it does not, consider making a “no reasonable efforts” finding against the agency. Challenge the tendency to label age-appropriate sexual activity as predatory. Avoid the double standard for behavior between LGBTQ youth and heterosexual sexually active youth.

**Admiration** — Use gender-neutral language when talking with the youth. For example, ask about the youth’s partners or important relationships in the youth’s life, romantic and otherwise. Use the youth’s name and pronoun of choice. Encourage the youth to dress as he or she wishes.

**Appreciation** — Display hate-free zone, rainbow flag or triangle signs in your courtroom or office.<sup>18</sup> Speak out when you hear colleagues, youth, family members, court officers, and others make homophobic or inappropriate anti-gay comments, especially in front of kids. Learn about gender identity and gender expression. Learn about the developmental needs of all young people, including sexual development, and integrate LGBTQ youth into this understanding.

**Nurturance** — *Lawyers:* Visit your clients in their placements including in LGBTQ group homes or get to know their friends. Be available by cell phone or by quickly returning calls for anything your client wants to discuss. Help them through crises and celebrate positive events with them. Work with their birth families to accept their



## RIDDLE HOMOPHOBIA SCALE ABOUT LESBIAN/GAY/BISEXUAL INDENTITY

In a clinical sense, homophobia is defined as an intense, irrational fear of same-sex relations that becomes overwhelming to the person. In common usage, homophobia is the fear of intimate relationships with persons of the same sex. Below are four negative homophobic levels and four positive levels of attitudes towards lesbian and gay relationships/people. They were developed by Dr. Dorothy Riddle, a psychologist from Tucson, Arizona.

### HOMOPHOBIC LEVELS OF ATTITUDE

**Repulsion:** Homosexuality is seen as a "crime against nature." Gay/lesbians are sick, crazy, immoral, sinful, wicked, etc. Anything is justified to change them: prison, hospitalization, negative behavior therapy, electroshock therapy, etc.

**Pity:** Heterosexual chauvinism. Heterosexuality is more mature and certainly to be preferred. Any possibility of "becoming straight" should be reinforced, and those who seem to be born "that way" should be pitied, "the poor dears."

**Tolerance:** Homosexuality is just a phase of adolescent development that many people go through and most people "grow out of." Thus, lesbians/gays are less mature than "straights" and should be treated with the protectiveness and indulgence one uses with a child. Lesbians/gays should not be given positions of authority because they are still working through their adolescent behavior.

**Acceptance:** Still implies there is something to accept. Characterized by such statements as "You're not a lesbian to me, you're a person!" or "What you do in bed is your own business," or "That's fine with me as long as you don't flaunt it!"

### POSITIVE LEVELS OF ATTITUDES

**Support:** Work to safeguard the rights of lesbians and gays. People at this level may be uncomfortable themselves, but they are aware of the homophobic climate and the irrational unfairness.

**Admiration:** Acknowledges that being lesbian/gay in our society takes strength. People at this level are willing to truly examine their homophobic attitudes, values, and behaviors.

**Appreciation:** Value the diversity of people and see lesbians/gays as a valid part of that diversity. These people are willing to combat homophobia in themselves and others.

**Nurturance:** Assumes that gay/lesbian people are indispensable in our society. They view lesbians/gays with genuine affection and delight, and are willing to be allies and advocates.

CONTINUUM OF ATTITUDES REGARDING LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE



children back into their homes, rather than assuming the youth will finish his or her childhood in foster care. Work to understand and advocate for safe and healthy services for transgender youth.

*Judges:* Support the youth and his or her family. Ensure the youth knows when you are proud of accomplishments and show understanding when there are problems. Talk to colleagues about the importance of nurturing all young people, including those who identify as LGBTQ.

## Checklists

Use the *Attitude Checklist*, p. 25, and the *Personal Comfort Assessment Tool*, p. 22, to examine your attitudes and start discussions with others. These checklists can be used to determine your own comfort with LGBTQ issues. You might identify some topics, such as gay marriage, adoption by LGBT adults, or gays in the military, that you are interested in, and then follow up by reading books and articles on the topic or talking to LGBT individuals for their assessment. They may also be used to identify where you fall on the Riddle Scale (discussed above) and suggest actions to take. You don't need to agree with all statements in the tools to support LGBTQ youth, but rather use the lists to identify your comfort with LGBTQ youth and how you might increase your ability to effectively represent them and make unbiased decisions about their care.

## Conclusion

As Jill Jacobs, executive director of Family Builders said, “*Judges should be especially active at letting the youth that come before them know that their courtrooms and chambers are hate-free zones . . . . To do this, judges need to be more culturally competent.*”<sup>19</sup>

Understanding and advocating for youth whose culture differs from your own is essential to being an effective child's lawyer or child welfare judge. LGBTQ youth live in your community and need your understanding. There is plenty to celebrate about their lives, but many of them have challenges to overcome. They need you to understand and nurture them so they feel comfortable trusting and relying upon you. They need you to set aside any negative attitudes about LGBTQ people and focus on their needs. You can make a difference for a young person if you can see them for who they are.

---

<sup>1</sup> Mallon, Gerald P. *We Don't Exactly Get the Welcome Wagon: The Experiences of Gay and Lesbian Adolescents in the Child Welfare Systems*. New York: Columbia University Press, 1998, 59.

<sup>2</sup> Response to ABA Opening Doors Project National Lawyer Survey, Fall 2006.

<sup>3</sup> These listening forums included Denver, CO, July 28, 2006; Jacksonville, FL, October 12, 2006; Nashville, TN, November 14, 2006; New York, NY, November 29, 2006; and Seattle, WA, December, 14, 2006.

<sup>4</sup> Mallon, Gerald P., 1998, 82.

<sup>5</sup> *Ibid.*, 110-118.

<sup>6</sup> *Ibid.*, 96.

<sup>7</sup> Youth comment, Jacksonville, FL Listening Forum, October 12, 2006.

<sup>8</sup> Interview with Marisa Howard-Karp, Program Director, The GLBT Youth Support (GLYS) Project, April 10, 2007.

<sup>9</sup> Opening Doors Survey, Fall 2006.

<sup>10</sup> *Ibid.*

<sup>11</sup> Charles, Laurie L., Dina Thomas, and Matthew L. Thornton. “Overcoming Bias Toward Same-Sex Couples: A Case Study From Inside an MFT Ethics Classroom.” *Journal of Marital and Family Therapy*, July 2005, 239.

<sup>12</sup> *Ibid.*, 247.

<sup>13</sup> *Ibid.*, 248.

<sup>14</sup> Dillon, Frank R., et al. “On Becoming Allies: A Qualitative Study of Lesbian-, Gay-, and Bisexual-Affirmative Counselor Training.” *Counselor Education & Supervision*, March 2004, 162, 164.

<sup>15</sup> *Ibid.*, 176.

<sup>16</sup> Sparling, Tobin A. “Judicial Bias Claims of Homosexual Persons in the Wake of Lawrence v. Texas.” *South Texas Law Review*, Winter 2004, 260.

<sup>17</sup> Riddle, Dorothy Ph.D., Tucson, AZ.

<sup>18</sup> The rainbow flag and triangle signs are demonstrations of LGBT pride.

<sup>19</sup> Interview with Jill Jacobs, Executive Director Family Builders, Fall 2006.

## *Representing LGBTQ Youth: Challenging Assumptions*

AN INTERVIEW WITH KRISTA PREDAGOVICH

Krista Predragovich is a trained licensed mental health counselor and recently became a volunteer GAL. She has been appointed to represent children in the dependency system, advocating for their best interests. She has also worked with the Department of Children and Families and volunteers at JASMYN, a shelter for LGBTQ youth.

### **How many child welfare cases do you carry? How many involve LGBTQ youth?**

I generally have two cases at a time. Millie is the only LGBTQ youth I have worked with and she is transgender. I observed Millie attempting to access resources and gain support in our rural county (a county that is not very liberal and where it was really a challenge for adults to even conceptualize what transgender meant). The staff at the shelter where she was living did not allow her to dress in female clothing or express her sexual identity. In a desire to support Millie, I connected Millie with JASMYN, which helped a great deal. Millie has been attending drop-in there for a number of months and is now more involved at JASMYN. I consulted with the staff there and I've become more involved at their drop-in center.

### **When working with a LGBTQ youth, how do you balance needs related to LGBTQ status with needs that most youth in out-of-home placement have (emotional, health, education, medical, developing relationship with family)?**

The LGBTQ youth stand out in that, although all youth in the dependency system have greater needs than the average child, usually child welfare agency staff members are in consensus about how a child might be helped. With Millie, there was no consensus on what her needs might be.

My experience has been that the staff who have come into contact with Millie operate under a broad continuum of acceptance and even conceptualization of what her issues and challenges are. In her case, there was infighting, heated discussions, and staunch position-taking about homosexuality. People were allowing their own beliefs and values, rather than objectivity, to dictate how they handled Millie.

### **How were you made aware of this tension?**

When Millie first came in, I specifically heard a supervisor on her case say, "Biologically this child is a boy, and that is how I will address him, refer to him, and

those are my expectations for his appearance and dress, etc.” For me, that was a clear statement of value and belief.

## Do you have a LGBTQ specialty? Did you look for these kids or are judges seeking you out for appointments?

Millie had been in the foster care system for about eight months when a GAL was assigned. My case coordinator approached me about the case because of my background and training, thinking I might be more open and accepting than some other guardians.

## Describe a situation or two in which you’ve worked with LGBTQ youth. What are some highlights and frustrations?

Right now, the frustrations stand out more. When Millie wanted to attend JASMYN’s alternative prom last year, she needed to request financial assistance to buy a dress. The supervisor of JASMYN was not willing to even put that request through because he did not want the record to show that he bought a prom dress for a boy. So even the LGBTQ shelters are not willing to give the higher-ups the opportunity to say yay or nay, or really challenge their conceptions. I understand that at times we’re already pushing the envelope, so not rocking the boat too much can be important to maintaining the support we do have.

Also, placement has been an incredible challenge. Millie burnt some bridges early on with her extended family members, and so what we continually hear is that there is no available placement for her. I still have a hard time believing there is no foster parent in this network that would be willing to raise this child.

How much attention is given to foster parent training regarding LGBTQ youth is a serious issue. There needs to be top-down training. Foster parents need to be made aware that this is the kind of child you could have come into your home: medically fragile, LGBTQ, or a different race.

## How have you made a positive difference for an LGBTQ youth? Have you faced any roadblocks?

Lack of awareness about these issues and about available resources is a huge burden. There is an extreme lack of resources in our area. I know of no resources in Clay County for these youth, let alone for a GAL. Duval County is a half hour drive, but it’s too easy for staff to say “We can’t do that; too far away; someone would have to stay late.” We now have JASMYN as a fantastic resource for future LGBTQ kids coming through the system. Transportation and communication could make using that facility even easier. Millie would have had a different experience had she been in a different county. If, for example, she lived in New York City or Los Angeles she may have had a different experience. Geography seems to make a big difference in what kind of care these youth can receive and that is very troubling.

Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?

The first time we went in front of the magistrate for judicial review of a case, the judge said, “Well if the father doesn’t want the child to dress as a female in the house, then the youth is breaking the rules of the house.” What got lost in there was the reason the child came into system. He had been in a physical fight with his father over dressing as a female. They were calling the child defiant rather than addressing or acknowledging the underlying issues. Never in the case was there a plan that directed the father to attend a PFLAG meeting or get some support around the fact that child was transgender. That was a huge hole in their case planning. If the goal is to reunify, which it should be, then you need to support the father in learning about special needs of the child. Millie’s family did not want her back and 18 months later, Millie came back in front of that magistrate dressed as a female. Although the magistrate did not address Millie’s choice of clothing, he wasn’t any more sympathetic or helpful. It was clear the judge had never had a transgender youth in front of him before and it was crucial for him to see a distinction between a boy in a dress and the strong young woman that Millie is.

What advice do you have for other adults working with LGBTQ youth?

All adults working in the legal system need to challenge their assumptions. We need to be willing to get some education and learn about new resources so we can address our own prejudices and biases. People were frustrated with me early on because I had never encountered a transgender youth before. And so I am a little embarrassed to admit I was not necessarily breaking down the door saying “Okay we need to meet this child’s needs!” It took me a while to embrace that this was not Millie’s choice, and that I needed to support her. I really grew personally throughout this process. It’s not simple; it’s not easy; and if a child does not want to open up fully right away, even though you may be doing everything right, give them time. Now I’m so glad to be a part of her case, as another adult who loves and supports her. She’s 17 now, and I look forward to watching her progress.

*Interview conducted by Melissa Fay Colangelo*





## Chapter Three

# BUILDING STRONG CLIENT RELATIONSHIPS

BY ANDREA KHOURY

Knowing a youth's LGBTQ status is key to strong advocacy on behalf of LGBTQ youth in the child welfare system. As the child's lawyer, you won't know the youth's status unless you have built a solid relationship. The youth must trust you to share such personal information. She won't make an appointment, come to your office, explain why she needs a lawyer, and provide supporting documents. You must forge a relationship with your client for trust to develop so communication occurs. This chapter explains how to build solid relationships that lead to strong advocacy for LGBTQ youth.

## Knowing the Client's LGBTQ Status

*"I don't care who they are sleeping with, I'm just concerned with their safety and permanency."*

*"I don't talk to my straight clients about their love life."<sup>1</sup>*

Sound familiar? Legal advocates may be reluctant to explore sexuality and gender identity. They aren't normally considered when representing youth in foster care and they may seem irrelevant to the court's focus on safety and permanency.



### Why does knowing a client's LGBTQ status matter for good representation?

In some cases, a client's sexual orientation or gender identity will have little impact on the lawyer's relationship with the child or advocacy. Consider a gay youth who has been out for a number of years and comes into foster care because his stepfather beat him because of his bad grades. His parents and extended family accept his sexuality. He attends a progressive school that has a policy against sexual orientation and gender identity discrimination. He is placed with supportive relatives and the family is working on reunification. Although the lawyer may want to ask a few questions to ensure his parents are supportive, the focus of the advocacy will be on reunification

efforts, such as parenting and anger management classes for the parents, and whether the youth feels safe returning to the home.

In most cases, however, the fact that a child has identified or thinks they may be LGBTQ will play a major role in their well-being. Consider a gay youth who is beginning to experiment with his sexuality and comes into foster care because his mother beat him for hanging out with the wrong crowd. He is only out to some of his close friends and he is scared of what his parents will think. He is placed in a group home where the other boys pick on him because they think he is gay. The social worker does not know of any LGBTQ-friendly placements or counseling services. His grades are starting to fall because he can't concentrate in school. The youth's LGBTQ status impacts his placement, reunification services provided to him and his family, his school situation, and his over all well-being. A lawyer who does not establish a relationship where the youth is comfortable enough to talk about his sexuality can not zealously advocate for her client.

As stated in the first chapter, and shown in this example, the child may have suffered discrimination, harassment, or confusion about why they differ from their friends. These issues and feelings affect the child's services, placement, and safety. Service providers, foster parents, social workers, and the legal community may have strong beliefs about sexual orientation and gender identity. Their feelings may impact the provision of services.

Lawyers are stronger advocates for their clients if they have essential information about their clients.

- Why is the court system involved?
- What happened in their home of origin?
- What negative school experiences have they had?
- Where do they want to live?
- Who is important in their lives?
- Where is the best placement that will keep the youth safe?

For LGBTQ youth, sexual orientation and gender identity play a large role in answering these questions. The youth will be better protected and achieve permanency sooner if they share their LGBTQ status and any effects it has had on the youth's life with the lawyer. The way to get a youth to answer these questions, including those about sexual orientation and gender identity, is to be diligent, communicate effectively, keep confidences, advise properly, and advocate without bias.



In several listening forums for this project, professionals wanted to know how they would find out their client's LGBTQ status. Should they ask their client? Most youth responded that the lawyer needs to build a trusting relationship before raising sexual orientation and gender identity issues. Sometimes it is obvious and the child client is



out and everyone knows. When that's not the case, lawyers must build the relationship and get the child to trust enough to disclose this potentially sensitive aspect of their life.

It's also important to realize that LGBTQ status does not define the child and other areas of the child's life should also take priority. Most LGBTQ youth in foster care just want to be treated like everyone else.

## Relationship-Building Skills for Lawyers

The ABA Model Rules of Conduct discuss skills that lawyers must have when representing clients. These skills are especially important when the child is or may be LGBTQ.

### *Competent Representation<sup>2</sup>*

In addition to basic federal and state abuse and neglect laws, including the Adoption and Safe Families Act and the Foster Care Independence Act, lawyers who represent youth in the child welfare system should also be familiar with laws, regulations, and policies related to LGBTQ youth. For example, a child's lawyer should know if:

- a state has a law against discrimination or harassment on school property for sexual orientation or gender identity;<sup>3</sup>
- a child welfare agency has a policy prohibiting discrimination by foster parents based on LGBTQ status of the youth;<sup>4</sup>
- a child welfare agency has a specific policy on training social workers to address LGBTQ youth's needs;<sup>5</sup>
- a child is going to be placed in a group setting, whether the setting has a nondiscrimination policy and whether they have restrictions on clothing or discussions about sexual orientation; and
- there are group care settings exclusively for LGBTQ youth.<sup>6</sup>

Beyond laws and regulations lawyers should know whether there are:

- mental health services aimed at youth dealing with and disclosing their LGBTQ status;
- service providers that are sensitive to LGBTQ youth;
- foster homes that have a reputation for being open and sensitive to LGBTQ issues;
- family counseling services that address reunification when the youth is LGBTQ;
- Parents and Friends of Lesbians and Gays (PFLAG) organizations.<sup>7</sup>

Knowing about issues that are likely to develop in the life of a child who is LGBTQ is key to developing a relationship with the LGBTQ child client.

### *Diligence<sup>8</sup>*

For lawyers to adequately represent a client, the client has to trust the lawyer enough to share very personal information. A lawyer cannot represent someone he

doesn't know well. Diligence and consistency helps establish that trust. A child will not initially trust the lawyer; the lawyer's job is gain that trust. One way to do that is to show commitment and dedication when advocating for the child regardless of sexual orientation or gender identity. When a child sees her lawyer working hard to give her a voice, the child is more likely to trust the lawyer.

An LGBTQ client is in a unique situation because she likely has not disclosed her LGBTQ status to her lawyer. Sometimes she will not have disclosed it to anyone. When the lawyer is aware of a client's LGBTQ status, trust is still important to learn whether her safety or well-being has been harmed by her LGBTQ status. This information may be embarrassing or difficult for a child client to disclose. If the child is in the process of coming out to her family, friends, and those around her, her situation may change and she may be able to discuss her options with her lawyer. Trust is essential.

### Communication<sup>9</sup>

Communication is also essential for a child to trust her lawyer. Lawyers must meet with every child to discuss the case in a safe, private environment, preferably not in the court hallway before a hearing. Meeting in a private place shows that the lawyer considers this case important and aids open communication.

Depending on the jurisdiction, the lawyer's initial meeting with a client may happen before or after the removal hearing. During the first meeting (and later meetings) the lawyer should show his openness by:

- Displaying materials or signs that signal it is safe to discuss LGBTQ issues (e.g., hate-free zone sticker, LGBTQ pride flag, and LGBTQ ally button).
- Using neutral (nongender-specific) language when asking about the child's social life.
- Avoiding assumptions about LGBTQ status based on dress.
- If your client discloses LGBTQ status, assure her that you will keep her confidences (see section below) and thank her for trusting you with that information.

The lawyer should meet (or otherwise communicate) consistently with his client throughout the case. Most children who are not out are not likely to disclose their LGBTQ status after the first meeting. Ongoing contact and communication are essential in creating the trust necessary for a child to disclose her LGBTQ status. Even if the child doesn't explicitly come out to her lawyer, if there is continued contact and discussions about the child's life, school issues, weekend plans, social life, friends with whom she associates, the child may imply her LGBTQ status. Some lawyers may feel comfortable sharing a little about their own private life to demonstrate familiarity and build mutual trust.



### Where should you meet your client to build communication and trust?

The *ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* advise lawyers to meet with their clients in a safe environment that is most

conducive to developing a good relationship.<sup>10</sup> Most lawyers with high caseloads and little time choose to meet their clients in the courthouse, their offices, or a foster home. Although lawyers should engage their clients in these environments, establishing trust and a relationship is more likely if the meeting is in a location where the child can speak openly.

If your client is LGBTQ, investigate whether there is a LGBTQ-friendly environment to meet. Not only may this make your client comfortable but it shows you are comfortable discussing sexuality and gender identity with your client. Discuss this option with your client and call the location in advance to ensure you can meet somewhere private. Some examples of places where LGBTQ youth congregate are:

- JASMYN<sup>11</sup>
- Tennessee Youth Advisory Council Oasis Center<sup>12</sup>
- Seattle's LGBTQ Community Center<sup>13</sup>

There are places like these in most jurisdictions where youth will feel comfortable discussing these sensitive issues.

Another way to pick a place to meet is to give your client options that include one LGBTQ-friendly environment, one neutral place, and your office. This gives your client some control over where to meet and also shows your willingness to meet in an LGBTQ-friendly place.

## Confidentiality

Protecting your child client's confidences is one of the most important ways to establish trust. Youth often state that the lawyer should not disclose the youth's LGBTQ status without their permission.<sup>14</sup> If you are the child's guardian ad litem, be clear about your role and whether your client can expect you to keep what she says confidential. If you are the child's lawyer, not only do you have an ethical duty to maintain your client's confidences but your client will be more likely to give you information that will assist your advocacy if she trusts you to keep her confidences.

A child's LGBTQ status can be sensitive. Talk with your client about who you can talk to about her status. Do not disclose this status unless your client gives you permission. However, use your advisor role to help your client feel comfortable coming out if it would lead to a positive result in her case.



## Do I disclose my client's LGBTQ status if it presents safety concerns?

If you have a traditional attorney-client relationship with your client you must adhere to Model Rule 1.6 and not disclose your client's status if she opposes absent several exceptions. Ideally, there are other ways to address the safety concerns.

- If your client is being harassed in her placement, you could talk to the social worker about a change of placement and not be specific about your concerns.
- If your client's peers at school are causing her harm, you could speak with the principal about the harassment.

- You could also ask the court to change your client's placement.

If alternative strategies do not rectify the safety concerns, the best course of action to maintain the integrity of your relationship with your client is to counsel her about consequences of not disclosing her status and what she may gain if she does disclose. Let her know that she may be able to change placements or get help at school if she shares her status and the negative treatment she is receiving. Discuss ways to limit the disclosure and allow your client to control how the information is disclosed.

If your client is unwilling to disclose and you feel strongly that she is at risk of physical harm, one exception to maintaining confidentiality is to protect your client against substantial bodily harm. You should disclose this exception at the beginning of your representation so your client is aware of the possibility. You must make it clear to her why you are disclosing and attempt to minimize the number of people who know.

### *Lawyer as Advisor<sup>15</sup>*

Beyond advocating to a social worker or in a courtroom for a client, a lawyer representing a child must take on the role of advisor. The child lawyer's sole professional responsibility is to the child. The lawyer must provide advice on placement options, permanency plans, services, and visitation. The lawyer must base the advice on all the information and without bias.

*“If the youth is out to you as the lawyer, but not to the preadoptive parents, help your client become comfortable coming out to the family.”*

For example, consider a 15-year-old girl is going to be placed in a home that is not accepting of lesbians. She tells her lawyer that she is attracted to girls in her class but she has not told anyone else. Her lawyer advises her that she may have a chance to be placed with a family that accepts her sexual orientation if they tell the social worker. After fully discussing options, the lawyer receives the youth's permission to disclose her sexuality and she is placed with a more accepting family.

Sometimes what the child wants and what actually happens in the courtroom or with the social worker are not the same. It's the lawyer's job to make the child understand that although she should voice her opinion and share her experiences with her lawyer, she might not get exactly what she wants. For example, consider a teenager who comes out while in foster care. She wants to go home. Her mom, who physically abused her, has been taking parenting and anger management classes and also wants to have her daughter come home. But when she learns about her daughter's sexual orientation, she reacts with anger, and now isn't sure she wants her daughter home. The lawyer should argue for return home but should tell his client that the judge may not order reunification if her mom isn't ready or until counseling is in place to ensure the child will be safe.

### *Misconduct and Prejudice<sup>16</sup>*

Comment three of the ABA Model Rules states that a lawyer violates the rules of professional conduct when, in the course of representation, he “knowingly manifests by

words or conduct a prejudice based upon...sexual orientation...when such actions are prejudicial to the administration of justice.”<sup>17</sup>

Lawyers are going to have their own prejudices; however, in developing a relationship with a client who may be LGBTQ, a lawyer is restricted from allowing LGBTQ prejudice to impact that relationship. The lawyer should realize personal prejudices and ensure they do not interfere with developing relationships with clients.

## Relationship-Building Skills for Judges

Unlike a lawyer, the judge has limited time and ability to develop a strong, personal relationship with a child. However, judges can take steps to promote a positive relationship between the court system and LGBTQ youth.

### *Quality Representation*

One option is specialized lawyers. If the case involves a complex special education issue, the judge can appoint a lawyer who specializes or has knowledge of special education. If a child has a concurrent delinquency case, the judge can appoint a lawyer experienced in juvenile justice law. The same applies to LGBTQ clients. If the judge knows the child is LGBTQ, the judge should have a list of lawyers who have experience with LGBTQ clients and ask one of those lawyers to represent the child.

### *Open, Nonjudgemental Courtroom*

The judge should discuss sexual orientation and gender identity openly and know about placement and counseling options. If the child does not want everyone to know about her sexual orientation, the judge should respect that and not announce it in open court. The child will respect and like the judge if the judge respects her privacy and wishes. The judge sets the tone in the courtroom and should require everyone to respect the child and not allow bias to impact the outcome.

## Conclusion

Establishing a relationship with a child client is the foundation for successful advocacy. LGBTQ clients may require more time and energy when establishing that relationship because of their past experiences. The child’s lawyer must be willing to put in extra effort to relate to these youth and build trust so that they feel comfortable communicating. This improves the representation of LGBTQ clients.

---

<sup>1</sup> Opening Doors project listening forums, 2006; ABA Opening Doors National Attorney Survey, Fall 2006.

<sup>2</sup> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. American Bar Association Model Rules of Professional Conduct Rule 1.1

<sup>3</sup> For example, California passed the California Student Safety and Violence Prevention Act, A.B. 537, in 2000. This act protects students from harassment based on, among other things, sexual orientation and gender identity. S.B. 770, the Students Civil Rights

Act, became law on January 1, 2008. It standardizes all student discrimination protection laws in the California education system including discrimination based on sexual orientation and gender identity.

<sup>4</sup> See, e.g., Cal. A.B. 458 § 1(f) (2003) (prohibiting foster parents from discriminating against children in their care on the basis of sexual orientation); Connecticut Department of Children and Families. “Ch. 30-9: Nondiscrimination of LGBTQ Individuals.” *Connecticut Policy Manual*, May 2004 (prohibiting discrimination against LGBTQ youth by foster parents).

<sup>5</sup> See, e.g., Illinois Department of Children and Family Services.

“Policy Guide 2003.02: Assessment and Treatment of Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youths,” February 3, 2003.

<sup>6</sup> Green Chimneys, New York, NY <[www.greenchimneys.org](http://www.greenchimneys.org)>

<sup>7</sup> Parents and Friends of Lesbians and Gays <[www.pflag.org](http://www.pflag.org)>

<sup>8</sup> A lawyer shall act with reasonable diligence and promptness in representing a client. Model Rule 1.3.

“Reasonable care or attention to a matter.”

<[www.dictionary.law.com](http://www.dictionary.law.com)>

<sup>9</sup> A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required by these Rules;

(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules or other law.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Model Rule 1.4

<sup>10</sup> Approved by the American Bar Association House of Delegates, February 5, 1996, available online at [www.abanet.org/child/rep-standwhole.pdf](http://www.abanet.org/child/rep-standwhole.pdf)

<sup>11</sup> Jacksonville Area Sexual Minority Youth Network

<sup>12</sup> Nashville, Tennessee

<sup>13</sup> Pike Street, Seattle, Washington.

<sup>14</sup> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherances of which the client has used or is using the lawyer’s services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of a crime or fraud in furtherance of which the client has used the lawyer’s services;

(4) to secure legal advice about the lawyer’s compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client; or

(6) to comply with other law or a court order.

Model Rule 1.6

<sup>15</sup> Youth opinions expressed at ABA Opening Doors project listening forums, 2006.

<sup>16</sup> In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation. Model Rule 2.1

<sup>17</sup> It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

<sup>18</sup> ABA Model Rule 8.4

## *Creating a Safe Environment for LGBTQ Youth*

AN INTERVIEW WITH KRISTIN KIMMEL

Kristin Kimmel has worked at Lawyers for Children in New York City for 11 years. She began her career at Lawyers for Children through a Skadden Fellowship and Equal Justice Works fellowship. As a law guardian, Kristin represents children in voluntary foster care and abuse and neglect cases.

### **What advice do you have for other adults working with LGBTQ youth in out-of-home care?**

It doesn't occur to most people that sexuality could be a struggle for a youth; advocates and judges simply assume the youth is straight. Legal advocates need to force themselves to think about these issues. Use posters or provide materials that indicate this is a safe space to come out. Don't assume a youth is straight or gay, but if a teen does come out, meet them where they are. Don't force them to go to a gay placement. Don't put a label on them which they haven't chosen for themselves. Some youth are outspoken about their sexuality and some are reserved. It's your job as the adult to help them at the point where they are. Also, the words that youth currently use are not always used by adults, nor do adults feel comfortable using them. (For example, these youth call themselves "queer.") It's important to keep a checklist: if you have a queer client, you have certain things you know you want to address with them. Finally, special attention needs to be paid to queer kids and safety.

### **How many child welfare cases do you carry? How many LGBTQ youth do you represent?**

I carry 110-120 cases at a time. This number is about average. A bill recently passed the state legislature that will limit how many cases law guardians can have at a time. This number would be restricted to between 60-75 cases. Our caseload often has about 25-30 clients at a time who have at some point identified themselves as queer.

### **How did you make those youth feel comfortable?**

I hand out the book *You are Not Alone* to LGBTQ youth. In cases where we suspect a youth might be queer, but he or she has not offered such information, we do not directly ask. Instead, we hand them a packet of books that we provide all youth and say: "Some of these books may be relevant to you, some may not, let us know if you

have questions.” We also have rainbow flag stickers on our laptops and posters in the office which were disseminated by Green Chimneys and Lambda that advertise the environment as one that is a safe LGBTQ space. We also have stickers that provide queer support hotline information. Lambda also distributed magnetic queer poetry which a colleague and I display on our file cabinets.

### When working with an LGBTQ youth, how do you balance needs related to LGBTQ status with needs that most youth in out-of-home placement have (emotional, health, education, medical, developing relationship with family)?

Medical care and education is an issue for all youth, but especially queer youth. These teens do not feel safe at the doctor’s office or at school. LGBTQ youth just want to be safe in schools where they are, and can be referred for offsite counseling. All issues for youth are personal; those for gay youth are not any more urgent, or more important, but for them, safety is an issue everywhere. They have to worry about not being safe in placements where staff and peers harass or beat them up. Safety and mental health services are paramount.

Foster care recruitment and training needs to be revamped to let foster parents know what they could be dealing with. The messages of acceptance we send our youth often conflict with those they receive from potential foster parents. For example, one youth finally found a foster mother and they seemed to get along extremely well in the first meetings. However, upon exiting the agency, when the teen felt comfortable enough to say to the foster mother, “I’m gay. Is that a problem?” the woman walked out. The agency empathized with the foster mother. Perhaps that is because one fundamental problem is that foster care providers’ religious views often shape their views of LGBTQ youth. The point is that if you work with youth, you are no longer a private person that can act solely on the basis of your own belief system. You’re state-certified and you need to hold yourself to a higher level when dealing with children.

All agencies are in dire need of more information about queer-friendly placements. It’s dangerous for youth to come out in most foster homes. I’ve known several youth who have been beaten up or kicked out. For years, foster care training has not included a section on LGBTQ issues. Just recently, the ACS commissioner said we need to change the training program regarding LGBTQ youth. We have been repeating that training for staff and foster parents is critical for years so this is a major achievement for us! The commissioner has finally said every foster parent has to be open to this and that ACS should be mandating the training.

### How have your colleagues reacted to your efforts and have any of them altered their behavior?

We have a very gay-friendly staff at my office. Individually, some people are homophobic. It’s difficult when directors and supervisors make heterosexist comments, but in general my office receives these efforts very positively. Now, trainers come in to talk to staff about LGBTQ issues and the executive director has never said no to these opportunities.



### Describe a situation in which you've worked with a LGBTQ youth. What are some highlights and frustrations?

It's hard to say "queer" or "lesbian" in an open courtroom on the record. You're met with stunned silence by judges and attorneys. A few years ago in court I said, "My client is a lesbian." You'd think I had used a swear word. Judges need to know they're not curse words, they're not sex words. It needs to be okay to say my client is a lesbian and doesn't feel safe. One judge in particular was problematic. If you had to discuss sexuality, she would get flushed, embarrassed, and harsh. Finally, we met with her to discuss this, and gave her another set of booklets to review. Queer youth are treated differently because people are afraid in court and talk around it, yet it's really important to find out what kids want. If a youth has come out to me, but does not want their sexuality to be discussed in court or to be part of their record, I just ask for a placement order at certain residences and everyone knows what that means.

I've had many LGBTQ clients who have succeeded in their lives, but it has been a struggle, nothing has magically fallen into place. The highlight is that things are improving! LGBTQ-friendly placements exist now and residential treatment centers (RTC) have been made gay-friendly. It's an agency success story. A social worker stepped up and decided the organization needed to address those issues and now there are meetings on the RTC campus. This year they even had a gay pride celebration. Sadly, I still recently allowed a young man, who attended a lot of these new meetings, stay with me because it was a struggle for him to find an appropriate placement. He finally aged out of care. However, now he attends college and is a consistent contributor at ACS LGBTQ support groups. He comes to all the meetings and even speaks on panels.

### Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?

Green Chimneys has the Gramercy Residence which has 25 beds for biological males. The Foundling's Agency Operated Boarding Homes are smaller homes with maybe eight beds and a supervised independent living program for 18-21 year olds. St. Christopher-Ottolie Family Services has 18 beds and accepts biological females. These service providers are always packed.

*Interview conducted by Melissa Fay Colangelo*



## Meeting LGBTQ Youth Where They Are

AN INTERVIEW WITH SHAWNDELLE

Shawndelle identifies as a lesbian and spent several years in the foster care system. She aged out of the system and now lives in Seattle, Washington. Shawndelle was eventually adopted by her foster parents and advocates for gay youth in foster care. She is an inspiration to youth and adults alike in the child welfare system.

### What advice do you have for legal advocates who are working with LGBTQ youth?

I would say a lot of the work to make a youth comfortable can be done ahead of time by advocates and social workers. Attorneys or judges can put up hate-free posters that specifically address homosexuality (not just a picture of a black and white person together). They can put up equality signs or rainbow stickers or pink triangles. They can offer youth lots of different packets of information with something about queer services. I think a lot of adults think, “I know that doesn’t apply to me” so they are reluctant to put these symbols out there for the sake of the youth. But it would be helpful if people were willing to put up some sort of sign of acceptance of any sexuality. I know that is a lot to ask, but all diverse backgrounds should be welcomed.

To be honest, even if attorneys or judges did make these efforts, I still wouldn’t have been comfortable coming out, because that is just me. Advocates should know that even if they do all this, some youth still won’t feel comfortable sharing such personal information. They shouldn’t push kids to say it. Instead, the attorney or caseworker could interview the placement providers and ask discretely about how LGBTQ-friendly the home was. When to come out, who to tell, and how is an extremely personal decision.

Before making *any specific* requirement for placement, talk to the youth. My feeling is that a lot of youth would not want an adult to place *any* type of limit on possible placements. Unless that youth is at risk (physically or mentally) in a certain place, I believe that adults should not cut off their chances to remain in one place, to go to a school (the same school!) for a few years, to make friends who might stick around, or to live in a family’s home.

### Do you feel being gay affected your experience in foster care?

Because I was in the system, I didn’t come out. Coming out affects your placement from what I can tell. I just wanted to *be placed* and didn’t want to have any possible extra complication that could further delay my eligibility to get some parents. I so

desperately wanted to end the stream of group homes. I would have dealt with anything, even homophobic foster parents to get out of the group homes.

I remember having a hard time in some interviews with various advocates and caseworkers because some of them in the court system still asked me, “Do you have a boyfriend?” I don’t know if they were trying to identify with me or make nice, but as soon as they asked that, I would shut down. Kids want to fit in and match the assumptions people have about them, especially when you want to get placed. I also had to let adults tell me many religious stories and share their religious views that I couldn’t identify with (and often actually feared was a direct comment about my being gay) because I just wanted to get placed. Attorneys, judges, and caseworkers should not share those kind of personal views with youth unless they already know *for sure* that the youth can identify with those feelings or conversations. Otherwise, youth feel they can’t live up to your ideal. That’s a lot of pressure for kids who are already under a great deal of strain.

## What advice do you have for an attorney or judge who strongly suspects a youth is LGBTQ but the youth is not comfortable discussing the topic?

The attorney or judge should go ahead and try to make sure that wherever they put the youth will be a liberal, accepting home. They need not necessarily tell the youth they have checked into that aspect of the potential home. (In general, parents, adults, and mentors do things for kids that the teen doesn’t realize has been done for them until much later, and then when the kid finds out, he or she is really thankful. The same scenario applies here.) It’s much easier for adults, as opposed to a scared kid, to step up in court or challenge other adults and help these youth by advocating for a hate-free, accepting, and stable placement.

I had many different legal advocates throughout my years in foster care and never discussed being gay with them. I was told later that almost everyone knew. It was a relief that I found wonderful adoptive parents who knew already and were accepting of me when I eventually came out. That love and unconditional support made all the difference in the world in my life. I am extremely grateful to all those adults who helped me get to the independent and happy point I’m at today!

*Interview conducted by Melissa Fay Colangelo*



## Chapter Four

# IMPROVING YOUR LEGAL ADVOCACY AND DECISION MAKING

BY MIMI LAVER

LGBTQ youth rarely feel safe, no matter where they are. Some LGBTQ youth feel safer on the streets than at home or school. They are harassed and physically harmed by other youth, foster parents, and group home staff. As the child's advocate or judge, you must ensure the safety, permanency, and well-being of LGBTQ youth in foster care.

Finding permanent homes for teens is a challenge. Agency workers and other professionals often give up on helping LGBTQ youth achieve permanency. Like other teens, these youth can and should go home with appropriate supports. If not, they should be placed in adoptive homes or with guardians. They should also have at least one positive adult connection that will continue after they leave foster care. As the judge or lawyer, you can make this happen.

LGBTQ youth may feel abandoned by families and friends because of their identity. Like other youth, they may have questions about their sexuality or health-related concerns. They may be bullied in school or feel left out of activities or conversations in class. If they need counseling or other health services, the provider must be LGBTQ-friendly and have experience with LGBTQ youth. They need to be in schools that are supportive and academically appropriate. You can help get these services for the LGBTQ youth on your caseload.

This chapter discusses: factors judges and lawyers should consider to assure safety, permanency, and positive well-being for LGBTQ youth; tools for involving youth in their case planning, including court appearances; and tips to help LGBTQ youth find their voices in the dependency court process. This chapter assumes the lawyer has established a strong relationship with the youth and focuses on in- and out-of-court advocacy.

## Role of Youth in Court

Including youth in their court hearings helps them feel valued and empowers them. Youth benefit from appearing in court in the following ways:<sup>1</sup>

**Sense of control** (e.g., youth can tell the judge he would like to be in an LGBTQ group home rather than his current placement)

**Understanding the process** (e.g., youth hears: caseworker recommend services, youth's lawyer discuss need for LGBTQ-friendly services, and then judge's decision)

**Seeing that adults care about them and their futures** (e.g., judge asks about safety in the foster home and at school and why the youth's grades have improved since entering care and supports youth's LGBTQ status)

The court also benefits since the youth can answer questions about her life more

## QUESTIONS EVERY LAWYER AND JUDGE SHOULD ASK

As the judge or lawyer in a case involving an LGBTQ youth, ask the following questions throughout the youth's case. Ask them of the agency, service providers, and the youth to help keep the young person safe, healthy, and in a permanent home.

### **Safety Concerns:**

Where is the youth placed?

- Is it a foster home that is open to working with an LGBTQ youth, or one in which the foster parents may not be open?
- Is it an emergency shelter?
- Is the youth transgender and placed with other youth who are the same gender with which she identifies?
- Is it a group home? If so, what are the staff like?

Is the young person free from harassment by staff and peers? Are staff attuned to this issue? Is the youth being separated rather than included in the home?

Has the youth been evaluated to see if he is in danger of harming himself or attempting suicide?

Are there signs that the youth is abusing drugs or alcohol?

### **Permanency:**

Is the agency frontloading services from an LGBTQ-friendly provider?

Are all professionals in the case working with the child and family on permanency issues at the beginning and throughout the case?

Has the entire family been engaged in the planning process?

Are the professionals engaged in concurrent planning?

How is the family reacting to the youth based on the reason for entry into foster care and LGBTQ status?

What does the youth want as a permanency plan?

Has the youth received counseling about his permanency options including returning home and adoption?

### **Well-being:**

*Education:* Has the youth had to change schools? If so, is she safe in her new school? Is she enrolled in proper classes? Is there a Gay Straight Alliance (GSA) in the school and is the youth aware of it?

*Medical issues:* Is the youth being treated like other youth in getting evaluated? Have service needs been identified and is the youth receiving the necessary medical care?

*Emotional health:* Does the youth appear to need immediate counseling? Is there a protocol for getting youth evaluations and is it being followed? If the youth is open about his sexual identity, is there an LGBTQ-friendly counselor in the jurisdiction to refer the child to? Has the referral been made?

accurately than anyone else in the case. Youth can be included by attending court proceedings and speaking in court or in the judge's chambers, writing a letter that is read in court, or just being present and speaking through the lawyer.

Having your LGBTQ client in court helps the judge see that your client appears like other youth. The youth can explain what is going well, and not well, in foster care. You will need to prepare your client for the court experience though. A courtroom can be intimidating and not what the youth has "seen on TV."<sup>2</sup> Some judges and lawyers may not respect the youth, and may make disparaging comments about the youth's identity.<sup>3</sup> Discuss this concern and let the youth decide whether she wants to talk to the judge, or whether she has something she'd like you to read. Let her know that even if she plans to talk but changes her mind, there is still value in appearing in court. Let her share any concerns she has about the experience before you enter the courtroom and after.

As the judge, you must welcome those who enter your courtroom, especially youth. They can provide insights and information you need to make the best decision in their cases, but will not if they do not trust you, or believe you value what they offer. (See Chapter 3)

## The Life of a Case

Once a child enters foster care, the case follows a familiar pattern: regular hearings, case planning meetings, and services for the child and family to help them work through the issues leading to the child's placement. At each point in a case, the judge or lawyer can affect the youth by addressing the issues unique to the case. Whether this is issuing a no reasonable efforts order against the child welfare agency because it was not providing family therapy by an LGBTQ-friendly therapist or advocating for an LGBTQ group home that the youth would like to move into, your actions will change the youth's experience in foster care.

### *Initial Removal*

An LGBTQ youth may enter care for a reason related to his LGBTQ status or something else. The youth may be out and open about his LGBTQ status with family and child welfare professionals, or he may not be ready to talk. If you are in a jurisdiction where you get to meet your client before the first hearing, jump on that opportunity. This is a good chance to start building a trusting relationship with your client. Discuss what information you plan to relay to the court and agency to ensure your client is safe and getting needed services at the start of her case.

### *Early Hearings*

While not ideal, in many places, the shelter care, detention, or adjudicatory hearing is the first time you as the lawyer or judge will meet the youth. For lawyers, if this is true in your jurisdiction, talk to your client and try to establish a relationship.

During the hearing, focus on the questions in the box on p. 48, paying attention to safety issues such as where the youth is placed, how she is being treated, if staff are appropriate, and if she has concerns. Watch for red flags that could give you clues

about the youth's LGBTQ status. These could come from the petition, the caseworker's testimony, or comments from the parents or the youth. These include:

- The youth was kicked out of home when no prior problems were reported;
- The youth ran away or was living on the streets;
- The youth was using substances and the parent was not able to handle the situation (this may or may not indicate LGBTQ);
- The youth attempted suicide;
- The youth started skipping school even though he was doing well before (could show child feels unsafe at school).

If there are signs that the youth is LGBTQ, decide how to use what you've learned in your advocacy and decision making. For example, if the youth came out to you as her lawyer, but did not want you to disclose her LGBTQ status in court, you may need to figure out how to convey some concerns. As one youth put it, "If we tell our attorney, it's because we feel comfortable, not because we want the judge and everyone else to know...or we would announce it over a loudspeaker."<sup>4</sup>

For example, if your client told you that she is frightened in her new school because people are bullying her because she prefers to dress in boys' clothing, the judge and agency need to know this because it is a safety concern. You could discuss why the judge needs the information and agree on a way for you to communicate it. You could say she is being bullied and not say why, for example. That should be enough of a message for the worker and judge to get involved. You could also talk to the school counselor on your client's behalf.

As the judge, the child's lawyer may ask you to change a youth's placement. The lawyer may be able to disclose that the young person feels unsafe because of LGBTQ status, or the lawyer may just say the young person feels her safety is not guaranteed and she is unhappy. Even if the agency wants to keep the youth in the same placement, you are in a position to order the placement change and ask the agency to find an appropriate placement.

Remember the youth is more than just her LGBTQ status. For example, she may have special learning needs, a desire to be near family, or religious beliefs that should be accommodated. All youth in foster care should be treated as individuals. A youth who identifies as LGBTQ is no different than other youth in foster care, but there are identity issues to consider.

## *In Between Hearings — Throughout the Entire Case*

### **Advocating outside court**

As the child's lawyer, you play a key role in between hearings as the case progresses. You should participate in important meetings with your client and talk to your client regularly. This is essential for your LGBTQ clients who may be dealing with difficult relationships with their families, foster parents, old friends, schoolmates and others. Your role is to look out for what is best for them and to advocate for what they want.



## ON POINT

### **Must the Agency Provide Medical Services to Transgender Youth?**

*Mariah L. v. Administration for Children's Services* considers whether the child welfare agency must pay for sexual reassignment surgery (SRS) for a male-to-female transgender youth who is a foster child in the custody of the New York Administration for Children's Services (ACS). Despite all of her medical providers agreeing the surgery is medically necessary for Mariah, ACS refuses to pay for the surgery because they say it is not medically necessary and is not covered by Medicaid. Mariah filed a petition with the court asking for an order requiring ACS to provide the surgery. The Family Court granted her petition in January 2006 and ACS appealed.

On August 24, 2006, the appellate court held that SRS is the generally recognized and successful treatment for gender identity disorder, but remanded the case to ACS to give a specific reason for their denial of Mariah's request. On February 21, 2007, Judge Sheldon Rand of the New York Family Court ordered ACS to provide Mariah with SRS. Judge Rand dismissed ACS's unsubstantiated arguments that SRS is not medically necessary. ACS appealed this decision. Oral arguments took place in May 2007 and there is no opinion yet. (Based on summary from the National Center for Lesbian Rights.)

### **Impact on Practice**

Advocates should be aware of this case and watch for the outcome. If the family court's order is upheld, it could impact what services you can advocate for on behalf of your transgender clients. Such services might include hormone treatment, sex realignment counseling, sex realignment surgery, and other supportive services. You may also be able to use this case to ask the court for specialized services for your LGBTQ clients that you may not have pursued in the past.

While your client is in foster care, she will have contact with other systems and providers. For LGBTQ youth, these interactions are often not smooth. Examples include:

- *School system.* Your client may be struggling in school, either academically or socially. She may be getting harassed or physically harmed. If she has changed schools many times, she may be having a hard time adjusting. You should make an appointment to see the school counselor with your client to arrange help by a tutor or someone who can protect her safety. If your client has an Individualized Education Plan (IEP), attend the IEP meeting and advocate for the educational services she needs.
- *Juvenile justice system.* If your client gets arrested and is having a delinquency hearing, you should appear or talk with the defense lawyer before the hearing. The police are often not sensitive to the issues facing LGBTQ youth. Many LGBTQ youth get arrested for sexual behavior that is labeled "predatory" when it is really behavior that would not rise to a criminal level for heterosexual youth. Other LGBTQ youth get arrested for prostitution because they are on the streets and need money. Ensure that whoever is representing your client in the delinquency proceeding is aware of your client's LGBTQ status and any relevant concerns.<sup>5</sup>
- *Health care system.* Your client may have health needs but have trouble accessing a doctor who is LGBTQ-friendly and treats youth in foster care.

## JUDGE HEPNER'S PLACEMENT TIPS

In training programs for judges, attorneys and agency personnel conducted by Judge Paula Hepner from New York, she suggests that before placing an LGBT youth in a detention or foster care facility, judges might want to know:

- what the facility's policies are regarding treatment of LGBT youth
- what the facility's staff training on LGBT issues is
- what the facility's policies are regarding segregating LGBT youth
- whether the facility provides equal access to programs and services
- whether and under what circumstances a facility engages in differential treatment of LGBT youth

*If your client is transgender*, there may be medical issues to address, such as whether the youth should be on hormones (See box, p. 51 ). If your client has a substance abuse problem, help the client access appropriate treatment.

*If your client needs counseling*, be sure the provider is committed to supporting the youth, not trying to change the youth's sexual orientation or gender identity. Some mental health practitioners practice reparative therapy techniques designed to change the youth. The American Academy of Pediatrics and the American Psychiatric Association oppose this type of therapy and believe it can harm the client. Child welfare agencies, attorneys and judges should never allow LGBTQ youth to be seen by a therapist who uses reparative therapy.<sup>6</sup>

*If your client is sexually active*, provide information about HIV and HIV prevention. Note that lesbian and gay youth are no more at risk for HIV infection than their heterosexual counterparts who engage in unprotected sex, therefore it is important that all youth in foster care have access to information about HIV prevention.

As the lawyer of a client dealing with any of these systems, you should be on top of the issue and help the youth and caseworker find assistance. If advocating with the agency and providers does not work, you may need to ask the judge to hear the case early to resolve the problem and issue an order.

### **Advocating at case planning meetings**

*LGBTQ-friendly services.* During case planning meetings, lawyers must work with the agency to get services for clients and their families by taking the following steps:

- Determine if the service provider is open to working on LGBTQ issues in a respectful and nonjudgmental way. Review websites of service providers to see if they list LGBTQ youth as a specialty. If not, work with the agency to decide if the provider can provide the necessary services or help find another provider.
- If your client is willing to engage in family counseling, advocate for services to work on the relationship with the client's parents, if appropriate.
- Monitor the agency's permanency planning efforts. Consider:

Is the agency working towards having your client return home? If so, how?

Has the agency or counselor directly addressed the youth's LGBTQ status and the parents' feelings before recommending your client return home?

Does the agency have a concurrent plan of adoption or guardianship by an LGBTQ-friendly individual or family? If so, what steps have been taken to ensure those outcomes?

Has the agency reached out to other family members who are open to the youth's LGBTQ status?

Has the agency found the youth a mentor or other positive adult role model who is LGBTQ-friendly?

Getting answers to these questions, and others in the box on p. 48, should be part of your advocacy throughout the entire case.

*Permanency plan changes.* As circumstances change, it may be necessary to revise the permanency plan. Sometimes when LGBTQ youth come out to the people in their lives, changes occur. For example, a young woman at one of the Opening Doors project's listening forums was in foster care for many years living with a preadoptive parent. When she came out to this parent, the parent would not adopt her.<sup>7</sup> If you were her lawyer, you would want to help her find another permanent placement. More immediately, you would need to help her with any emotional issues related to coming out and be abandoned by her preadoptive mother. This might involve working with the agency, at case planning meetings and through conversations, to find counseling by an LGBTQ-friendly provider. If the agency is unwilling to work with you and your client, consider taking the case to court and asking for an order.

### *Permanency Hearings (and Reviews)*

Every case must be in court at least every six months for a review hearing and every 12 months for a permanency hearing. These hearings should never be just rubber stamps of what the agency says. Judges and lawyers can ensure meaningful hearings happen for all young people, remembering that a meaningful hearing may look different for each family.

As the lawyer, by communicating with your client and her caseworker regularly, and attending the case planning meetings, you should know how your client is doing in care, her long-term goals, the agency's goals for her, and her progress in school. You should know whether she needs any services, and whether she is receiving them from LGBTQ-friendly providers. You will know whether she is involved in a Gay Straight Alliance (GSA) group at school. You may also have concerns that you think the judge needs to hear, either from your client or from you. Prepare your client to be in court and to share these concerns, or talk to your client about how she would like you to express the issues.

## Reunification

When LGBTQ youth enter foster care, especially for reasons related to their LGBTQ status, professionals in the case often bypass reunification as the first choice permanency goal.<sup>8</sup> This is unfair to the youth and the youth's family. Many youth in care return to their biological families. If a LGBTQ youth returns home without first working with the family about the issues leading to the placement, the chance of this working is poor. However, research shows that even families who are angry when a family member comes out, can work through that anger and learn to become supportive and nurturing. (See Chapter 2) When this happens, outcomes for LGBTQ youth can be positive.<sup>9</sup>

*“ . . . in developing a relationship with a client who may be LGBTQ, a lawyer is restricted from allowing LGBTQ prejudice to impact that relationship.”*

Based on this research, the agency should provide the services your client and his family agree are needed to work towards a safe, and emotionally healthy reunification. This could involve family therapy, enrolling in Parents, Families and Friends of Lesbians and Gays (PFLAG) or other support groups, or education on issues common to LGBTQ youth and their families.

During the review, let the judge know whether this is happening. If not, ask the judge to order immediate services. The judge should order services unless there is strong evidence to the contrary. When working toward reunification, you might have to look beyond the youth's LGBTQ status to determine the reasons why the youth entered care and focus services on these issues. If the child was not being supervised at home, was using substances, had mental health concerns, or was physically harmed, the kinds of services offered may go beyond basic family therapy and PFLAG membership.

Remember that a youth's family may include people other than parents. The youth may have siblings who entered foster care, or remained at home, depending on the reasons for the placement. No matter where the siblings are, the youth should maintain contact with them, and you should help ensure that.<sup>10</sup> Visitation increases the chance of reunification and maintains sibling relationships. Ask the court to order sibling visitation in the most natural setting possible. The siblings could see each other during visits with the parents, or separate visits with the youth could be arranged. Advocate for whichever is best for your client. Additionally, including siblings in counseling and other family-centered services may maintain the relationship and help the siblings understand the youth's LGBTQ status. If the sibling has heard bad things about the youth from the parents, having the chance to talk to your client, and ideally the sibling, in a safe place about that may help the youth and the sibling.

## Termination of parental rights/adoption

If reunification is unlikely at the permanency hearing, the judge should require the agency to provide information about a viable permanency plan with clear steps for achieving this plan. If this does not happen, the judge should issue a no reasonable efforts order and ask that the case be brought back to court soon. This plan should include information about adults in the youth's life who can serve as lifetime resources for the youth upon leaving care. These people should welcome the youth into their homes for holidays and when the youth needs help. While they do not have to be LGBTQ themselves, they should be open to the youth's identity and ready to support him throughout his life. The youth should help identify these people, just like the youth can help find his own permanent placement resources.

If the agency says the goal is adoption, they should discuss specific recruitment efforts to find an adoptive resource for the youth. These efforts could include outreach to the gay community. If the youth will be adopted by current foster parents, find out if the youth is out to these parents. If the youth is out to you as the lawyer, but not to the preadoptive parents, help your client become comfortable coming out to the family. Talk with your client about her concerns about coming out

to these parents. Counsel her about the danger that the adoption would disrupt in the future when she does come out, or when the parents find out from another source. Suggest that your client and the preadoptive parents see a counselor together to discuss this issue in a comfortable, supportive setting.

The adoptive parents must understand and be comfortable with the youth's LGBTQ status. Many people say they are comfortable, but the adoptive parents must understand what this means. For example, would the parents be comfortable when the youth brings his same-sex partner home for a holiday and the two are holding hands in the living room? Will they treat the couple the same way they would if the couple were heterosexual and holding hands on the couch?

Also, the adoptive parents must be comfortable as advocates for the youth on a systemic (e.g., school) and a personal (e.g., with extended family) level. If the adopted grandparent is not comfortable with the youth's partner, will the adoptive parent support the youth? The adoptive parents must be comfortable with their relationship with the youth so when people from outside the family make unpleasant comments, they can respond in an affirming way. The main focus must be on the youth and supporting him so he can become a well-adjusted adult.<sup>11</sup>

Remember that youth may be able to identify adults in their lives — mentors, teachers, coaches, friends' parents — who may be interested in adoption. Do not forget to include youth in planning their lives.

The TPR hearing is its own step in the case. If the goal at a permanency hearing is adoption, some decisions must be made before terminating the youth's parents' rights. These include whether the youth is ready to end the relationship with her biological family or whether the adoptive parents are open to those relationships continuing. Talk to the youth about these issues before and during the TPR hearing.

## Guardianship/relative placement

If adoption is also not possible, discuss guardianship and then relative placement with the youth. The youth can often locate a suitable guardian. When this happens, the caseworker should ensure the proposed adult would provide a safe home.<sup>12</sup>

The caseworker should have reached out to relatives when the case started, but if not, should be ordered to do so if other permanency options are not likely. A relative, who is open to LGBTQ issues, may be interested in adopting, being a guardian, or providing a permanent home and connection for the youth. This relative may also be willing to help the youth improve relationships with his parents if that is a concern, and maintain a relationship with his siblings. A relative may know the family history and whether other family members are LGBTQ or who in the family would be open to supporting this youth.<sup>13</sup>

## APPLA

The final permanency option is another planned permanent living arrangement (APPLA). APPLA is not:

- living in an emergency shelter for a year;
- moving from group home to group home; or

- staying in a residential treatment facility indefinitely unless the youth's diagnosis requires that setting.

Some youth do well in group homes, especially group homes created for LGBTQ youth. This placement might work for some or all of the youth's stay in foster care. However, since most youth need family connections, the caseworker should be trying to find LGBTQ youth family placements. APPLA should be planned and permanent. This means that if the youth will remain in care until he turns 18 or 21, services should be established to help with the transition, and a plan should be in place so the youth does not end up homeless, incarcerated, or without adult connections. If the agency suggests APPLA as the permanent plan, the judge should ask questions to ensure the transition is occurring and the youth has access to resources.

## Appeals

If judges are not making appropriate orders or holding the agency accountable, the attorneys have a duty to appeal.<sup>14</sup> While appealing a trial judge raises concerns about the judge's treatment of you and your client in future cases, it is not acceptable for a judge to make derogatory or prejudicial comments and then disregard your requests on behalf of an LGBTQ client. If your case is heard before a hearing officer or master, remember you can file exceptions and have the case heard by a judge. The right to appeal is a legal tool when you are dissatisfied with the order or treatment by a judicial officer.

When deciding to appeal, first talk to your client. Explain that appeals involving minors only identify the youth with initials, but the youth may feel that personal information about his life would be broadcasted to even more people. This should be a decision that you make together.

## Conclusion

To be an effective advocate or decision maker for a young person who identifies as LGBTQ you must get to know the youth. Earn his respect and trust by including him in his case. Find answers to the key questions that will help to ensure his safety, permanency, and well-being. Then, as the attorney advocate, get what your client needs. And, as the judge, make difficult decisions for the sake of the youth. This is not easy, but it is essential to improving outcomes for LGBTQ youth in foster care.

<sup>1</sup> Khoury, Andrea. "Seen and Heard: Involving Children in Dependency Court." *ABA Child Law Practice* 25(10), December 2006, 150.

<sup>2</sup> Youth statement, Opening Doors Project listening forum, New York, NY, November 29, 2006.

<sup>3</sup> Youth statement, Opening Doors Project listening forum, Jacksonville, FL, October 12, 2006. See also Chapter 2 for quotes from youth about court experience.

<sup>4</sup> Youth statement, Opening Doors Project listening forum, New York, NY, November 29, 2006.

<sup>5</sup> Fedders, Barbara. "Coming Out for Kids: Recognizing Respecting and Representing LGBTQ Youth." *Nevada Law Journal* 6, Spring 2006, 774, 796-798 (for discussion of LGBTQ youth being arrested and detained longer than heterosexual youth for "sexual predatory behavior" and sexual crimes).

<sup>6</sup> Wilber, Shannan, Caitlin Ryan and Jody Marksamer. *CWLA Best Practice Guidelines*. Washington, DC: Child Welfare League of America, 2006 at 55-56, 64 (discussion of reparative therapy and

the opposition to its use).

<sup>7</sup> Youth statement, Opening Doors Project listening forum, Nashville, TN, November 14, 2006.

<sup>8</sup> This is a common theme expressed during listening forums and trainings.

<sup>9</sup> Wilber, Ryan & Marksamer, 2006, 12 (discussion of the Family Acceptance Project, "family and caregiver acceptance is an important protective factor and family and caregiver rejection has serious negative health outcomes for LGBTQ youth.")

<sup>10</sup> See Viner, Elana. "Understanding Siblings' Rights in the Child Welfare System." *Child Law Practice*, November 2006, 129, 134-138.

<sup>11</sup> Interview with Gary Mallon, PhD, July 26, 2007.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Judge statement, Opening Doors Project listening forum, Jacksonville, FL, October 12, 2006.

## *Courtroom Strategies for Supporting LGBTQ Youth*

AN INTERVIEW WITH JUDGE JANET ALBERT

Judge Janet E. Albert is a magistrate judge in the District of Columbia Superior Court. She has taken creative steps to make sure LGBTQ issues are addressed sensitively in her courtroom and youth feel safe and comfortable. In this interview, Judge Albert shares ideas on ways courts can support and meet the needs of LGBTQ youth.

### **How many child welfare cases do you carry? How many involve LGBTQ youth?**

My caseload includes about 250 youth. I'm unsure how many have identified as LGBTQ, but there is at least a handful. I find that most youth are not open in the courtroom about their LGBTQ status.

### **How do you make LGBTQ youth feel comfortable in court?**

I try not to label these youth because I don't believe labels are important and I never want to out a youth in the courtroom. Usually I will ask a youth if there is anything they would like to discuss privately.

### **When working with LGBTQ youth, how do you balance needs related to LGBTQ status with needs that most youth in out-of-home placement have (emotional health, education, medical, developing relationship with family)?**

LGBTQ youth have many more risk factors than other youth in foster care. It's critical to find a good placement that will provide proper mental health care and substance abuse counseling. Gay youth also experience extra harassment at school. So keeping them in school is important, but that requires that social workers, foster parents, and CASAs improve their communication with the school system.

### **How have your colleagues reacted to your efforts and have any of them altered their behavior?**

I believe there has been a significant change in the last several years. Now, adults involved in family court affairs are primarily doing the right thing or trying to. That said, there are still pockets of homophobia in the court system.



**Do colleagues or advocates seek you out in cases involving LGBTQ youth? When you interact with colleagues, advocates, or a youth you believe to be LGBTQ, what kind of information do you share?**

Although I have no particular training in this area, I have done some research about local organizations so I can inform others about available services. I have printed information to hand to parties about these issues because we lack these resources in readily available forms and they're needed. I'm also now chairing an LGBTQ working group that works with child welfare representatives in the community to share best practices. Currently the group is attempting to link community organizations with group homes for juveniles. The group is encouraging mental health care personnel to make themselves available for these meetings so we can troubleshoot with them as well.

**Are you aware of LGBTQ-friendly placements or service providers in your area? Do judges and other advocates know about them? How did you find out about them?**

I'm aware of general organizations that support LGBTQ youth such as PFLAG, SMILE, and there are certain CASAs in the DC area who are gay-friendly. Judges and CASAs are now largely aware of the *homophobic placements*, but more information is needed on where the *gay-friendly placements* are. I find information from articles, journals, and mental health studies, and then I print my own materials.

**Describe a situation or two in which you've worked with a LGBTQ youth. What are some highlights and frustrations?**

The frustration is that the foster care system needs to actively recruit foster families that are gay friendly and train all new foster parents (or re-train those currently serving as foster parents) about these issues. Training should be mandatory. The organization as a whole is extremely religious but needs to remain open to these youth. Those in the system who statistically tend to be the most homophobic (the foster parents or even some social workers) are on the front lines.

A highlight is that I'm now aware that the Child & Family Services Agency has a LGBTQ working group that is developing training for social workers. I'm optimistic about this because I believe that working with social workers and foster parents (in addition to judges, GALs, or CASAs) is critical to the systemwide buy-in that needs to occur.

**What advice do you have for other adults working with LGBTQ youth?**

Be open. Do not be afraid to talk about these issues with the youth if they raise them. No one is comfortable discussing sexuality in general, or pregnancy, or STDs. If these issues are not addressed, then risk factors associated with sexual activity will not be addressed. In general, all advocates need to be open to discussing sexuality because we need a complete picture of the youth. Although this may be more difficult or uncomfortable when dealing with a gay youth, it is critical because of the many risk factors (drug and alcohol abuse, mental health issues, safety, and truancy) that could be overlooked if that initial piece of information is not known.

*Interview conducted by Melissa Fay Colangelo*



## *Listening to and Learning from LGBTQ Youth*

AN INTERVIEW WITH DOMINICK MAGEE

Dominick is 18 years old and has spent 10 years in foster care. He is currently in a community college program, but will transfer soon to a local four-year college and focus his studies on paralegal work.

**What advice do you have for advocates in the legal system who are working with LGBTQ youth?**

Don't ask, "Why are you this way?" Don't bring your personal beliefs and values about how it's wrong or right into your work. The placement of this child is not about you. It's about them and their life.

**Do you feel being gay affected your experience in foster care?**

Foster care has its ups and downs. I do think sexual orientation played a part in my experience. I had no male role model as a young child, so I always acted like my mom. My foster care mother accepts that kind of attitude for the most part. I'm close with my foster mom, but I still can't have company over here unless I ask. I told her about my sexual preference about two or three years ago. I've been here four years now, and we have our disagreements. Some of the stuff does seem to be about who comes over. Right now I'm living on my own, but renting a bottom floor from my foster mom. I can't bring anyone over here; I am still severely restricted in what I can do. I feel as if: *"I'm renting my place from you, but you think because of my sexual orientation I can't bring anyone over here."* My foster brother also said he's tired of all these gay people coming through this house. So now I don't want to bring people over anymore. I think they assume if I have any friends over that those people are gay and that I will engage in some sort of homosexual activity with anyone who walks through the door. Yes, my sexual orientation plays a big role in this house even though I'm most comfortable here.

**If an attorney or judge strongly suspected a youth was LGBTQ but the youth did not feel comfortable discussing the topic, what would you want your attorney/judge to do?**

It was hard for me to talk about most of my life. I knew that people knew or had an idea, but no one wanted to talk to me about it. I need an attorney to be open-minded, understanding. If possible, agencies should try to recruit openly gay or gay-friendly attorneys. If an attorney was gay-friendly, openly gay, or was just willing to have a non-judgmental one-on-one conversation with me, saying something like, "I've experienced

that, I'm that way," or "I understand," or "I'm sorry that's so hard," or just asking what I wanted to do, that would be really helpful. Most of the time though, attorneys see any kind of sexual orientation issue as an increase in drama; more issues to deal with. I just wanted to make sure I would get into a home.

I would also recommend that foster parents, social workers and attorneys go through a careful screening process and thorough background checks, because research needs to be done to see if they are violent or have a history of abuse, and of course, if they're homophobic. We're a vulnerable group and you add in people who could potentially abuse youth in conjunction with their sexual orientation, it's traumatic. When I told social workers that my former foster parents and staff at a residential treatment center abused me, no one believed me. Attorneys and judges need to respect youth in disputes with foster parents and respect youth when they feel threatened. Basically, I have a deep belief that juveniles who are prosecuted for status offenses and adults who violate basic decency to youth, particularly on the basis of their sexual orientation, should all be handled similarly and equally.

*Interview conducted by Melissa Fay Colangelo*

# APPENDIX A

## Resources

These resources provide further information for advocates about LGBTQ youth. You may find them useful to give to others involved in the process (caseworkers, residential staff, parents, teachers, psychologists, colleagues) or youth themselves. This list is not exhaustive. For more state-specific services, please contact the ABA Center on Children and the Law, Opening Doors project, directly or visit the National CASA website at [www.NationalCasa.org](http://www.NationalCasa.org)

### LEGAL ADVOCACY ORGANIZATIONS

#### **ABA Center on Children and the Law, Opening Doors Project**

740 15<sup>th</sup> St., NW  
Washington, DC 20005  
202/662-1736

[www.abanet.org/child/lgbtq.shtml](http://www.abanet.org/child/lgbtq.shtml)

This project improves legal advocacy and judicial decisions on behalf of LGBTQ youth in dependency cases. In addition to its manual for attorneys and judges, the Opening Doors project provides legal training to jurisdictions on request. A web cast discussing legal roles in LGBTQ cases, and attitudes and beliefs about LGBTQ youth can be accessed on the project's website.

#### **Court Appointed Special Advocates (CASA)**

100 West Harrison St., North Tower, Suite 500  
Seattle, WA 98119  
800/628-3222

[www.nationalcasa.org](http://www.nationalcasa.org)

The National CASA Association, with its state and local members, supports and promotes court-appointed volunteer advocacy for abused and neglected children in the court system so they can thrive in safe, permanent homes.

*Publication:*

*Annotated Bibliography: Resources for Working with Lesbian, Gay, Bisexual, and Transgender and Questioning Youth and Families in the Foster Care System*

[http://www.casanet.org/download/diversity/0612\\_lgbtq\\_0032.pdf](http://www.casanet.org/download/diversity/0612_lgbtq_0032.pdf)

#### **Equity Project**

<http://www.equityproject.org/>

This national collaboration between Legal Services for Children (San Francisco), the National Center for Lesbian Rights, and the National Juvenile Defender Center ensures LGBT youth in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues that impact LGBT youth during the delinquency process.

#### **Lambda Legal Defense**

120 Wall Street, Suite 1500  
New York, NY 10005  
212/809-8585

[www.lambdalegal.org/](http://www.lambdalegal.org/)

This national organization pursues high-impact litigation, public education, and advocacy on

behalf of equality and civil rights for LGBT people. It supports people who need legal help through its phone help desks and educational publications. It has four locations throughout the country, in addition to its New York City headquarters.

*Publications:*

*Youth in the Margins: A Report on the Unmet Needs of Lesbian, Gay, Bisexual, and Transgender Adolescents in Foster Care*

Current state foster care programs neglect LGBT youth and, in many cases, promote a homophobic atmosphere that undermines their welfare. This report from Lambda Legal examines foster care programs in 14 states, highlighting the shortfalls of each in addressing LGBT youth and providing recommendations to address them.

<http://www.lambdalegal.org/our-work/publications/page.jsp?itemID=32009148>

**Legal Services for Children/National Center for Lesbian Rights Model Standards Project**

Legal Services for Children  
254 Market St., 3rd Floor  
San Francisco, CA 94102  
415/863-3762, ext. 310  
[www.lsc-sf.org](http://www.lsc-sf.org)

**National Center for Lesbian Rights National Office**

870 Market St., Suite 370  
San Francisco, CA 94102  
415/392-6257  
[www.nclrights.org](http://www.nclrights.org)

This partnership has produced the *Model Standards Project LGBTQ Practice Guide*, published by the Child Welfare League of America in 2006 and available through [www.lsc-sf.org](http://www.lsc-sf.org), [info@nclrights.org](mailto:info@nclrights.org), and [www.cwla.org](http://www.cwla.org)

**National Center for Lesbian Rights**

870 Market St., Suite 370  
San Francisco CA 94102  
415/392-6257  
[www.nclrights.org](http://www.nclrights.org)

NCLR is a national legal organization committed to advancing the civil and human rights of LGBT people and their families through litigation, public policy advocacy, and public education. In addition to its San Francisco headquarters, it has offices in Florida and Washington, DC.

*Publications:*

*Breaking the Silence: LGBTQ Foster Youth Tell Their Stories*

This 45-minute DVD/CD includes 10 digital short stories by LGBTQ foster youth, training tools, and resources. The stories describe what it's like to be an LGBTQ foster youth and what advocates and providers can do to improve how child welfare and juvenile justice systems serve these youth. Available for \$25. To order, call or email Jody Marksamer, NCLR Staff Attorney, 415/392-6257, ext. 308; [jmarksamer@nclrights.org](mailto:jmarksamer@nclrights.org)

*LGBTQ Youth in Foster Care System Fact Sheet*

[www.nclrights.org/site/DocServer/LGBTQ\\_Youth\\_In\\_Foster\\_Care\\_System.pdf?docID=1341](http://www.nclrights.org/site/DocServer/LGBTQ_Youth_In_Foster_Care_System.pdf?docID=1341)

*LGBTQ Youth in the Juvenile Justice System Fact Sheet*

[www.nclrights.org/site/DocServer/LGBTQ\\_Youth\\_Juvenile\\_Justice\\_Factsheet.pdf?docID=1343](http://www.nclrights.org/site/DocServer/LGBTQ_Youth_Juvenile_Justice_Factsheet.pdf?docID=1343)

**Sylvia Rivera Law Project**

322 8th Ave., 3rd Fl.

New York, NY 10001

212/337-8550

[www.srlp.org](http://www.srlp.org)

SRLP works to guarantee all people are free to self-determine gender identity and expression, regardless of income or race, and without facing harassment, discrimination or violence.

## NONLEGAL ADVOCACY ORGANIZATIONS

**Advocates for Youth**

2000 M Street NW, Suite 750

Washington, DC 20036 USA

202/419-3420

[www.advocatesforyouth.org](http://www.advocatesforyouth.org)

Advocates for Youth helps young people make informed and responsible decisions about their reproductive and sexual health.

*Publications:*

“Respecting the Rights of GLBTQ Youth, A Responsibility of Youth-Serving Professionals,” *Transitions* 14, June 2002.

A special issue of Advocates for Youth’s journal, *Transitions*, dedicated to GLBTQ issues.

[www.advocatesforyouth.org/publications/transitions/transitions1404.pdf](http://www.advocatesforyouth.org/publications/transitions/transitions1404.pdf)

*Creating Safe Space for GLBTQ Youth: A Toolkit*

This manual includes sections on supporting youth of color and transgender youth.

[www.advocatesforyouth.org/publications/safespace/safespace.pdf](http://www.advocatesforyouth.org/publications/safespace/safespace.pdf)

*GLBTQ Youth*

Fact sheet providing information on challenges, risk factors, and trends among GLBTQ youth.

[www.advocatesforyouth.org/publications/factsheet/fsglbt.pdf](http://www.advocatesforyouth.org/publications/factsheet/fsglbt.pdf)

*Pamphlets for Youth:*

*I Think I Might Be Bisexual, Now What Do I Do?*

[www.advocatesforyouth.org/youth/health/pamphlets/bisexual.pdf](http://www.advocatesforyouth.org/youth/health/pamphlets/bisexual.pdf)

*I Think I Might Be Gay, Now What Do I Do?*

[www.advocatesforyouth.org/youth/health/pamphlets/gay.pdf](http://www.advocatesforyouth.org/youth/health/pamphlets/gay.pdf)

*I Think I Might Be Lesbian, Now What Do I Do?*

[www.advocatesforyouth.org/youth/health/pamphlets/lesbian.pdf](http://www.advocatesforyouth.org/youth/health/pamphlets/lesbian.pdf)

*I Think I Might Be Transgender, Now What Do I Do?*

[www.advocatesforyouth.org/youth/health/pamphlets/transgender.pdf](http://www.advocatesforyouth.org/youth/health/pamphlets/transgender.pdf)

**Child Welfare League of America (CWLA)**

440 First St. NW, 3rd Floor

Washington, DC 20001

202/638-2952

[www.cwla.org/programs/culture/glbtc.htm](http://www.cwla.org/programs/culture/glbtc.htm)

CWLA and partner Lambda Legal Defense and Education Fund are working together to build the child welfare system's capacity to deal fairly and constructively with young people, family members, and employees who are LGBTQ, with particular emphasis on those making the transition to adulthood.

*Publications*

*Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of LGBTQ Youth in Care.* Available free online.

"Addressing the Needs of Gay, Lesbian, Bisexual, Transgender and Questioning (GLBTQ) Children, Youth, and Families Within Child Welfare Systems," Special Edition, *Child Welfare Journal*, CWLA, 2006. Available for purchase online.

[www.cwla.org](http://www.cwla.org) or [www.cwla.org/programs/culture/glbtc.htm](http://www.cwla.org/programs/culture/glbtc.htm)

**Families United Against Hate**

P.O. Box 6396

Olympia, WA 98507

360/888-5291

Contact: Lisa Weiner-Mahfuz of PFLAG, 202/467-8180, ext. 217

[www.fuah.org](http://www.fuah.org)

A national network by and for families and survivors of hate-motivated violence which operates in conjunction with Parents, Families, and Friends of Lesbians and Gays (PFLAG) and other organizations and individuals. It focuses on providing long-term emotional support and technical assistance to families.

**Gay, Lesbian, Bisexual, and Transgender (GLBT) Health Access Project**

Justice Resource Institute

130 Boylston St.

Boston, MA 02116

617/457-8150

[www.jri.org/jrihealth.htm#glbt](http://www.jri.org/jrihealth.htm#glbt)

This project is a collaborative, community-based program funded by the Massachusetts Department of Public Health, offering provider trainings, technical assistance, and support aimed at eliminating barriers to health care access for LGBT individuals and their families.

**Human Rights Campaign (HRC)**

1640 Rhode Island Avenue, NW

Washington, DC 20036-3278

202/628-4160

[www.hrc.org](http://www.hrc.org)

As the largest civil rights organization working to achieve equality for LGBT Americans, the Human Rights Campaign represents a grassroots force of more than 700,000 members and supporters nationwide. HRC envisions an America where LGBT people are ensured equality and embraced as full members of the American family at home, work and in every community.

**National Youth Advocacy Coalition (NYAC)**

638 R. St., N.W., Suite 300

Washington, DC 20009

202/319-7596, ext. 12

[www.nyacyouth.org](http://www.nyacyouth.org)

A social justice organization that advocates for LGBTQ youth to end discrimination and ensure their physical and emotional well-being. NYAC publishes a news magazine about sexual minority youth concerns.

**DIRECT SERVICES FOR LGBTQ YOUTH****California AIDS Clearinghouse (CAC)**

443 N. Martel Ave

Los Angeles, CA 90046

323/845-4180

[www.hivinfo.org/](http://www.hivinfo.org/)

The Clearinghouse partners with state-funded education and prevention programs and HIV testing programs to create support services and educational materials that are culturally sensitive, language appropriate, and meet educational needs of these programs.

**Gay, Lesbian, Bisexual, and Transgender Youth Support Project**

942 W. Chestnut St.

Brockton, MA 02301

800/530-2770

[www.hcsm.org/glys/glys.htm](http://www.hcsm.org/glys/glys.htm)

Provides training and technical assistance for providers and educators who support LGBT youth.

**Gay and Lesbian Adolescent Social Services, Inc. (GLASS)**

650 N. Robertson Blvd.

West Hollywood, CA 90069

310/358-8727

[www.glassla.org](http://www.glassla.org)

Private, nonprofit social services agency aimed at gay and lesbian youth who are in foster care, on probation, or are homeless.

**Hetrick-Martin Institute (HMI)**

[www.hmi.org/](http://www.hmi.org/)

The Hetrick-Martin Institute, Home of The Harvey Milk High School, believes all young people, regardless of sexual orientation or identity, deserve a safe and supportive environment in which to achieve their full potential. HMI creates this environment for LGBTQ youth between the ages of 12 and 21 and their families. Through a comprehensive package of direct services and referrals, HMI seeks to foster healthy youth development. HMI's staff promotes excellence in the delivery of youth services and uses its expertise to create innovative programs.

Locations:

**Manhattan: Ali Forney Center**

Wednesday, 10:30-11:30 a.m.

527 West 22nd St., 1st floor

Take the E train to West 23rd St.

Youth must be a member of the Ali Forney Center to attend.  
Call 212/206-0574 to join.

**Manhattan: Streetwork Project**

Thursdays, 3:00-5:00 p.m.  
165 W. 131st street, 3rd floor New York, NY 10027  
Take the # 2, 3 trains to 135th St.  
Youth must be a member of Streetwork to attend.  
Call 212/695-2220 to join.

**Manhattan: Hetrick Martin Institute**

1st and 3rd Wednesday of the month, 5-6 p.m.  
2 Astor Pl.  
Take R or W to 8th St. or 6 to Astor Pl.  
Youth must be a member of Hetrick Martin Institute to attend.  
Call 212/674-2400 to join.

**Jacksonville Area Sexual Minority Youth Network (JASMYN)**

P.O. Box 380103  
Jacksonville, FL 32205  
904/389-3857  
Gay Youth Information Line: 904/389-0089  
JASMYN is a safe place where sexual minority youth are accepted, no questions asked. It offers a place for these youth to talk about LGBTQ issues and thoughts

**L.A. Gay and Lesbian Center**

The L.A. Gay & Lesbian Center provides services for the LGBT community, welcoming nearly a quarter-million client visits from ethnically diverse youth and adults each year. Through its Jeffrey Goodman Special Care Clinic and onsite pharmacy, the Center offers free and low-cost health, mental health, HIV/AIDS medical care and HIV/STD testing and prevention. The Center also offers legal, social, cultural, and educational services, with unique programs for families and youth, including a 24-bed transitional living program for homeless youth.  
[www.laglc.org](http://www.laglc.org)

Locations:

**McDonald/Wright Building**

1625 N. Schrader Blvd.  
Los Angeles, CA 90028-6213  
323/993-7400

**The Village at Ed Gould Plaza**

1125 N. McCadden Pl.  
Los Angeles, CA 90038  
323/860-7302

**Jeff Griffith Youth Center**

7051 Santa Monica Blvd.  
Los Angeles, CA 90038  
323/993-7501



**The Spot**

745 N. San Vicente Blvd.  
West Hollywood, CA 90069  
323/993-7440

**One-in-Teen Youth Services Nashville**

109 29th Avenue North  
Nashville, TN 37203  
615/321.7288  
877/ONE-IN-TN (877/663-4686)  
[www.one-in-teen.org](http://www.one-in-teen.org)

Since 1989, One-In-Teen Youth Services (OIT) has provided a safe space for LGBTQ youth, between the ages of 14 and 21, to be themselves. Basic services are free and events are alcohol and drug-free.

**Sexual Minority Youth Assistance League (SMYAL)**

410 7th St. SE  
Washington DC 20003-2707  
202/546-5940  
[www.smyal.org](http://www.smyal.org)

SMYAL assists LGBTQ youth in Washington, DC. It promotes self-confident, healthy, productive lives for LGBTQ youth as they journey from adolescence into adulthood. It concentrates five areas: (1) life skills & leadership development, (2) counseling & support, (3) health & wellness education, (4) safe social activities, and (5) community outreach and education.

**Urban Justice Center: Peter Cicchino Youth Project**

123 William St, 16<sup>th</sup> Fl.  
New York, NY 10038  
646/602-5600  
[www.urbanjustice.org/ujc/projects/peter.html](http://www.urbanjustice.org/ujc/projects/peter.html)

This project helps LGBTQ youth stabilize their lives by helping them obtain government benefits, access permanent housing, and continue their educations. Legal clinics are conducted weekly at drop-in centers for runaways and LGBT youth. In addition, the project engages in systemic advocacy and impact litigation around issues such as mistreatment of LGBT youth in New York City's foster care and juvenile detention systems. The project also helps LGBT youth who are "aging" out of foster care.

## CAREGIVER SUPPORT PROGRAMS

**Family Builders**

3953 24<sup>th</sup> St., Suite C-2  
San Francisco, CA 94114  
[www.familybuilders.org](http://www.familybuilders.org)

Family Builders provides a full range of services to families who wish to adopt a waiting child. In addition to an orientation and preadoption training, it offers ongoing support services, postadoption training, groups, community building events, and an extensive library for families.

**Family Equality Council**

P.O. Box 206

Boston, MA 02133

3953 24th Street, Suite C-2

San Francisco, CA 94114

510/272-0204

[www.familyequality.org](http://www.familyequality.org)

A national advocacy organization that works to secure family equality for LGBTQ parents, guardians, and allies. Promotes legislation, policies, and initiatives that support LGBTQ-headed families.

**Parents, Families, and Friends of Lesbians and Gays (PFLAG)**

1726 M St., NW, Suite 400

Washington, DC 20036

202/467-8180

[www.pflag.org](http://www.pflag.org)

Provides support, education, and advocacy for parents, siblings, and friends of LGBTQ youth.

Local chapters meet monthly. If no chapter is listed under “Local Organization” for your town, contact National PFLAG.

*Publications:*

*Be Yourself: Questions and Answers for Gay, Lesbian, Bisexual, and Transgender Youth*

[www.pflag.org/fileadmin/user\\_upload/Be\\_Yourself\\_TT.pdf](http://www.pflag.org/fileadmin/user_upload/Be_Yourself_TT.pdf)

## SCHOOL-BASED SUPPORT PROGRAMS

**Gay, Lesbian, and Straight Education Network (GLSEN)**

1012 14th St. N.W., Suite 1105

Washington, DC 20007

202/347-7780

[www.glsen.org](http://www.glsen.org)

This national education organization focuses on ensuring safe schools for all students.

**Gay Straight Alliance Network**

1550 Bryant St., Suite 800

San Francisco, CA 94103

415/552-4229

[www.gsanetwork.org](http://www.gsanetwork.org)

This youth-led organization empowers youth activists fighting homophobia in schools. It advises on starting GSAs in schools and how to keep them going.

*Note:* The National Center for Lesbian Rights offers a fact sheet that explains the legal rights of students to form GSAs and to have the same privileges as other clubs.

[www.nclrights.org/publications/pubs/gsaqa.pdf](http://www.nclrights.org/publications/pubs/gsaqa.pdf)

**Safe Schools Coalition**

Public Health—Seattle & King County, MS: NTH-PH-0100

10501 Meridian Ave., N.

Seattle, WA 98133

206/632-0662, ext. 49

Intervention Help: (WA State only): 888/307-9275

[www.safeschoolscoalition.org](http://www.safeschoolscoalition.org)

A public-private partnership that works to reduce bias-based bullying and violence in schools and to help schools better meet the needs of sexual minority youth and children with sexual minority parents.

*Note: Three useful resources addressing bullying in school are:*

*Bullying, It's Not Okay*

This brochure for parents contains sections on “When Your Child Is the Victim,” “When Your Child Is the Bully,” and “When Your Child Is a Bystander.” It was jointly produced by the Washington State Medical Association, the Washington State Chapter of the American Academy of Pediatrics, and the Washington State Attorney General’s Office.

[www.atg.wa.gov/bullying/BullyingBrochure8\\_05.pdf](http://www.atg.wa.gov/bullying/BullyingBrochure8_05.pdf)

*Responding to Hate at School*

A guide for teachers, counselors, and administrators from Teaching Tolerance.

[www.tolerance.org/pdf/rthas.pdf](http://www.tolerance.org/pdf/rthas.pdf)

*Safe Passage: Voices from the Middle School*

A web page for parents and educators on bullying from the Family Education Network.

<http://familyeducation.com/topic/front/0,1156,24-18106,00.html>

## WEB SITES FOR LGBTQ YOUTH

### **Youth Guardian Services**

[www.youth-guard.org](http://www.youth-guard.org)

A youth-run organization that provides support services on the Internet to LGBTQ and straight youth.

### **Youth Resource Web Site**

[www.youthresource.com](http://www.youthresource.com)

This web site was created by and for LGBTQ youth to safely explore sexuality and issues of concern to the LGBTQ community. Created by Advocates for Youth, it offers “web rings,” which are collections of home pages for all LGBTQ youth, and dedicated pages for LGBTQ youth from various ethnic and cultural backgrounds.

### **National Coalition for Gay, Lesbian, Bisexual, and Transgender Youth (OutProud)**

[www.outproud.org](http://www.outproud.org)

A web site community for LGBTQ youth and those who care about them. The site offers publications, personal stories, youth forums, Q&As, recommendations, and other resources.

# APPENDIX B

## Legal System’s Approach to LGBTQ Youth in Foster Care: Select Findings from Attorney/Judge Surveys

BY SHARON G. ELSTEIN

As part of the Opening Doors project, an exploratory survey was conducted to learn whether child welfare attorneys and judges know about court-involved lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth on their caseloads. It also sought to understand how the legal system responds to the special needs of LGBTQ youth.

This survey was the first of its kind and the sample is small. Its findings highlight the need for awareness education, sensitivity training, resource allocation, and support for youth who identify as LGBTQ and their families. A summary of the survey findings appears below. To view the full research report, visit the Opening Doors web site: [www.abanet.org/child/lgbtq.shtml](http://www.abanet.org/child/lgbtq.shtml)

### SUMMARY OF ATTORNEY/JUDGE SURVEY FINDINGS

#### Attorney/Judge Background

##### Attorneys

- 71 of 556 attorneys completed and returned the survey.
- Attorney respondents primarily had a dependency caseload.
- Most attorneys had at least seven years of experience in the field; and one-third had more than 15 years’ experience.

##### Judges

- 18 of 300 judges completed and returned the survey.
- Judges in the sample preside over dependency cases with various levels of experience (i.e., length of time presiding over cases and length of assignment).
- Judges rarely know if a youth in their courtroom identified as LGBTQ.

#### Identification/Awareness of LGBTQ Status

##### Attorneys

- More than half of the attorneys often or sometimes know if their client is LGTBQ; two-fifths rarely or never know; and only 3% said they always know.
- Most attorneys believe that LGBTQ clients represent 10% or less of their dependency and delinquency caseload.
- The majority of attorneys reported their awareness of their clients’ sexual identity was based either on the youth’s self-report or on reports from others.

##### Judges

- Judges rely on others, or on self-report by the youth, to determine if a youth is LGBTQ.
- Judges perceive LGBTQ status as somewhat important in respect to child safety and very important in regards to permanency.
- Judges do not routinely ask social workers or GALs to ask youth about their sexual orientation.

## Identification/Awareness of LGBTQ Status *(continued)*

### *Attorneys*

- A majority of attorneys do not ask their young clients about their sexual orientation.
- More than half the respondents believe that social workers ask youth about their sexual orientation; close to one-half do not know whether they ask.
- If the attorney is aware of a youth's LGBTQ status, more than half will share that information with other professionals, but 40% will not.
- More than half of the attorneys believe a client's LGBTQ status is somewhat or very important when considering a child's safety and plans for permanency.
- The majority of attorneys believe LGBTQ youth in foster care have unique needs (safety, sensitivity, and acceptance).

### *Judges*

- Judges do not address a youth's LGBTQ status with others involved in the case, although some share the information if they feel it is important for decision making, and is based upon the wishes of the minor.
- Judges believe that LGBTQ youth in foster care have unique needs compared to heterosexual youth on their caseloads.

## Education/Training

### *Attorneys*

- Close to one-half of the attorneys reported LGBTQ educational seminars were available within their jurisdiction, but one-third did not know if such trainings were offered.
- Only a handful of attorneys (16) had taken advantage of training opportunities, and 5 of those reportedly changed their practice based on what they learned.

### *Judges*

- Educational seminars/trainings related to LGBTQ were available in only a few jurisdictions.

## LGBTQ-Friendly Efforts

### *Attorneys*

- One-third of responding attorneys report that child welfare professionals demonstrate they are "LGBTQ friendly" (e.g., by displaying rainbow flag or LGBTQ insignia or resource materials); while about one-half do not know of any such efforts.
- While a minority of responding attorneys currently display posters, flags, etc., a majority would consider doing so.

### *Judges*

- A small proportion of judges reported displaying a sign or poster that was supportive of nondiscrimination generally, not specific to LGBTQ. Judges reported they would be willing to display LGBTQ resource material either in or outside of their courtroom.

## **Delinquency System Involvement**

### *Attorneys*

- Forty-five percent of respondents consider fewer than 5% of their LGBTQ clients as both delinquency and dependency (“cross-over”) clients.
- Most attorneys do not know whether their LGBTQ clients are more likely to be adjudicated delinquent for risky behaviors (e.g., prostitution/survival sex, assault, substance abuse) than non-LGBTQ clients.
- When asked specifically about LGBTQ clients with substance abuse problems, more than one-third could not estimate the number; 19% thought between one-quarter and one-half had problems.

### *Judges*

- Most judges were unsure of how many LGBTQ youth were involved in the delinquency system, or how many were involved in both the delinquency and dependency systems.
- Among the few judges who were aware of LGBTQ youth involved in both the delinquency and dependency systems, the sense was that they represented a small proportion of youth.
- Most judges did not know if LGBTQ youth were more likely than heterosexual youth to be adjudicated for risky behaviors, or to have substance abuse problems.

## **Placement/Safety**

### *Attorneys*

- Most attorneys raise specific issues when addressing placement for LGBTQ youth, including foster homes’ safety, sensitivity, and acceptance.
- Few attorneys reported the availability of resources related to LGBTQ-friendly placements.
- 38% said LGBTQ-friendly counseling services were available either through their own offices or their child welfare agency.
- A minority of attorneys reported their local child welfare agency had a resource list of appropriate placements or counseling services; most were unsure if such lists exist.
- Two-thirds of attorneys reported asking social workers to provide information on placement families’ views if the youth identifies as LGBTQ; and about one-half ask at subsequent hearings.
- More than one-half ask social workers to screen placements if the child has identified as LGBTQ.
- Three-quarters of the attorneys will recommend the agency find an accepting placement if the first placement does not accept a youth’s LGBTQ orientation.

### *Judges*

- Judges perceive no specific placement issues for LGBTQ youth.
- Few of the judges reported the availability of resources related to LGBTQ-friendly placements, and counseling services either through their own offices or their child welfare agency.

## Mental/Physical Health

### Attorneys

- Half of the attorneys' jurisdictions require a medical examination when entering their child welfare system; very few require reproductive health examinations or HIV testing.
- Two-thirds of attorneys say they make sure youth are receiving therapy or services by LGBTQ-sensitive providers.
- Over half the attorneys report their jurisdiction has confidentiality protections for HIV status, but 37% were not sure.
- More than half the attorney respondents stated their judges order all parties not to disclose the youth's HIV status.

### Judges

- Medical exams were the most commonly requested exam requested by judges for LGBTQ youth, with over half of respondents requesting one.
- Very few judges request therapy/services by LGBTQ sensitive providers based on the results of medical, psychological, or reproductive exams.
- Most judges' jurisdictions have confidentiality protections in place for HIV status.
- Most judges enforce HIV confidentiality protections by ordering attorneys and parties not to disclose HIV status. Some seal records, close the courtroom, or follow statutes and laws.

## Permanency

### Attorneys

- All 32 attorneys who responded to the question on whether LGBTQ youth are harder to place in comparison to heterosexual teens said LGBTQ youth are harder to place, primarily due to the lack of tolerance/acceptance at the placements.
- Among 25 responding attorneys, all reported LGBTQ teens experience more placements; and among 33 responding attorneys, all believe LGBTQ youth have more turmoil or trouble with placements, again due to a lack of tolerance by adults and other youth.
- Among 19 responding attorneys, all believe that LGBTQ teens run away from placements more frequently than other teens, due to lack of acceptance, and to maltreatment.
- 69% of attorneys discuss with parents their attitudes towards their child's sexual identity; 61% do the same with relatives with whom the youth will be placed; and 64% discuss this with adoptive parents.
- Most attorneys said they refer families to LGBTQ-friendly counseling if they learn that the youth's status is an issue with parents or relatives.

### Judges

- Some judges believe LGBTQ youth are harder to place compared to heterosexual teens, due to lack of tolerance/acceptance associated with placement options. A few judges also reported LGBTQ teens experience more placements, more turmoil or trouble with placements, and more frequently ran away from placements.
- When LGBTQ youth are placed with relatives, judges do not discuss attitudes towards sexual identity with the relatives. Some judges felt this discussion was the responsibility of mental health professionals and social workers.
- Judges indicated that they were not knowledgeable about the ability of LGBTQ couples to be foster parents. However they report LGBTQ couples are allowed to adopt within their jurisdiction.

**Permanency** *(continued)*

**Attorneys**

- The majority of respondents are not aware of any LGBTQ group homes in their jurisdictions.
- Three-fourths of respondents said that LGBTQ couples may be foster parents in their jurisdictions; and 69% said they may be adoptive parents.

*This summary is based on research compiled by Sarah Caverly.*



# APPENDIX C

## Case Law on LGBTQ Youth Rights and Protections

Case law recognizing the rights of LGBTQ youth is another critical building block in the pursuit of achieving fair representation and treatment in the court system for all minors. The following cases are representative of some of the claims and issues being taken up in jurisdictions around the country. School harassment and discrimination, inequities in access to health-care and medical services, and general institutional persecution are prevalent. However, parents and legal organizations are helping LGBTQ teens fight for equal treatment and complete acknowledgment of their civil rights. These cases also serve to demonstrate the types of issues that LGBTQ youth in foster care may face and the extensive legal measures they must take to preserve and secure basic privacy and liberty interests.

### ***Brian L. v. Administration for Children's Services*, 32 A.D.3d 325 (N.Y.A.D. 1 Dept. 2006).**

See Chapter 4 for a summary of this case addressing a child welfare agency's responsibility to pay for sex reassignment surgery for a transgender youth in its custody.

### ***R.G. v. Koller*, 2006 WL 897578 (D. Hawai'i).**

Three youth (a 17-year-old male-to-female transgender girl, an 18-year-old lesbian, and an 18-year-old boy perceived to be gay) accused the Hawai'i Youth Correctional Facility (HYCF) of willful blindness, abuse, and harassment. Doctors and psychologists repeatedly expressed concern over the welfare of LGBT youth in the facility because of the atmosphere of harassment. The ACLU of Hawaii then issued a report in 2003 exposing this pervasive humiliation and abuse. In 2005, the U.S. Department of Justice also reported on the policies and practices at the HYCF and found systematic violations of youths' civil rights. The United States District Court for the District of Hawaii issued a preliminary injunction requiring HYCF to stop harassing LGBT youth. HYCF agreed to several new training procedures, antiharassment policy, and other reforms.

### ***Nguon v. Wolf*, 517 F. Supp. 2d 1177 (C.D. Cal. 2007).**

Charlene Nguon, a 17-year-old student at Santiago High School in California with no previous disciplinary record, was repeatedly chastised and suspended for one week for engaging in what the school deemed inappropriate public displays of affection (IPDA) with another female student. However, heterosexual students were not disciplined for hugging, holding hands, or kissing. When explaining the suspension to Charlene's parents, the school disclosed her sexual orientation without obtaining Charlene's permission first, resulting in her transfer to another school mid-semester.

The ACLU's national Lesbian Gay Bisexual Transgender Project, the ACLU of Southern California, and the law firm of Latham & Watkins, LLP, brought a lawsuit on behalf of Nguon and the Gay-Straight Alliance Network in September 2005 to clear Charlene's disciplinary record and establish a policy of equal treatment for LGBT students in the district.

The court found that disciplining Charlene for IPDA with her girlfriend did not violate her equal protection or first amendment rights, and the principal did not violate her privacy rights by disclosing her sexual orientation to her parent while explaining the student's suspension without obtaining Charlene's permission.

### ***Davis v. Fleming High School (Florida)\****

Kelli Davis, a senior at Fleming High School, was denied the right to appear in her senior yearbook because she wore a tuxedo. After negotiating with NCLR, the school board agreed to change the portrait policy; add ‘sexual orientation’ to its nondiscrimination policy; distribute a copy of the new policy to all secondary school students; and provide annual training on sexual orientation to faculty, staff, and students.

### ***Pinellas County Juvenile Welfare Board (Florida)\****

A member of the Pinellas County Juvenile Welfare Board circulated a memo stating that Gay Lesbian and Straight Education Network (GLSEN) and Parents, Families and Friends of Lesbians and Gays (PFLAG) “endorse unhealthy sexual practices among youth, including sex between underage youth and adults.” GLSEN and PFLAG issued a letter insisting the statements be retracted. The executive director of the board issued a public statement clarifying that “neither [GLSEN nor PFLAG] endorse unhealthy sexual practices among youth, including sex between underage youth and adults” in response to the letter.

### ***Ramirez v. Los Angeles Unified School District (California)\****

At Washington Preparatory High School in the Los Angeles Unified School District, students and members of the Gay-Straight Alliance Network’s It’s OK club claimed they had been harassed and discriminated against by teachers, administrators, staff, and other students based on their sexual orientation. The discrimination and harassment took place at school and included anti-gay comments and name calling, threats to out students, and failure to provide safety from anti-gay attacks.

The NCLR and the ACLU of Southern California, joined by Milbank, Tweed, Hadley & McCloy LLP, filed a complaint against the Los Angeles Unified School District and Washington Preparatory High School for discrimination against students based on sexual orientation. A settlement was reached and included among its stipulations, mandatory training for teachers, administrators, staff, and high school and middle school students.

### ***PRIDE v. White County School District (Georgia)\****

In 2005, students at White County High School in Cleveland, Georgia requested permission to form a gay-straight alliance club. The club aimed to fight against anti-gay harassment and bullying at the school. School administrators opposed the club and were slow to respond to the students’ request. The ACLU of Georgia then became involved, negotiating for the students. Later in the school year, school administrators granted permission to start the club. The gay-straight alliance club was formed, meetings began, and the club was called PRIDE (“Peers Rising in Diverse Education”).

A few days after PRIDE was formed, school officials presented a plan to ban all noncurricular student groups, starting with the following academic school year. During the 2005–2006 school year, PRIDE was not allowed to have meetings on school grounds. However, other clubs such as a dance club and a shooting club did continue meeting on the school campus even though they involved noncurricular activities and no academic credit was given for taking part in such clubs.

The Lesbian Gay Bisexual Transgender Project of the ACLU and the ACLU of Georgia filed a federal lawsuit against the school officials for banning the gay-straight alliance. A preliminary injunction was obtained, ordering the school officials to permit PRIDE and other school clubs to meet.

The ACLU and school officials of White County reached a settlement requiring school officials to institute an antiharassment policy to safeguard LGBT students from bullying, and provide faculty training each year on handling and preventing anti-gay harassment.

### ***Paramo v. Kern High School District (California).*★**

East Bakersfield High School in the Kern High School District publishes *The Kernal*, a respected school newspaper. In 2005, students at the paper decided to write an article series about difficulties faced by lesbian, gay, bisexual, and transgender students at East Bakersfield High School.

The students were thorough and cautious in securing the consent and cooperation of interviewed students and their parents. Nevertheless, school officials prevented the articles from being published, “claiming unsubstantiated threats” against those students who had been interviewed for these articles.

Representing the newspaper staff and the interviewed students, the ACLU of Southern California and the ACLU Lesbian, Gay, Bisexual, Transgender Project sued the school. Attorneys for the plaintiffs argued that school officials must handle any problems by dealing with those students who are making threats, not by stifling the right to free speech of those students being threatened.

An agreement was reached affirming that “all students have the right to exercise freedom of speech and of the press” and that “school officials may turn to censorship only as a last resort.”

### ***Morrison v. Boyd Co. Board of Education (Kentucky).*★**

The ACLU filed a lawsuit on behalf of Boyd County High School students who wanted to start a gay-straight alliance club at their school. Upon settlement of this lawsuit, a federal judge in Kentucky ordered the Boyd County public schools to institute antiharassment training and policy. The school district agreed to comply after the judge discovered the extensiveness of anti-gay harassment in the school, “where students in an English class once stated that they needed to ‘take all the fucking faggots out in the back woods and kill them.’”

In February 2005, the Alliance Defense Fund (ADF), a conservative religious legal organization, sued the school district to stop the antiharassment training and policy. Five plaintiffs from the original lawsuit were represented by the ACLU Lesbian Gay Bisexual Transgender Project and the ACLU of Kentucky. The parent of a student from Boyd County also joined in fighting the ADF suit.

A trial court ruled that “there is no religious right to stay out of school trainings aimed at reducing anti-gay harassment.” An issue concerning the constitutionality of the school board’s antiharassment policy (since revised) was also resolved in favor of the school district.

The U.S. Court of Appeals for the Sixth Circuit decided whether the policy was constitutional. In agreeing with the ADF that the initial harassment policy was constitutionally flawed, the ACLU nevertheless argued on appeal that “schools can have antiharassment policies that protect LGBT students from harassment while still respecting the constitutional rights of students opposed to homosexuality on religious (or other) grounds.”

The Sixth Circuit “reversed the district court’s ruling in favor of the Board, but only with respect to the court’s dismissal of Morrison’s claim that his speech had been chilled by the Board’s prior policies.” The case has been remanded to decide if Morrison’s right to free speech was in fact violated.

★ *These case summaries were adapted from the NCLR website: <http://www.nclrights.org>*



# SUPPORTING LGBTQ YOUTH

## A JUDICIAL BENCH CARD

### Positive Attitudes

- Use gender-neutral language when talking with youth.
- Ask about the youth's "partners" or "important relationships" in the youth's life, romantic and otherwise.
- Use the youth's name and pronoun of choice and encourage the youth to dress as he or she wishes.
- Display hate-free zone, rainbow flag or triangle signs in your courtroom or office.
- Speak out when you hear anyone make homophobic or inappropriate anti-gay comments.
- Foster diversity by making the courtroom an "inclusive environment."
- If a youth wears non-gender conforming clothing or otherwise appears stereotypically LGBTQ do not assume anything about sexual orientation or gender identity when making decisions concerning safety, permanency, or well-being.
- Avoid defining LGBTQ youth by their sexual orientation or gender identity. Realize they are defined by these and other aspects of their lives.
- Never discuss the youth's sexual orientation or gender identity without her permission.

### Fair Treatment

- Enforce nondiscrimination policies from state civil rights laws, court rules, representation standards, school/placement/agency policies, or canons of ethics.
- Insist the agency care for the youth in an affirming way. If they don't, consider making a "no reasonable efforts" finding against the agency.
- Eliminate segregation and isolation of LGBTQ youth as a punishment for engaging in same-sex activities unless heterosexual activity is similarly sanctioned.
- Avoid double standards for LGBTQ youth and heterosexual youth who are sexually active.
- Ensure all youth receive information about HIV and protective measures.

### Services and Support

- Require the child welfare agency to find opportunities for social support for LGBTQ youth.
- Require qualified mental health practitioners, knowledgeable about LGBTQ issues to provide treatment.

- Ensure transgender youth receive medical services from qualified health care practitioners knowledgeable about hormone treatments and other pharmacological interventions.
- Encourage or require parents and family members to participate in counseling and parent support groups if they need help becoming more accepting and supportive of LGBTQ issues.
- Require that discharge plans identify local programs and services available for LGBTQ youth and their families.
- Identify appropriate school placements to maintain LGBTQ youth in the community or successfully transition back to the community at the end of placement.
- Have resources available to share with LGBTQ youth, their families, and lawyers.

## Placement and Permanency

### *Reunification*

- Require families to work through any concerns relating to their child's sexual orientation or gender identity that led to placement before reunification.
- Require the child welfare agency to provide services to the family to work towards a safe and emotionally healthy reunification.
- Require frequent visitation between the youth and family, including siblings, to further ensure successful reunification.

### *Adoption*

- Require the child welfare agency to locate LGBTQ-friendly adoptive placements.
- Ensure the adoptive caregivers will be strong advocates for the youth.

### *Guardianship/Relative Placement*

- A relative who is open to LGBTQ issues may be interested in adopting, being a guardian, or providing a permanent home and connection for the youth.
- If a youth can locate a suitable guardian, the caseworker should ensure the proposed adult would provide a safe home.

### *Another Planned Permanent Living Arrangement*


- If youth will remain in care until age 18 or 21, establish services to help with the transition.
- If the agency suggests APPLA as the permanent plan, the judge should ask questions to ensure the transition process is occurring and the youth has access to LGBTQ resources.







# JUDICIAL GUIDELINES

- Analyze your attitude toward LGBTQ youth. Work on changing negative attitudes.
  - You may think and believe what you want, but those thoughts may not impact the treatment clients and litigants receive.
  - Learn about sexual developmental needs and healthy sexual development of all young people, including LGBTQ youth.
  - Become familiar with state laws and policies protecting LGBTQ youth.
  - Learn LGBTQ terminology and become comfortable using it.
  - Understand that LGBTQ youth are not mentally ill.
  - Help develop nondiscrimination policies covering LGBTQ youth.
  - Help develop procedures that assure the safety of LGBTQ youth.
  - Require court staff training regarding treatment of LGBTQ youth.
  - Promote the development of recreational programs and opportunities for LGBTQ youth to interact.
  - Ensure LGBTQ youth have access to the same programs as their heterosexual peers.
  - Ensure court staff are respectful to all individuals in the courthouse, including LGBTQ youth.
  - Visit websites of service providers to determine if they provide services in an LGBTQ-affirming manner.
- 





American Bar Association  
Center on Children and the Law

740 15th Street, N.W. • Washington, DC 20005 • [www.abanet.org/child](http://www.abanet.org/child)