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# THE BELTWAY AND BEYOND: THE STRUGGLE FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER EQUALITY

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## INTRODUCTION

Good morning. Thank you so much for inviting me to address you today. It is an honor to be here at Cleveland-Marshall College of Law. I look forward to this exciting day of discussion and to the opportunity to speak with many of you here. I especially want to thank my friend and former law school classmate Professor Tayyab Mahmud for organizing this conference. Re-orienting the law is certainly the work that the legal community is called upon to do.

I titled my talk—The Beltway and Beyond: The Struggle for Gay, Lesbian, Bisexual and Transgender Equality. I will focus primarily on the struggle in the legislative arena in Washington, DC and more importantly, in states and local communities. And I will focus on three key issues for the GLBT community: families; civil rights and the intersection with religious liberty rights; and finally, violence and hate crimes.

## CONTEXT

The movement for GLBT rights has gone through a major shift. We are a larger, more visible and more diverse movement than ever before. We are not so much in the streets as we are in the media, the PTA, the legislative and legal arenas.

On the progressive side of the movement, we are making links and building coalitions with other groups on progressive issues. Increasingly those folks welcome us as allies. The words “gay and lesbian” are spoken with little discomfort by newscasters and politicians. These are the changes.

And yet GLBT people can be and are discriminated against, in employment, youth are harassed and beaten in the schools, and parents are denied custody of their children. The remaining fifteen states with sodomy laws can use those laws to criminalize GLBT people in every realm of daily life. In the era of a diminishing volunteer army, gay people are hunted down and rooted out, hounded like spies and war criminals. Still, change for the better is taking place.

First, let’s talk about the arena for legislative change. Why do we now look to states and local communities as the vanguard? It was not so long ago that the federal government stood as a bulwark (albeit often a reluctant one) against the reactionary/segregationist states, asserting the states’ rights to perpetuate Jim Crow racism. Yet in this period of the weakening federal government, and particularly a conservative Congress hostile to civil rights, some states and localities have come forward to pick up the mantle of forward-thinking legislative action.

Why is this? State legislatures are closer to home and more accessible to constituents. But they also are closer to the pulse of public opinion. Mostly Congress follows where everyone has long since lost the fear to tread.

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We often say that the balance of power has shifted from Washington, DC to the states. This year there was more legislation introduced into state legislatures which was more positive for the gay community than ever before (of course, there was also a great deal of negative legislation as well). Laws prohibiting discrimination against GLBT people are found not at the federal, but at the state level. Currently eleven states and the District of Columbia ban discrimination based on sexual orientation. Twenty-five states and DC include crimes based on sexual orientation in their hate crimes laws. And localities, companies and institutions across the country have adopted non-discrimination policies and domestic partnership ordinances and regulations. Henderson, Kentucky just joined Lexington and Louisville with ordinances prohibiting discrimination against gays, lesbians, bisexuals and transgendered people. Now there is leadership, and that is a challenge to all of us.

However, don't let me give the impression that this is all a rosy picture. The right wing has long targeted the GLBT community for attack. Our gains are extremely fragile and constantly subject to repeal and referendum. The struggle to maintain hard won rights is constant.

What do we have at the federal level? We have a Congress hostile to civil rights and to gay people. Americans often assume that discrimination based on one's membership in a group is illegal. People are convinced that we have many more rights than we do. They are shocked to hear that an individual can be fired at any time simply for being gay. GLBT people can be denied housing or service in a public accommodation. There simply are no protections from discrimination at the federal level with one exception.

That exception is in federal agencies. In a first time ever event, a pro-gay vote occurred in the House. President Clinton's executive order prohibiting discrimination in the executive branch agencies was left standing after a Republican attempt to repeal it in Congress.

Now I want to talk about critical issues that affect the GLBT community. Some issues are proactive, such as the fight for civil rights. Some are reactive, as we fight off attacks.

I am a firm believer in the concept of moving one's agenda forward by means of an "offensive reaction". That is, even while under attack, you assert your vision, your quest for justice and equality, and your humanity.

For example, the anti-marriage ballot initiative in California passed in 2000. The purpose was to ban same sex marriage in California. No matter that gay marriage was not permitted, already. It was that extra step to let gay people know that they are second class citizens, outside the realm of loving, caring relationships, recognized by the state.

Yet, we will continue to use this battle to raise issues about rejecting bigotry, about our families and relationships, our children and our communities.

#### FAMILIES

Let's talk about families. What is a family? It really means a different thing to each of us. And yet the right wing has the audacity to tell some of us that our families are not worthy or even legal? And their negative vision becomes the right wing's legislative agenda. As Pat Buchanan and Gary Bauer extol the virtues of the traditional family, we recognize that statistically, mom, dad and the two kids is no longer the norm. A majority of us come from or live in families that the right would

consider “broken” homes, single parent families, two working parents, two moms, two dads—a houseful of people we care about regardless of blood relationships.

What does the federal law have to say about GLBT families? Well, in 1996, Congress passed, and Clinton signed, the Defense of Marriage Act. Clearly an institution in the throes of crisis, marriage needed an immediate shot in the arm from Congress. This critical piece of legislation was rushed through Congress so that the federal government in all its power could save the institution from the hordes of homosexuals who would flock to the first place to legalize same-sex marriage and overwhelm and debase this fragile institution. DOMA defines marriage for federal purposes as between a man and a woman and allows states to deny recognition of same-sex marriages in other states. (No full faith and credit here, by God.) DOMA also prohibits recognition of state same-sex marriages for federal purposes including benefits, pensions, taxes, etc. Following the passage of DOMA, 30 states passed anti-same sex marriage statutes. The right wing continues to use this issue as a rallying point.

What about our children? Family law is usually state law, yet Congress has attempted for the past several years to use its power over the District of Columbia to overturn an appellate decision and to declare that the DC adoption law prohibits unmarried couples from adopting. Two years ago, for the first time, the amendment was rejected on the House floor.

In the states, only Florida has a complete ban on gay adoption. Arkansas and Utah passed prohibitions on foster care and adoption of children in the state system. Negative legislation was beaten in many other states.

In the courts, some of the ugliest cases of all time stand. In Virginia, the Bottoms case held that Sharon Bottoms could lose custody of her child to her mother simply because she was a lesbian and Virginia has a sodomy law. In Florida, in the Ward case, the court gave custody of a young daughter to her father who was convicted of murdering his first wife over the mother who was a lesbian. The mother died shortly thereafter of a heart attack.

Still, many couples across the country have completed second parent adoptions, where one partner adopts the child of his or her partner. Legislation on foster care and adoption, particularly from the right, is one of the most critical issues we face today. As the issue of our families flies higher and higher above the radar screen, look for an increasing number of bills regulating who can donate and obtain sperm from sperm banks. Look for continued battles on marriage and civil unions. The states will continue to be an arena for struggle on family issues for years to come.

#### RELIGION/CIVIL RIGHTS

Now let's turn to religious and civil rights. There was a heated and protracted discussion within the progressive community over conflicts between religious and civil rights. The Religious Liberty Protection Act (RLPA) was introduced in Congress with the laudable purpose of ensuring that people with religious beliefs do not suffer unreasonably when general laws are passed that burden these beliefs. This legislation was supported by a huge religious coalition from left to right. The problem, we discovered, was that RLPA poses a significant threat to the effective enforcement of state and local civil rights laws. RLPA would allow an “individual belief defense” to any individual in a state or locality that has a civil rights law. We feared that this defense would be used to deny housing, jobs and public accommodations to gays other minority groups. And right wing activists signaled

that they indeed intended to use the law for precisely the purpose of getting around civil rights laws.

Fortunately, a large civil rights coalition came together across issues and identities to signal the alarm. A religious liberty bill passed and was signed into law that was narrowly tailored and does not interfere with civil rights.

In the states, fifteen religious liberty bills were introduced two years ago, and three passed. Many people are still unaware that there are vehicles that can derail a civil rights agenda at the federal and state level unless we are constantly vigilant and aware of potential threats. We need to make sure that asserting one fundamental right does not trample another.

#### HATE CRIMES

Finally, hate crimes are an issue with high visibility. Matthew Shepard, strung up on a fence and left to die. Billy Jack Gaither, thrown on a pile of burning tires and beaten with ax handles. Joseph Ito, shot because he was a non-white. Small children singled out because they were Jewish. My childhood synagogue torched and defaced.

Most people are shocked, saddened, horrified. We want to do something to demonstrate that as a community we reject hate. Recognizing hate crimes as attacks on an entire community is critical. We need to speak up against those young men who have long believed that homosexuals should serve as fodder for their rage and frustration, their fragile and threatened masculinity. Communities are standing up and saying that beating and killing people because of who they are, because of their identity, is unacceptable. Hate crimes laws serve to identify and name the problem and to place community prohibitions on hate violence.

But Congress has failed to pass hate crimes legislation out of both chambers. The legislation would have added sexual orientation, gender and disability to the categories already covered under current federal law. This legislation was a high priority for the President and for the Leadership Conference on Civil Rights, an umbrella organization of civil rights groups. After passing in the Senate, the bill died in a House/Senate Conference.

State after state has passed hate crimes laws. Hate crimes laws are just part of the solution. As we work in broad-based coalitions with religious and civil rights groups to pass these laws, we must work to make law enforcement more accountable to communities of color and the gay community. We must conduct public education campaigns. We must speak up.

#### CONCLUSION

In summary, the GLBT community is pushing ahead of these and other issues in all 50 states. The Federation of LGBT Statewide Political Organizations is dedicated to passing progressive legislation in every state. The National Gay and Lesbian Task Force works closely with the Federation to provide technical assistance, to draft legislation and provide policy analysis to support these legislative efforts. Working with the GLBT litigation groups we strive to draft legislation that will stand up to judicial scrutiny. As the Supreme Court restricts federal powers, states can step in. Local communities can push the momentum even further.

Inside the Beltway we continue to push forward, but beyond the Beltway, the people are speaking in very strong voices, demanding to be seen and to be heard, demanding action. The motto of the 350 state and local events held in March of

1999 to bring attention to state GLBT political issues was apt: Equality Begins at Home.

Thank you.