

## 2006 Dan Bradley Award Acceptance Speech\*

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Thank you so much. Thank you to Anthony Romero for coming down to present this award and to the National Gay and Lesbian Law Association for this honor. It is good to look around this room and see people who have been involved in the movement for a long time. And one of the benefits of longevity in the gay, lesbian, bisexual, and transgender (GLBT) movement is being able to see things happen that you never thought would take place. When I started law school, it was 1980, Reagan was on the verge of winning, and the right wing was ascendant but not dominant. AIDS was yet to come, and the gay movement at the national level was a tiny series of local organizations scattered around the country that had just managed to hold its first national gathering in October of 1979 (the first National March on Washington).<sup>1</sup> The idea of a career in GLBT liberation was absurd.

I was a twenty-two year old, who found herself connected with a bunch of amazing people associated in one way or another with a community-based news weekly called the *Gay Community News*.<sup>2</sup> In law school, I met fellow students at Northeastern University School of Law who became not just friends for life, but movement lifers. People like Kevin Cathcart, who runs Lambda Legal, Richard Burns at the LGBT Community Center in New York, and Catherine Hanssens, who

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\* Lavender Law 2006 Conference (Sept. 9, 2006).

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1. See Eric Rofes, *The First Queer March on Washington: A Veteran Community Organizer Commemorates the Twenty-Fifth Anniversary*, National Gay and Lesbian Task Force, Oct. 14, 2004, <http://www.thetaskforce.org/node/1661/print>.

2. See *Gay Community News*, <http://www.gcn.ie> (last visited Feb. 1, 2007).

runs the Center for HIV Law and Policy, are among those of you who have worked more than twenty-five years for GLBT liberation.<sup>3</sup>

As I became a baby dyke lawyer, my movement icons were people, many of whom are in this room, who were speaking out, who inspired all of us, in a time when it was implausible, unsafe, and unfashionable to be out of the closet and to dream of working in the GLBT movement.

There was Virginia Apuzzo who was the head of National Gay Task Force, as it was then called, and who is one of the most motivational leaders the movement has ever had.<sup>4</sup> There was the fabled law firm in D.C. of Hunter & Polikoff, and I am pleased that Nan Hunter and Nancy Polikoff are here sitting right next to each other.<sup>5</sup> I mean, they were the coolest of the cool to a little lesbian like me. On the West Coast, there were people like Matt Coles, who was then at Northern California ACLU and who is also in this room.<sup>6</sup> People like Donna Hitchens and Roberta Achtenberg, who were pioneering lesbian rights and women's rights.<sup>7</sup> And in Boston there was the incredible firm of Ward, Rizzo and Lund, led by John Ward, who was a national leader in representing people in police harassment and rest-stop-bust cases.

I am just naming some of the many people who helped to create a vital GLBT legal movement and who did a lot more than I ever have, frankly, to deserve this honor.

I thought I would take this moment to share a few observations about the GLBT movement and where we find ourselves. They are not in any particular order.

The first observation is about money. I work for a national foundation that focuses on supporting GLBT human rights, and I think

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3. See Lambda Legal, Kevin M. Cathcart, <http://lambdalegal.org/cgi-bin/iowa/about/staffmem.html?record=1> (last visited Feb. 9, 2007); The Lesbian, Gay, Bisexual, and Transgender Cmty. Ctr., *The Center's Richard Burns Celebrates Twenty Years as Executive Director*, Oct. 31, 2006, [http://www.gaycenter.org/news/News.2006-11-02.9949914170/news\\_view](http://www.gaycenter.org/news/News.2006-11-02.9949914170/news_view); The Ctr. for HIV Law and Policy, About Us: Staff & Consultants, <http://www.hivlawandpolicy.org/about/staff.htm> (last visited Feb. 9, 2007).

4. See Liz Highleyman, *What Is the History of the National Gay and Lesbian Task Force?*, GMAX, March 30, 2004, <http://www.gmax.co.za/think/history/2004/040415-ngltf.html>.

5. Brooklyn Law School, Full-Time Faculty: Nan D. Hunter, <http://brooklaw.edu/faculty/profile/?page=68> (last visited Feb. 9, 2007); see American University Washington College of Law, Faculty: Nancy Polikoff, <http://wcl.american.edu/faculty/polikoff> (last visited Feb. 9, 2007).

6. See Yale, Same-Sex Marriage Symposium, Matt Coles, [http://islandia.law.yale.edu/samesexmarriage/bios/matt\\_coles.html](http://islandia.law.yale.edu/samesexmarriage/bios/matt_coles.html) (last visited Feb. 9, 2007).

7. See Judicial Council of Cal., *Family Court Judge Donna Hitchens Wins State Access to Justice Award*, NEWS, Feb. 1, 2002, <http://www.courtinfo.ca.gov/presscenter/newsreleases/NR15-02.htm>; Campaign for College Opportunity, Roberta Achtenberg, <http://collegecampaign.org/about-us/board-of-directors/index-6.html> (last visited Feb. 9, 2007).

about money a lot.<sup>8</sup> To come from the grassroots and radical margin to inside the establishment has been a strange journey, and it is amazing to me that it revolves so much around money. When I started out, the movement had no money. It was funded out of the pockets of the people who volunteered in it. Institutions were rare, and full time jobs were a dream. Well, it is indeed true what they say about money—money changes everything. It changes people. It changes their aspirations and possibilities. Sadly, organizations also change themselves for money, and that's problematic. And in many ways having more resources has changed our movement.

Working for gay and lesbian liberation requires that leaders and organizations be brave, always critical and forward thinking, committed to the fullness of our communities, not the narrowness of our own self interest, mindful of co-optation. In the early years of our modern movement, we were all these things and more—there seemed nothing to lose and a world to gain. But as we institutionalized, as we came under attack from the right wing, as we suffered immeasurable losses due to AIDS and the violent impact of homophobia, the imperative to moderate increased. A more conservative political landscape pressured a once radical movement to itself tilt right. And underlying it all a clear paradox has emerged: the need for institutionalization, the creation of the very institutions that I believe are essential to save our lives, has co-opted and limited our vision and dreams. It has presented a respectable sexuality that may be more acceptable to straight folks (the consumerism of *Queer Eye for the Straight Guy*, the titillation of *The L Word*), but it has not yet created a world that embraces, respects and celebrates queer sexual orientation or gender variance. We are still stigmatized as sinful and immoral.

Funding and its conditions have a lot to do with the construction of the movement we have today. Institutionalization takes money—big money. The twenty-five largest national and state GLBT groups have an annual combined budget of more than one hundred million dollars, and they employ more than five hundred people—they are real and stable institutions.<sup>9</sup> Those who run them are always concerned about the survival of the institutions. The impetus is not necessarily to be brave, to be inclusive, to work on and say things that are often unpopular, but rather to advance goals and ideas that funding entities might support.

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8. See Arcus Found., Interim Funding Guidelines for 2007, [http://www.arcusfoundation.org/pages/home\\_s.cfm](http://www.arcusfoundation.org/pages/home_s.cfm) (last visited Feb. 9, 2007).

9. MOVEMENT ADVANCEMENT PROJECT, 2006 FINANCIAL AND OPERATING OVERVIEW OF THE LGBT MOVEMENT.

The agenda of our movement should not be set by funders, but by the urgent needs of ordinary people who are trying to live and fulfill their lives. It should be set by the artists and the visionaries, the dreamers, and not the fundraisers.

Here is another truth about money and the law. The latter works in the service of the former. I think it bears noting the extent to which, in the past twenty years, the law has been made into a blunt tool for the servicing of money. The focus on law and economics as a field by conservative funders like the Olin Foundation has been integral to this new alignment of interests.<sup>10</sup> It has shifted the focus of legions of law students and law professors from being crusaders for consumers, to being ambassadors for an idealized version of a market, guided by no morals, and beholden to nothing of greater consequence than an ever-shifting and unsatisfying bottom line.

Deregulation, the rewriting of rules to favor corporations, the shutting down of tort litigation, the closing of pathways to seek redress for those harmed by the actions of commercial interests, the lack of campaign finance reform, the fire sale of the airwaves, and other public goods to convert them to private ownership—all this and more have been presided over and conducted by members of our profession.

There may be nothing new in what I am saying, but what I find troubling is that the investment of Olin in the law and economics movement has not really been accompanied by a parallel investment by progressive foundations in the fields of civil rights, human rights, or progressive policy-oriented law. Indeed, the mainstream foundation sector has decreased its support for racial justice, and major civil rights organizations struggle for funding.<sup>11</sup> As a result, the legal landscape that we find ourselves in as advocates for the expansion of civil rights is challenging. We have to continue to broaden the base of support of our movement's organizations—by challenging mainstream philanthropy, which still funds GLBT rights with less than 0.1% of all its giving; by

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10. See, e.g., People for the Am. Way, Right Wing Watch: Buying a Movement: The John M. Olin Foundation, <http://www.pfaw.org/pfaw/general/default.aspx?oid=2066> (last visited Mar. 5, 2007); Harvard Law Sch., The John M. Olin Center for Law, Economics, and Business, [http://www.law.harvard.edu/programs/olin\\_center](http://www.law.harvard.edu/programs/olin_center) (last visited Mar. 5, 2007); Stanford News Service, News Release: Stanford Law School Receives \$3 Million from John M. Olin Foundation, Dec. 14, 2007, <http://www.stanford.edu/dept/news/pr/2004/pr-sls-0112.html>.

11. See CHRISTOPHER HARRIS, FORD FOUND., THE FORD FOUNDATION REPORT: THE SOCIAL JUSTICE GAP (Summer 2003), [http://www.fordfound.org/publications/ff\\_report/view\\_ff\\_report\\_detail.cfm?report\\_index=438](http://www.fordfound.org/publications/ff_report/view_ff_report_detail.cfm?report_index=438) (discussing the considerable growth of philanthropic giving in recent years and the troubling trend of social justice programs failing to keep pace with tremendous general expansion).

inspiring GLBT and straight people to be more involved; and by taking more risks that will ignite people to become involved.

Not only has there been a constriction in the funding available, but there has also been a shutting down of avenues for redress. Compare the options available to the legal movement for the prisoner's rights movement in the 1970s with the options it has today. Compare the judges on the bench in the '70s and '80s with the more ideological judiciary put in place by the ideologically driven right.

In these contexts of limited funding and shrinking opportunities, what the GLBT Legal Movement has accomplished is truly remarkable. It is truly brilliant. It is truly imaginative. It is truly revolutionary. To have achieved the gains we have made warrants enormous praise and gets recognized far too little. I take great offense as a lawyer to all the lawyer jokes and the dissing. I think we have done our profession proudly in the civil rights community in particular.

The second point I want to make is about the critical work that lies ahead for the GLBT movement. The movement is far from over. We all know that. One could look at GLBT political history as a struggle against four basic arguments, justifications that are offered to deny GLBT freedom in the United States. They still tell us we were sick; they have told us we were criminal; they have told us we are sinners or abominations; and they still tell us we are immoral. The movement has worked since the '50s and gotten rid of the sickness characterization—especially debunked with the APA's change of policy in 1973-1974.<sup>12</sup> The legal community worked for decades through penal code reform, legislation, and litigation to get rid of the criminality stain—we finally won several years ago, with *Lawrence*.<sup>13</sup>

The work, I submit to you, that lies ahead is about the characterization of GLBT folks as sinful and immoral. For lawyers this is a vexing problem. How do we discuss and change morality? How do we litigate the characterization of us as sinful? Professor Chai Feldblum at Georgetown Law Center has done pioneering work to think about the moral basis and the moral biases of the law.<sup>14</sup> She urges the movement not to deny the moral underpinnings of law, but to engage, contest and

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12. Am. Psychological Ass'n, APA Policy Statements on Lesbian and Gay Issues, <http://www.apa.org/pi/statemen.html> (last visited Feb. 9, 2007).

13. See *Lawrence v. Texas*, 539 U.S. 558 (2003).

14. See The Moral Values Project, MVP Library, <http://www.law.georgetown.edu/moral-valuesproject/Library/index.htm> (last visited Mar. 5, 2007). See generally Chai R. Feldblum, *Rectifying the Tilt: Equality Lessons from Religion, Disability, Sexual Orientation, and Transgender*, 54 ME. L. REV. 159 (2002); Chai R. Feldblum, *The Moral Rhetoric of Legislation*, 72 N.Y.U. L. REV. 992 (1997).

redefine the interpretation of those roots. But alongside its roots in religion, U.S. law also has a distinctly civic, one might even say secular, tradition. Secular humanism is a derided term, but we might call it shared secular American values.

These shared secular values include ideas like fair play, live and let live, less government interference in the ordering of individual lives, equal opportunity. The gay movement has succeeded because it engages people's sense of fair play and their nonreligious cultural values as much as because it won cases in courts or passed laws in state legislatures.

A legal solution to the problem of cultural characterization may be as straightforward as that proposed in South Africa—write protection into the law and thereby create a new set of norms, values, and cultural aspirations. Constitutions are value statements.<sup>15</sup>

But the cultural transformation that is needed also requires the GLBT movement and its allies to enter two domains that the GLBT mainstream has only tentatively engaged in. First, working inside religious organizations and with religious leaders to change the debate on homosexuality and sex; and second, working through education and culture to change the shame, stigmatization, and denigration of sex. These are conversations in which law and lawyers can engage—certainly in the court room through cases that test the power of the state to regulate and define sexual or reproductive behavior; through cases that defend free expression even of views that might be too sexually explicit or offensive for some—there are multiple, specific situations in which law and lawyers can and do engage the interaction between cultural norms about sexuality in the courts.

I would encourage the legal community to also engage these issues in the public sphere through our willingness to talk about things like the boundaries of individual freedom, the relevance of community norms, and the proper limitation of the police power of the state. Of course, this is not just a conversation for us as lawyers—contestation of the sexual shame, repression, and stigmatization were central parts of the early GLBT liberation movement. Some argue that we lost that focus because we had to divert our energies to dealing with HIV/AIDS in the '80s. Others argue that the right's emergence led us to back away from our more ambitious aspirations about what a truly deregulated sexual subject would look like under the law and in practice. It is these difficult conversations we must restart over the next few years in order to move

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15. S. AFR. CONST. 1996 § 9(3), (5), *available at* <http://www.info.gov.za/documents/constitution/1996/96cons2.htm> (last visited Feb. 9, 2007) (prohibiting unfair discrimination based on sexual orientation).

forward to a day when GLBT people are seen as healthy, natural, and moral.

A third point I want to make is about race in our movement and in our lives. I was at the Congressional Black Caucus prayer breakfast this morning. The speaker was a mesmerizing leader in the African-American religious community, Bishop Vashti McKenzie.<sup>16</sup> She is the only woman Bishop in the African Methodist Episcopal Church.<sup>17</sup> She gave an incredible talk about leadership and the responsibility each of us must shoulder to be engaged in action and to pioneer social change. But as I sat there this morning, and am here this afternoon, the differences in composition between the two rooms is striking, and it leaves me meditating on a third huge challenge ahead for the GLBT movement—the challenge of creating a truly mixed-race (and mixed-generational) movement. I have worked for more than twenty-five years in GLBT liberation, and this problem has remained present. Segregation did not end. It is real in our communities. It challenges us to engage more deeply across racial lines.

Like heteronormativity, we live under a regime of racial normativity. We accept as normal conditions that we should not. Among the conditions that we must challenge is the segregation of our social, political, work, and home lives. Segregation is the cultural manifestation of racial prejudice. And whether it is social, in the workplace, or zoned through housing codes, it maintains a structural racism that originated in this country at its inception. It is imperative for us as lawyers, as value-based people who have these incredible, brave dreams of equality and liberation, to engage more fully within the GLBT community around issues of racial injustice—to step up, to speak out, to commit to issues of racial justice, and to spend time on them, even at the risk of being challenged for “not working on a gay issue.” There is creative work ahead for those of us who are interested in this—to develop ways that GLBT institutions and leaders can organize, act, and work to advance racial justice as well as gender and sexual freedom. Whether that means work on affirmative action ballot initiatives, amicus briefs on civil rights issues, immigration law reform, ensuring that education spending is not so biased, ensuring that health care delivery is not so racially biased, or challenging the many deep problems of the criminal justice system—these are all ways that we can extend our engagement with racial justice, while advancing the goals and aspirations of the GLBT movement.

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16. See African Methodist Episcopal Church, 13th District, Bishop Vashti McKenzie, <http://www.13thame.com/believe/bishop.html> (last visited Feb. 9, 2007).

17. *Id.*

The final point I want to raise is about the new progressivism we see arising and how it continues to disregard GLBT issues and GLBT human rights. The left in this country—the newly called progressive wing—looks at gay issues in the same way it did when I started out in the GLBT movement in the 1970s. It is very annoying to me. You know, we are like the dessert or the digestif after dessert course—after the revolution we will get to it. Many progressive groups still do not have any positions or take any actions to support GLBT equality. They still take that old materialist line that sexuality is not the real issue—the real issue is economic justice. These days at the Arcus Foundation, I work on two issues—advancing GLBT human rights and the conservation of the world's great apes. It is an interesting mix. But one thing that is fascinating in working on apes, I have come to see that the division the left makes between material needs and sex is spurious: there is no separation in the animal world. One is as urgent a motivator and need as the other. Perhaps there are some law students here who could take up the separation of sexuality into a culturally controlled arena. We need to see it as integral to all life, and its repression as the deformation of life.

Our movement, along with those that work for racial or gender justice, is often charged with working in a “silo.” This is the new buzz word—the new spelling of the epithet politically correct. Well, maybe we can reclaim the phallic image and it is at least good for something. But in all seriousness, those of us who have been engaged in the progressive wing of GLBT liberation do not see ourselves as building a gay silo or living in one.

The way I see it is not silos but soil. We are part of an earth, a common ground if you will, a soil in which race, gender, sexuality—all of our identities—are churned up in this rich, fertile soil. And what we are trying to do is create new institutions, new policies, and new ways of imagining, in order to create a world out of this common soil of our identities and our experiences. That is the kind of progressivism I am looking for. That is the kind of progressive leadership we need—not the reactionary thinking that we have had in the left for the last thirty years on issues of race, gender, and sexuality.

If you truly do think about it, and agree with me, you know we are trying to create something new in all of our work. Then the opposition and resistance we face becomes completely comprehensible. We are going up against deep values, and we are changing them in a more inclusive, plural, and truly liberatory direction.

Thank you again for this honor. I truly cherish it, because the legal movement has been my inspiration for so many years.