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# ARTICLE: BLUEPRINT FOR RESPECT: CREATING AN AFFIRMING ENVIRONMENT IN THE COURTS FOR THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITIES

2015

## Reporter

41 Wm. Mitchell L. Rev. 4 \*

**Length:** 13869 words

**Author:** Honorable Paula J. Hepner (Ret.)+

+ Judge Hepner served as a judge of the New York State Family Court in Kings County from 1990-2012 and was the supervising judge of that court from 2008-2012, when she retired.

## Text

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[\*4]

### I. Introduction

Ten years ago if I asked anyone in the family court or juvenile justice system if they thought conducting a training on the needs of **lesbian, gay, bisexual, and transgender (LGBT)** youth would have been helpful, the universal response would have been, "We don't have any of those kids." If I followed that up with a question about what they thought the needs of **LGBT** youth were, the universal response would have been, "They're the same as any other kid in the system." If I asked a further question to explore whether any of the youth coming through the courts had disclosed their sexual orientations or gender identities, the universal response would have been, "Oh, we can't talk about that."

[\*5] Fast forward to the year 2014. We now know that **LGBT** young people, who represent just 5% to 7% of the nation's overall youth population, <sup>1</sup> make up between 13% and 15% of youth currently in the juvenile justice system, <sup>2</sup> and 40% of the homeless youth population - 39% of whom become involved with the juvenile justice system. <sup>3</sup> We now know that 31.8% of **LGBT** students miss an entire day of school over the course of a month because of biased language, physical, verbal, and electronic harassment or physical and verbal assaults, and receive a higher rate of suspension and disproportionate sanctions for their infractions of school rules. <sup>4</sup> **LGBT**

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<sup>1</sup> Nico Sifra Quintana et al., Ctr. for Am. Progress, On the Streets: The Federal Response to Gay and Transgender Homeless Youth 6 (2010).

<sup>2</sup> Katayoon Majd et al., Legal Servs. for Children, Nat'l Juvenile Defender Ctr. & Nat'l Ctr. for Lesbian Rights, Hidden Injustice: **Lesbian, Gay, Bisexual, and Transgender** Youth in Juvenile Courts 10 (2009) (citing Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, [19 Colum. J. Gender & L. 675, 676 \(2010\)](http://www.columbia.edu/~l675/676/2010/06/19%20Colum.%20J.%20Gender%20&%20L.%20675,%20676%20(2010).pdf)).

<sup>3</sup> Nico Sifra Quintana et al., *supra* note 1, at 6; Jerome Hunt & Aisha Moodie-Mills, Ctr. for Am. Progress, The Unfair Criminalization of Gay and Transgender Youth: An Overview of the Experiences of **LGBT** Youth in the Juvenile Justice System 3 (2012), available at [http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile\\_justice.pdf](http://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf).

<sup>4</sup> Joseph G. Kosciw et al., Gay, Lesbian & Straight Educ. Network, The 2011 National School Climate Survey: The Experiences

youth who experience high levels of family rejection during adolescence are 8.4 times more likely to have attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sex, as compared to peers reporting no or low levels of family rejection.<sup>5</sup> **LGBT** youth are [\*6] "vastly overrepresented in the homeless youth population," and the existing data from several studies done throughout the United States reveals "shockingly disproportionate rates of homelessness among **LGBT** youth compared to non-**LGBT** youth," with estimates for **LGBT** youth ranging from 9% to 45%.<sup>6</sup>

How did this happen? How was it possible to get from a place of total invisibility and ignorance to a place of awareness and understanding? This is the story of what the New York City (NYC) Family Court was able to do. These things did not happen because it was NYC. They happened because there was strong judicial leadership from individuals on the bench who took seriously the concept of "access to justice."

## II. Recognizing the Issues

In August 1990, I was appointed to the New York (NY) State Family Court by then Mayor David Dinkins. Two months later, as I was in my courtroom reviewing my calendar after the lunch recess, three court officers were discussing one of their colleagues from another county and repeatedly referred to him - loudly and derisively - as a faggot. While I found their speech offensive, other than my clerk and I, the courtroom was empty. Since I had been an open lesbian when appointed by Mayor Dinkins, I viewed their actions as simply carrying out orders from their superiors to manufacture an issue to test me. Therefore, I did nothing. At the time, I did not know that the rules of our chief judge contained a code of ethics setting forth basic principles of conduct that all court employees should observe.<sup>7</sup> Discriminatory conduct based on sexual orientation was one prohibition, and in accordance with the Code of Judicial Conduct, I was responsible for enforcing it.

In 1997, I was assigned to preside over juvenile delinquency matters and cases involving "persons in need of supervision" (PINS) - children who are "truant, incorrigible, ungovernable or [\*7] habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care."<sup>8</sup> For the next seven years, I heard hundreds of delinquency and PINS cases, but during 2003, I began to see examples of the differential treatment that **LGBT** youth on my caseload were receiving. These cases revealed systemic problems, not just individual biases. For example, in 2003, I placed a teenager into a detention facility for twelve months after she admitted to shoplifting two pairs of jeans from Macy's. As was my custom for all children I placed in care, I ordered

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of **Lesbian, Gay, Bisexual and Transgender** Youth in Our Nation's Schools 21 (2012); Preston Mitchum & Aisha C. Moodie-Mills, Ctr. for Am. Progress, *Beyond Bullying: How Hostile School Climate Perpetuates the School-to-Prison Pipeline for **LGBT** Youth* 4 (2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/02/BeyondBullying.pdf>.

<sup>5</sup> Alison Chrisler et al., Military REACH Team, Research and Outreach (REACH) Lab. & Univ. of Minn., *Promoting Positive Development of **Lesbian, Gay, Bisexual, and Transgender** Youth: Research Brief 3* (2014) (citing Caitlin Ryan et al., Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults, 123 *Pediatrics* 346, 349 (2009)), available at <https://reachmilitaryfamilies.umn.edu/sites/default/files/rdoc/Promoting%20Positive%20Development%20of%20LGBT%20Youth.pdf>.

<sup>6</sup> Andrew Cray et al., Ctr. for Am. Progress, *Seeking Shelter: The Experiences and Unmet Needs of **LGBT** Homeless Youth* 4 (2013), available at <http://cdn.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf>.

<sup>7</sup> See N.Y. Comp. Codes R. & Regs. tit. 22, § 50.1(II)(C) (Westlaw through 2014) ("Court employees shall not discriminate, and shall not manifest by words or conduct bias or prejudice, on the basis of race, color, sex, sexual orientation, religion, creed, national origin, marital status, age or disability.").

<sup>8</sup> *N.Y. Fam. Ct. Act § 712* (McKinney, Westlaw through 2014) ("'Person in need of supervision' [is a] person less than eighteen years of age who does not attend school in accordance with the provisions of part one of article sixty-five of the education law or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority, or who violates the provisions of section 221.05 or 230.00 of the penal law ...").

a three-month adjustment report to make certain that the services I ordered for her were being provided and to learn how she was doing in state custody. When the report came, I learned that she had been held in solitary confinement for three months because she was caught kissing another girl on campus. During the processing of her case, this young woman had not disclosed her sexual orientation to her lawyer, the probation officer, or the mental health clinician who prepared reports to the court for the dispositional hearing. But for this incident, no one would have been aware that she was a lesbian.

When I calendared the case for the agency caseworker and the girl's attorney to appear, I discovered the agency had different rules for LGBT youth, and that this young woman's punishment for this rule infraction was more severe and longer in duration than any female teen would have received for kissing a boy. When I inquired about whether the agency had a nondiscrimination policy, I was given its "Policy and Position Statement on Sexuality and Sexual Preference." The policy specifically addressed "'sexual behavior,' 'sexual identity,' and 'sexual orientation' with an eye to what is best for the children in our care." <sup>9</sup> The policy stated, "Any client's feeling of sexual desire for individuals of one's own gender may be accepted as a valid current feeling. It must not be assumed [<sup>\*8</sup>] that this determines one's desire pattern for life nor establishes one's 'lifestyle' or identity in society." <sup>10</sup> Another section of the policy stated:

Males whose mannerisms or behavior give the impression of their being "feminine" are often assumed to have a "homosexual identity." This assumption is usually false. Females whose mannerisms give the impression of being "masculine" are also often falsely assumed to have a same gender sexual preference. Mannerisms, habits, sexual experiences, preferences and fantasies can all be discussed as separate concerns, without making overarching conclusions about sexual "identity" or sexual "orientation." <sup>11</sup>

A third section in the policy stated, "Expressions of sexual desire from one youth to another are discouraged [as] this usually encourages prohibited behavior." <sup>12</sup> The policy reflected the three conventional mythologies of the time - that same-sex relationships are situational (i.e., occurring when people are confined with persons of the same sex), that same-sex behavior is a phase that children will grow out of, and that this behavior is learned from others and therefore must be treated as inappropriate.

With help from a colleague, this young woman's attorney filed a motion to return her to the girls' cottage. The motion was filled with obsolete terminology and awkward phrases, but was sufficient to obtain the relief requested. It was silent, however, in regard to any relief addressed to the agency's policy.

In 2004, I remanded another teen to a detention facility pending his trial on charges of assaulting his father. When the detention staff discovered he was wearing feminine undergarments, the staff and fellow dorm residents ridiculed him. In reaction to being called names and spit upon by one of the residents, the teen tripped him. Three days later, when the teen returned to court for a probable cause hearing, both of his forearms were blistered and wrapped in bandages. I learned that, as a punishment for tripping the other resident, he was forced to crawl on his elbows and arms five times around the perimeter of the "quiet room," which had [<sup>\*9</sup>] Berber carpet on the floor. Both of his arms had rug burns from his wrist to his elbow. I ordered an investigation into the incident. The consequence for the staff members who were responsible was a transfer to another juvenile detention facility without any mention of the reason in their personnel records. I also learned that there was no ombudsman or other formal means for this young man to complain about his care and treatment, the staff had never been trained to work with LGBT residents, and a nondiscrimination policy was nonexistent.

Later that same year, I was assigned to a case involving a teen who was arrested for committing a public sex offense with an older man. The teen's gender presentation was classically female though the petition was filed with

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<sup>9</sup> Leake & Watts Servs., Inc., Position and Policy Statement on Sexuality and Sexual Preference (2005) (on file with author).

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

a male name and contained male pronouns throughout. Every governmental entity with which she interacted, including the court, treated her as a male. When the officers brought her from detention, she was wearing a wig, makeup, long eyelashes, nail polish, a sundress, and high heels. The prosecutor objected to the defense attorney's application to have his client called by the name Robyn instead of Roberto. No parent or relative showed up on her case, and she was remanded to detention. While in detention she was housed in the special health unit with residents who were ill because she was unwilling to modulate her mannerisms or speech pattern, and the staff felt they could not assure her safety if she was assigned to a regular dorm. When she returned to court for trial, the adjustment report said that she was homeless since her stepfather had kicked her out of the family home after her mother discovered that she was cross-dressing and involved in sex work. She was taking street hormones to alter her physical appearance and was uncompromising in her gender identity and expression. The facility was not prepared to handle her medical needs, and the staff was not trained to handle a young transgender person.

Clearly something had happened between 1997 and 2004. Seemingly overnight, my caseload began to include lesbian, gay, and transgender teenagers charged with acts of juvenile delinquency or under PINS petitions. While I had often suspected, over the years, that many of the young people before me were lesbian, gay, bisexual, transgender, or questioning youth, none of them were open about their sexual orientations or gender identities, and if their family members knew, they surely were doing [\*10] everything they could to avoid acknowledging or discussing it. What I thought was inexplicable was actually being documented by researchers who, from 2000 onward, collected data showing how early young people were becoming aware of their sexual orientations and gender identities,<sup>13</sup> and that they were disclosing their sexual orientation to others at younger ages than in previous generations.<sup>14</sup> The findings of these researchers certainly explained what we were beginning to see in the courts and added another dimension to my growing sense of urgency about attending to the [\*11] needs of these young people instead of pretending they did not exist.

As I began making inquiries of lawyers practicing in family court, many disturbing examples of bias and prejudice on the part of judges, as well as court personnel, came to light:

. When a mother and her same-sex partner came to court for their son, who was a respondent on a delinquency case, the judge assumed that the woman accompanying the mother was a friend or neighbor and told her to sit in the back of the courtroom.

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<sup>13</sup> By age five, youth become aware of their sexual orientation, and at around age ten, youth become aware of same-sex attraction. Caitlin Ryan & Rafael M. Diaz, Family Responses as a Source of Risk and Resiliency for LGBT Youth, Presentation at the Pre-Conference Institute on LGBTQ Youth, Child Welfare League of America National Conference (2005). Around age thirteen, youth self-identify as gay or lesbian. Id. Caitlin Ryan, DSW, is the director of the Family Acceptance Project. She is a clinical social worker who has worked on LGBT health and mental health for nearly forty years. Dr. Ryan and her team have been developing a wide range of research-based materials and assessment tools to help families and caregivers to support their LGBT children. Dr. Ryan has developed an evidence-based family model of wellness, prevention and care to strengthen families and promote positive development and healthy futures for LGBT children and youth.

<sup>14</sup> In a study of developmental and sexual expression milestones in lesbian, gay, bisexual, and transgender youth (with a mean age of seventeen), males first became aware of their same-sex attraction at the age of twelve and females at the age of thirteen. Arnold H. Grossman, Lesbian, Gay, Bisexual, and Transgender Youth, in Recreation and Youth Development 446 (Peter A. Witt & Linda L. Caldwell eds., 2005). Both sexes were identifying themselves as lesbian, gay, or bisexual by age fourteen and disclosing their sexual orientation to others around age fifteen. The mean age for male-to-female transgender awareness was 8.5 years, with self-identification occurring at thirteen years followed by disclosure at fourteen years. Id. at 449. The mean age for female-to-male transgender awareness was nine years, self-identification at fifteen, and disclosure occurring over the next two years. Id. This is in contrast to a study of the age of awareness and disclosure in gay and lesbian adults over sixty years of age. See Anthony R. D'Augelli & Arnold H. Grossman, Disclosure of Sexual Orientation, Victimization, and Mental Health Among Lesbian, Gay, and Bisexual Older Adults, 16 J. Interpersonal Violence 1008, 1014-16 (2001). While the age of first awareness for gay men (12.9 years) and lesbians (16.4 years) is quite close, the ages at which these older adults self-identified as LGB and disclosed their sexual orientations is markedly different. Id. at 1015, 1017. The age at which gay men self-labeled was 22.5 years and the age of first disclosure was 28.6. Id. at 1015. In lesbians, the age of self-labeling was 25.6 years and the age of first disclosure was 29.8 years. Id.

. When a lawyer entered the courtroom with his gender nonconforming lesbian respondent in a PINS case, the judge looked at her and said to the attorney, "Where's his mother?"

. After receiving permission to approach the bench with the prosecutor, the defense attorney for a transgender youth in female clothing and make-up told the judge that during a sidebar they had with the court on their last appearance, one of the court officers came over to her client and said, "Need a piece of hard candy, honey?" The judge laughed and motioned the attorneys back to their seats.

. After a finding was entered in the trial of an assault case between two teenage girls, the judge learned for the first time from the probation report that the complainant and the respondent were dating and in a same sex relationship, to which the mothers of both girls objected. Realizing that their relationship might have influenced whether a finding of assault could or should have been made in the case, and that this was neither disclosed by the prosecutor nor raised by the defense at the trial, the judge angrily inquired, "Why didn't you know those girls were lovers?" It did not occur to the judge that the prosecutor may have acquiesced to the demands from an unaccepting complainant's mother in filing the case. The probation officer's "investigation and report" that was submitted to the court contained a recommendation for placement of twelve months at an upstate detention facility. During the dispositional hearing, the probation officer was asked whether any less restrictive alternatives were explored, since the finding was to a misdemeanor of attempted assault. The probation officer testified that placement was recommended because that is "what the respondent's mother [\*12] wanted." If this had been an assault case between opposite gendered teens, an adjournment in contemplation of dismissal or a disposition of probation supervision would have been the outcome.

. Without recounting what services were offered to avoid court action, which is required in all cases before they are referred for court intervention, a report from the child welfare agency simply referred a case to the Department of Probation for the filing of a PINS petition because the young man, who had taken his parent's credit cards to go shopping on the web, was "reportedly pursuing a homosexual lifestyle."

When I was appointed a family court judge in the 1990s, a copy of the Code of Judicial Conduct was distributed during orientation for new judges. After giving a few cautionary words about conflicts of interest, misconduct, ex parte communications, and the appearance of impropriety, the presenter told us to review the Code and acquaint ourselves with what was required of us. During the orientation, no reference was made to the obligation to perform the duties of judicial office without bias or prejudice, or to the additional obligation that judges have to require that lawyers in proceedings before them refrain from manifesting bias or prejudice by their words or conduct. Nor was it ever pointed out that judges have a duty to see that court staff, court officials, or others subject to their direction and control do not manifest bias or prejudice in their behavior or conduct. What the judicial codes of ethics specifically prohibit varies from state to state; the American Bar Association's Model Code of Judicial Conduct <sup>15</sup> and the New York Code of Judicial Conduct <sup>16</sup> are substantially similar. Each [\*13] prohibits bias or prejudice on the grounds of sexual orientation, while neither includes gender identity or gender expression.

There was no discussion at our new judge orientation of what it means to manifest bias and prejudice by words, behavior, or conduct. As more cases involving LGBT teens came before me, the meaning of these phrases came into my consciousness in a most immediate and compelling way. The experiences of the LGBT youth on my caseload, and the treatment that they and their parents were receiving in courtrooms, detention facilities, probation offices, and residential treatment centers throughout NYC, were powerful and profound teachings for me. It became clear that I had a professional responsibility to see that LGBT youth were not discriminated against, or physically

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<sup>15</sup> Model Code of Jud. Conduct R. 2.3(B) (2011) ("A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation ...").

<sup>16</sup> N.Y. Code of Jud. Conduct R. 100.3(b)(4) (2006) ("A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status ...").

and emotionally harmed, while in the institutions where I placed them. I had a professional responsibility to see that our courtrooms and courthouses became safe and welcoming environments where LGBT youth and adults are treated with dignity and respect.

### III. The Work Group's Early Years

In 2001, I was asked to serve as chair of the Family Court Advisory Council's Subcommittee on Juvenile Delinquency. After encountering the problems that LGBT youth were experiencing in custody, I resolved to do two things: visit the facilities where I was placing LGBT young people, and find a way to raise awareness about the presence of LGBT youth and parents in our courts so that improvements could be made concerning their contact with the judicial system.

Coincidentally, the program planned by the NYC Bar Association to celebrate Pride Month in June 2003 was titled "Suffer the Children: Are We Failing LGBT Youth in the Family and Criminal Courts?" Having been asked to be one of the presenters on the panel, this became the first opportunity for me to speak publicly about the invisibility of LGBT youth in the family courts, the presumption of heterosexuality that almost everyone was operating under, and the need for those working in the juvenile justice system to become culturally competent<sup>17</sup> in order to [\*14] properly serve LGBT communities. I knew that judges, clerks, court officers, attorneys, mental health professionals, probation officers, child welfare caseworkers, and detention staff, with proper training and education, could learn to look at the symptomatology they were seeing in a more inclusive way. Their perspective on the issues could broaden to include an understanding that behavioral problems in LGBT youth may stem from: (a) feeling isolated in an environment that is hostile to their sexual orientation or gender identity; (b) feeling afraid and ashamed of disclosing anything about their sexuality for fear of rejection; (c) feeling anxious about being "different," and experiencing confusion over whether their same-sex erotic impulses are normal; (d) enduring physical and emotional abuse as a consequence of their sexual orientation from their parents, guardians, and caretakers, the very people whom they depend on for food, shelter, clothing, emotional and financial support, and who are charged with protecting and promoting their well-being; (e) becoming homeless and being forced to live on the street or with strangers after being excluded from their homes by their parents, guardians, or caretakers - LGBT youth with adjustment problems often do not find havens in the homes of boyfriends and girlfriends like their heterosexual counterparts do; (f) having no options but to go AWOL to avoid harassment, verbal abuse, and threats of or actual physical assault in their foster homes or group homes because of their sexual orientations and gender identities; or (g) needing to commit survival crimes like petit larceny, robbery, and prostitution to support themselves.<sup>18</sup>

[\*15]

#### A. Focus on LGBT Youth

Shortly after the NYC Bar Association Pride Month program, I asked the Honorable Joseph M. Lauria, the administrative judge for the family courts in NYC, if a work group could be created under the umbrella of the Subcommittee on Juvenile Delinquency that I could chair. The purpose of this work group would be to examine issues involving LGBT youth in the juvenile justice system, and more specifically, in the family courts. When this request was approved, I stepped down as chair of the subcommittee in order to develop and lead this work group

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<sup>17</sup> The Wisconsin State Council on Alcohol and Other Drug Abuse has defined "cultural competency" as the following:

Cultural Competency is a process of developing proficiency in effectively responding in a cross cultural context. It is the process by which individuals, agencies, and systems integrate and transform awareness of assumptions, values, biases, and knowledge about themselves and others to respond respectfully and effectively across diverse cultures, language, socioeconomic status, race, ethnic background, religion, gender, sexual orientation, and ability. Cultural competence recognizes, affirms, fosters, and values the strengths of individuals, families, and communities and protects and preserves the worth and dignity of each.

Cultural Competency Definition, Wis. St. Council on Alcohol and Other Drug Abuse (Aug. 22, 2008), <http://scaoda.state.wi.us/docs/main/CulturalCompetencyDefinition.pdf>.

<sup>18</sup> This list is an amalgamation of the author's own experiences working with LGBT youth.

for the NYC family courts. There is a power of persuasion that comes with being a judge. When judges organize meetings, the invitees come, sometimes not for long and sometimes not often, but generally 100% at the outset. Naturally, there are always dual questions about whether participation is driven by a sense of obligation and how fully committed their administrations will be. The first meeting of the Family Court's Work Group (Work Group) took place on February 24, 2004, and it was well attended.<sup>19</sup> Our focus was the citywide family court system, and the participation of the committee's membership remained steady at twelve to fifteen individuals from within as well as outside the judicial system.

The agenda for the first meeting was threefold: What brought us here? Who are we? Where do we begin? Understandably, everyone was nervous, wondering what this was all about, where this [\*16] was going, and what would be expected of the agencies and organizations they represented. Lurking in the background, of course, was "The Topic." Sexuality is a very difficult topic to discuss. Same-sex relationships and gender transitions are even harder. Everyone brings to any discussion of sexual orientation their own understanding of its cause, their morality and fear of difference, as well as their cultural and religious beliefs. Before this conversation can be had, participants must confront each person's level of comfort with their own sexuality. It requires everyone to recognize that sexuality is a continuum spanning different-sex to same-sex activity and that not everyone is immutably lodged at its extremes. These are factors that can hamper the ability to have a meaningful dialogue about it. For this reason, the agendas for the initial meetings were exploratory rather than task oriented.

The Work Group was conceived as a vehicle to discuss the decisions that have to be made about the needs and services required by self-identified LGBT youth and their families upon their arrival in court and while on remand, probation, or in placement. As a plan for accomplishing this, the participants in the Work Group decided to begin with defining where we were, identifying where we wanted to be, and then planning how to get there. To get us all on common ground, each organizational entity was asked to make a presentation about "where they were," meaning what they considered the range of issues to be from their perspectives, how the problems came up, how they were addressed, how their agencies and organizations were presently serving LGBT youth, and whether any nondiscrimination policies existed or any staff training was taking place. Meeting once a month and hearing from only two or three participants per meeting, it took a long time to complete these reports. The dividend was that the participants became comfortable with each other, and the anxieties that were apparent at the outset gradually subsided. Despite presentations from the Urban Justice Center, the Correctional Association, and the Legal Aid Society - all documenting the experiences that their young LGBT clients were having in the courts and the juvenile justice system - there was a persisting undercurrent of considerable skepticism from the representatives of the governmental agencies in attendance. Even though the presentations included statistics on the LGBT youth these agencies were serving, many attendees believed that these examples reflected nothing more than a few [\*17] isolated cases, insufficient to be considered a "real" problem in need of a solution.

While this question is not a concern today,<sup>20</sup> ten years ago the Work Group struggled with whether the city and state agencies caring for LGBT youth should be capturing data on the number of LGBT youth in the system. In

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<sup>19</sup> In addition to another delinquency judge and myself, the members of the initial Work Group included: general counsel and two representatives from the executive branch agency responsible for operating statewide detention facilities in NY (the Office of Children and Family Services); general counsel to the NYC Department of Juvenile Justice; the executive assistant to the commissioner of the NYC Department of Probation; general counsel and two social workers from the NYC child welfare agency (Administration for Children's Services); an assistant district attorney from the Kings County District Attorney's office; the director of training and two social workers from the family court division of the NYC Law Department, Office of the Corporation Counsel; three defense attorneys and social workers from organizations representing children and indigent persons (Legal Aid Society, Lawyers for Children, and the Panel of Assigned Counsel); two private agencies providing child care to LGBT Youth (St. Christopher-Ottillie and Green Chimneys); and representatives from three private organizations working on behalf of LGBT youth (the directors of the juvenile justice projects at Urban Justice Center and the Correctional Association, and a social worker from Safe Space).

<sup>20</sup> Juvenile justice and child welfare agencies are beginning to collect sexual orientation, gender identity, and gender expression (SOGIE) data in their case management systems. Shannan Wilber, Esq., the Youth Project Director for the National Center for Lesbian Rights, has spearheaded data collection in several child welfare jurisdictions. Angela Irvine, PhD, the research director



particular, the group struggled with the questions of whether and how to affirmatively identify LGBT youth who are not self-identifying. Some members of the group felt that this would confirm the frequently quoted estimate that around 10% of the youth in care were LGBT, while others feared that because youth are not self-identifying in great numbers, the opposite would be confirmed. For the Work Group's April 2005 meeting, I invited Dr. Arnold H. Grossman, one of the major clinical researchers on risk and protective factors for LGBT youth and a professor in the Department of Applied Psychology at New York University.<sup>21</sup> This meeting was scheduled over the lunch recess in Brooklyn Family Court for anyone who wanted to attend: judges and their staff, clerks, court assistants, court officers, prosecutors, defense counsel, social workers, probation officers, detention staff and caseworkers, and agency attorneys and personnel. Dr. Grossman had just completed the first national longitudinal study of LGBT youth in an urban setting, and he spoke to us about his research findings and how they might help us answer questions about whether and when to affirmatively identify LGBT youth. Dr. Grossman described in detail what was known in 2005 about the awareness of sexual orientation, gender identity, and gender expression among LGBT young adults. Dr. Grossman made it clear [\*18] that the approach of young people in the millennium was moving toward living openly as they are, not relegated to a closet or impersonating heterosexuality in order to conform to societal expectations. Dr. Grossman's presentation was instrumental in ending the debate about collecting data and turning the Work Group's attention to what we could do. Dr. Grossman's advice to the Work Group was to begin by developing an in-service training program oriented toward agency staff, lawyers, and social workers.

As we listened during the monthly meetings to everyone's descriptions of their encounters with LGBT youth involved in delinquency and PINS cases, certain patterns slowly began to emerge:

- . Parents filing PINS petitions alleging their children were associating with "undesirable people" who, in fact, were their children's same-sex boyfriends or girlfriends;
- . Parents not appearing in court to support their LGBT children, thereby virtually assuring the outcome of the hearing would be out-of-home placement;
- . Parents expecting judges, attorneys, probation officers, detention staff, and others to validate their disapproval of their children's sexual orientations and gender identities;
- . Probation officers yielding to parental pressure to inappropriately refer for prosecution cases alleging sex offenses when parents have discovered same-sex, consensual relationships between their children and their same-sex dating partners;
- . Prosecutors filing cases against LGBT youth for assaulting their parents when, in fact, the behaviors of these young people were provoked by their parents' physical and verbal abuse, harassment, and name calling because their sexual orientations were not heterosexual;
- . Parents opposing relatives who made themselves available as custodial resources to avoid out-of-home placement because they were affirming of the young person's sexual orientation or gender identity.

Uncovering these patterns led to other recurring themes in the Work Group's meetings, notably the participants' discomfort with an awareness that sexuality might be involved in every one of their cases, their unfamiliarity with appropriate terminology, and a [\*19] lack of skills for providing services to LGBT youth in a respectful and supportive way - all of which resulted in an inability to communicate effectively with LGBT youth to find out the answer to such basic questions as whether the juvenile is a victim or the aggressor. Through monthly presentations

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at the National Council on Crime and Delinquency, has provided technical assistance and training on collecting SOGIE data to the juvenile defender of New Orleans, violence prevention programs in Oakland, CA, and a dozen probation departments in California.

<sup>21</sup> Dr. Grossman's research areas include sexual and gender identity development in gay, lesbian, bisexual, and transgender adolescents and adults. A list of Dr. Grossman's published research studies is available at Faculty, Arnold H. Grossman: Professor of Applied Psychology, N.Y.U. Steinhardt, [http://steinhardt.nyu.edu/faculty\\_bios/view/Arnold\\_Grossman](http://steinhardt.nyu.edu/faculty_bios/view/Arnold_Grossman) (last visited Nov. 2, 2014).

at the Work Group, it was possible to discern where each of the governmental agencies and private organizations stood with respect to their internal practices and procedures for serving LGBT communities, which in turn provided a window into what was needed. While some agencies and organizations were beginning to address LGBT communities through policies and training programs, everything was in its infancy. As a result of these views being repeatedly expressed by the participants, and a recognition that we could be a catalyst in bringing attention to the circumstances and needs of the LGBT youth coming through the courts, the Work Group decided that its primary focus should be twofold: (1) encouraging the member groups to develop nondiscrimination policies and in-house training programs for their staff, and (2) developing and presenting training programs to bring everyone in the court system to a place of cultural competence in serving LGBT youth and their families.

## B. Nondiscrimination Policies

Once the Work Group settled on these two priorities, the agenda for each meeting allocated time for member agencies and organizations to report on in-house efforts related to initiative, training, and the development of antidiscrimination policies. During the course of the Work Group's existence, four governmental agencies adopted policies prohibiting nondiscrimination on the basis of sexual orientation and gender identity.

Herman Dawson, general counsel to Commissioner Neil Hernandez of the NYC Department of Juvenile Justice, began working on a nondiscrimination policy in August 2005. After two years of work, the policy was eventually issued in February 2007.<sup>22</sup> Under NYC's Administrative Code, it is unlawful for employers; [\*20] labor organizations; employment agencies; providers of public accommodations; any persons or entities having the right to sell, rent, or lease any housing accommodation; and any lenders of money for the purchase, construction, rehabilitation, or maintenance of any housing accommodation or commercial space to discriminate based on "actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person."<sup>23</sup> The statute and case law provide qualified immunity to government officials and employees for discretionary conduct and decisions unless they act in bad faith or their actions lack a reasonable basis. The decisional law under this statute has held that detention facilities are not considered places of "public accommodation."<sup>24</sup> With these exclusions in place, the NYC Department of Juvenile Justice did not have to comply with the nondiscrimination provisions of the Human Rights Law. When the agency's final policy was presented to the Work Group, the commissioner's counsel indicated that the commissioner chose not to treat this as an obstacle because he felt it was the "right thing to do." The commissioner's counsel acknowledged the assistance of the Work Group in both helping the policy come to fruition and encouraging the agency to include LGBT issues in their in-house training program.

John Mattingly, PhD, appointed in 2004 as the new commissioner of the Administration for Children's Services (ACS), directed his general counsel, Ronald Richter, to create a strategic plan for LGBTQ<sup>25</sup> youth that was modeled on a policy created by its sister agency in Philadelphia, the Department of Human Services. The purpose of the plan was to determine what the agency and its providers might be able to do differently or better in meeting the needs of LGBTQ youth. As part of the process, ACS convened an LGBTQ Strategic Action Work Group comprised of members from inside the agency and advocacy groups outside the agency. While [\*21] there was an existing policy statement regarding children in foster care, a restatement of it was issued in November 2004 "to reinforce ACS's commitment to respect the dignity of lesbian, gay, bisexual and transgender youth, and to clarify

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<sup>22</sup> N.Y.C. Dep't of Juvenile Justice, Policies and Procedures Directive No. 02/07, Anti-Discrimination of LGBT Youth (2007), available at [http://www.njjn.org/uploads/digital-library/resource\\_1097.pdf](http://www.njjn.org/uploads/digital-library/resource_1097.pdf).

<sup>23</sup> N.Y.C. Admin. Code tit. 8, § 107 (McKinney, Westlaw through 2013).

<sup>24</sup> See id.

<sup>25</sup> Recognizing that sexuality evolves during the maturational years, this acronym is frequently written as LGBTQ. In this setting, the "Q" is an acknowledgment that some youth are "questioning" in regards to what their sexual orientations and gender identities are. See Katayoon Majd et al., *supra* note 2, at 46.

types of gender-based discrimination that were prohibited under NYC and State law." <sup>26</sup> The policy restatement offered no guidelines or definitive procedures to follow. Before the end of the year, ACS's strategic action plan was completed and issued, but implementation was slow to get underway. The Strategic Action Work Group recommended that ACS hire a Director of LGBTQ Policy and Planning, and after that position was filled, the plan gained forward momentum.

It was not until 2009 that the agency issued a nondiscrimination policy directive outlining specific procedures to be followed when assessing the safety of LGBTQ children and youth in foster care. After ACS merged with the Department of Juvenile Justice, it adopted a comprehensive policy, which committed the agency and their contract-provider agencies in both foster care and delinquency facilities to providing:

[A] safe, healthy, inclusive, affirming and discrimination-free environment ... [to] any child, youth or family member receiving services from Children's Services Protective, Preventive, Foster Care, Juvenile Justice Placement, Detention, or Alternative to Detention (ATD) and Alternative to Placement (ATP) settings, who self-identifies as or is perceived to be **lesbian, gay, bisexual, transgender** [or] questioning (LGBTQ). <sup>27</sup>

[\*22] At the next meeting of the Family Court Work Group, held in April 2004, Leta D. Smith, PhD, gave a presentation on behalf of the NY State Office of Children and Family Services (OCFS), in which she announced the opening of a new twenty-two-bed facility in Red Hook that was to serve a mixed population, including transgender youth. She indicated that although OCFS receives only a "handful of transgendered youth in any given year," <sup>28</sup> the agency had contracted with Hunter College Professor Gerald P. Mallon, DSW, to provide training for the staff of the facility. The Work Group learned in January 2006 that the newly appointed commissioner of OCFS, Gladys S. Carrion, had contracted with Dr. Mallon to develop a nondiscrimination policy titled "Guidelines for Good Childcare Practices with Gay, Lesbian, Bisexual, and Transgender Youth." However, the policy that was drafted was never implemented. At the Work Group's meeting in July 2006, it was mentioned that Dr. Mallon may have been asked to develop a nondiscrimination policy in conjunction with Dr. Smith.

In September 2006, the Human Rights Watch and the American Civil Liberties Union collaborated to produce a report highlighting the treatment of girls, including lesbians and gender nonconforming youth, in OCFS custody. <sup>29</sup> The report was the impetus for an investigation by the Civil Rights Division of the U.S. Department of Justice ("DOJ"). Their findings into the conditions of confinement, which were made public in August 2009, ultimately led to the filing of a complaint against the agency in federal court in July 2010. The case was concluded, on consent, with a comprehensive agreement intended to resolve the unconstitutional conditions at four juvenile justice facilities, two of which housed girls. <sup>30</sup> In 2007, during the pendency of the DOJ investigation, the agency formed a committee titled "The Working Group for **LGBT** Youth in State Custody." With the involvement of several members from the Work Group, the agency was able to finalize and adopt in [\*23] 2008 an antidiscrimination policy designed to

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<sup>26</sup> Memorandum from John B. Mattingly, Comm'r, Admin. for Children's Servs. (Nov. 16, 2004) (on file with author).

<sup>27</sup> N.Y.C. Admin. for Children's Serv., Policy No. 2012/01, Promoting a Safe and Respectful Environment for **Lesbian, Gay, Bisexual, Transgender** and Questioning (LGBTQ) Youth and their Families Involved in the Child Welfare, Detention and Juvenile Justice System (2012), available at [http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ\\_Policy.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ_Policy.pdf). Unlike those preceding it, this policy specifically covered the following topics: nondiscrimination, coercion and imposition of beliefs, staff conduct, addressing incidents, guidelines for staff interaction with youth, LGBTQ identities, language and terminology, confidentiality, disclosure by youth and/or family members, use of preferred name, documentation, LGBTQ-affirming literature and written materials, advocacy, service referrals, medical and mental health assessments and services, and training. See id.

<sup>28</sup> Juvenile Justice Subcomm. of the NYC Family Court Advisory Council **LGBT** Work Grp., Meeting Minutes from Apr. 20, 2004 (on file with author).

<sup>29</sup> Human Rights Watch, Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls 75-77 (2006).

<sup>30</sup> Press Release, U.S. Dep't of Justice, Office of Pub. Affairs, Justice Department Announces a Comprehensive Agreement with New York to Remedy Violations and Ensure Constitutional Rights at Four Juvenile Justice Facilities (July 14, 2010), <http://www.justice.gov/opa/pr/2010/July/10-crt-811.html>.

support and protect LGBT youth in state juvenile facilities. OCFS's policy became one of the most progressive of its kind in the country, especially in its sensitivity towards gender identity issues.

In 2008, the Chancellor of the NYC Department of Education issued a regulation titled "Student-to-Student Bias-Based Harassment, Intimidation and/or Bullying," which included protections for gender identity, gender expression, and sexual orientation.<sup>31</sup> In 2012, the NYC Police Department completed major revisions to its Patrol Manual, which was drafted and negotiated with an LGBT advisory committee made up of community-based LGBT advocacy groups and service providers. The new policies mandated that police officers respect the gender identity and expression of transgender and gender nonconforming people and "explicitly prohibited NYPD officers from conducting any search for the purpose of determining a person's gender."<sup>32</sup> The "changes ranged from establishing search procedures for transgender arrestees to requiring officers [to] address arrestees by their preferred name."<sup>33</sup>

### C. Creating an LGBT Training Program

By August 2005, the members of the Work Group were scouring the East and West coasts to see whether any training materials specifically about LGBT youth in the juvenile justice system already existed. Very little material was out there, and what was available was oriented toward best practices with LGBT youth in the dependency system. Three individuals were identified who were very involved with training around the experiences of LGBT youth and the issues associated with their lives. Invitations to meet with the Work Group were extended to them, as we knew they could be instrumental in helping us shape our training program. Jody Marksamer, a staff attorney with the National Center for [\*24] Lesbian Rights who was just beginning to work on a staff training curriculum for youth in juvenile detention centers, happened to be in NYC in October 2005 and fortunately had time in his schedule to speak with us. In May 2006, Miriam Yeung, Director of Public Policy and Government Relations at the LGBT Community Center in NYC, and Monroe France, Education and Training Manager for the Gay, Lesbian and Straight Education Network (GLSEN), gave presentations to the Work Group explaining the structure and content of their respective training programs about LGBT youth. With the support and guidance of these three individuals, the Work Group began developing a training program, even though there was uncertainty about how much interest there would be in receiving this training on the part of the court system, the governmental entities, the legal services organizations, and the community-based agencies connected to the family court.

When the Work Group convened in January 2006 to discuss what its focus for the coming year would be, the group settled on a plan to run a training program over the lunch recess in each of the five boroughs of NYC for all family court personnel and anyone working in the court. This plan was deferred when Harriet Weinberger, Esq., the director of the Law Guardian Program in the Appellate Division, Second Department, offered the Work Group a ninety-minute segment of her annual CLE training program for attorneys in the assigned counsel plan. With its timetable accelerated considerably, a subcommittee of the Work Group shifted into high gear to decide on the subject matter for the training and to compile whatever materials would complement it. On March 30, 2006, members of the Work Group delivered the first of dozens of PowerPoint presentations that it would eventually create.<sup>34</sup>

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<sup>31</sup> N.Y.C. Dep't of Educ., Regulation of the Chancellor No. 8-302, Student-to-Student Bias-Based Harassment, Intimidation, and/or Bullying (2008), available at [http://rems.ed.gov/docs/repository/REMS\\_000056\\_0002.pdf](http://rems.ed.gov/docs/repository/REMS_000056_0002.pdf).

<sup>32</sup> Press Release, Council of the City of N.Y. Office of Commc'ns, Speaker Christine C. Quinn, NYPD Commissioner Kelly, Council Members and Advocates Celebrate Patrol Guide Reforms to Protect Transgender New Yorkers (June 12, 2012), <http://council.nyc.gov/html/pr/061312trans.shtml>.

<sup>33</sup> Id.

<sup>34</sup> The presentation was so well received that the Work Group was asked to repeat it in September 2010 at the Annual CLE Training Program for the attorneys on the assigned counsel panel.

This was followed, quite unexpectedly, by an invitation from the dean of the NY State Judicial Institute,<sup>35</sup> with whom I had had the opportunity to discuss the Work Group's activities and the training it hoped to provide. The assistant dean in charge of the [\*25] training curriculum for the family courts in NY State related the dean's offer to incorporate the Work Group's LGBT training program into their annual educational program for judges in October 2006. An all-too-short time slot of sixty minutes was allotted for an introductory LGBT program, and although we tried, our efforts to get another half hour were not fruitful. Knowing how competitive the process was for securing time in the five-day schedule of training programs at the judges' summer school, it was more important to be included in the first place, rather than to quibble over the amount of time. Pulling together this first program and finding people to present the material sent the Work Group into high gear over the next five months.

After the judicial training was over, the Work Group returned to its original plan of conducting lunchtime training programs for everyone working in the NYC family courts. The presenters travelled this training circuit during the last quarter of 2006 and the first quarter of 2007, armed with a PowerPoint presentation, a laptop, and a projector.<sup>36</sup> The program was so successful that the Work Group repeated the training two years later.<sup>37</sup> Although personnel changes make repetition necessary, it has become clear that this is not the optimal way to attain cultural competence for the judges and court personnel on an ongoing basis. To be effective, this training should be incorporated into the orientation programs for all new employees of the court system, rather than being done on an ad hoc basis.

#### IV. Resistance Encountered

It would be unrealistic to undertake a project of this magnitude and not expect to be met with opposition along the way. The first resistance to continued participation in the Work Group came in July 2005, when the Office of Children and Family Services' Assistant Deputy Counsel Diane M. Deacon announced that her agency would no longer be attending the meetings or [\*26] participating in the Work Group. She told everyone that her agency preferred simply to "receive the Work Group's recommendations and take them under advisement."<sup>38</sup> In October 2005, Commissioner John A. Johnson was contacted about his agency's absence from the meetings of the Work Group, and the importance of having someone from OCFS attend the meetings was stressed since all of the children adjudicated as juvenile delinquents and placed in custody for twelve or eighteen months are remanded to facilities operated by his agency.<sup>39</sup> That same month, two representatives from the regional office of OCFS returned to the meetings of the Work Group. However, in March 2006, the assistant deputy counsel informed the Work Group that because the agency had been "named as a defendant in a federal court lawsuit pertaining to transgender issues arising from a family court placement from the NYC area," she felt "compelled to suspend [its] participation."<sup>40</sup> This time, the agency did not return to the Work Group until 2007, after Gladys Carrion was appointed by Governor Spitzer as its new commissioner.<sup>41</sup>

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<sup>35</sup> Created through a partnership between the court system and Pace Law School, the NY State Judicial Institute provides statewide education and training for the judges and justices of the NY State Unified Court System.

<sup>36</sup> The Work Group presented on December 6, 2006 (sponsored by the Manhattan Family Court), January 24, 2007 (sponsored by the Brooklyn Family Court), March 6, 2007 (sponsored by the Bronx Family Court), and April 11, 2007 (sponsored by the Queens Family Court).

<sup>37</sup> Id. (training for all courthouse staff in Kings, Manhattan, Queens, and the Bronx from October through December 2008).

<sup>38</sup> Juvenile Justice Subcomm. of the NYC Family Court Advisory Council LGBT Work Grp., Meeting Minutes from July 12, 2004 (on file with author).

<sup>39</sup> Letter from author to John A. Johnson, Comm'r, Office of Children & Family Servs. (Oct. 3, 2005) (on file with author).

<sup>40</sup> Letter from Diane M. Deacon, Assistant Deputy Counsel, Office of Children & Family Servs., to author (Mar. 3, 2006) (on file with author).

<sup>41</sup> E-mail from Diane M. Deacon, Assistant Deputy Counsel, Office of Children & Family Servs., to author (Mar. 22, 2007) (on file with author).

The second encounter the Work Group had with resistance happened at the October 2006 training program for the delinquency judges. To say that it received a lukewarm reception would be an understatement. The judges were critical of the interactive format. They accused the presenters of "talking down" to them. They sighed, rolled their eyes, and read the newspaper throughout. When one becomes a judge, awareness develops that we are expected to know everything about everything, and so quite naturally we develop the mindset of an "expert." As judges, if we are presented with something new, most of us rarely admit it. Instead, we tend to sit mute until we can independently search out the answer or, conversely, some of us assume a defensive posture and become indignant about wasting our time on things we already know. When confronted with new and unfamiliar territory, as these [\*27] judges were at the October training, their inability to receive the information with an open mind was not a surprise. Despite the negative feedback, the Work Group continued to develop and offer training programs tailored to specific audiences.

The third experience with resistance occurred in January 2007, after the Work Group began planning a citywide training for all the NYC probation offices in each of the five boroughs. The executive assistant to the commissioner of the NYC Department of Probation was a member of the Work Group from its inception and participated in developing the content, structure, and hypotheticals for the training program. We selected dates for each borough and were in the process of making the fliers when one of the assistant commissioners asked to preview the presentation with some of her deputies. The presenters from the Work Group gave the entire presentation and responded to all of their questions. Within a week, the assistant commissioner indicated that certain changes would have to be made if the program was to go forward. The presentation included three hypotheticals designed to look at the decision-making role a probation officer has during the intake, adjustment-parole/remand, and investigation stages of a delinquency case, and what additional factors need to be considered when working with an LGBT respondent. The NYC Department of Probation, as many other agencies do, relies on a risk assessment instrument to assist in making critical determinations about whether a youth should be remanded during the pendency of the proceeding or placed out-of-home at the conclusion phase of the case. Because many of the risk factors affecting LGBT youth are the same factors these instruments rely on in determining the risk of re-arrest if a youth is released (school attendance, warrant histories from home or foster care, a parental presence in court), LGBT respondents are disproportionately remanded to temporary or placed long-term as a result of the high scores they receive. Because the assistant commissioner feared that these hypotheticals would be too critical of the probation department and its officers, it took nearly a year to reach consensus on how this material could be presented. The training program was finally given between May and August of 2009.

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## V. Making the Issues Visible

After the first training program at the Judicial Institute for the delinquency judges, it became apparent that making presentations to groups outside the family court was central to the Work Group's mission. <sup>42</sup> The larger community

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<sup>42</sup> The author and members of the Work Group were panelists or presenters at lectures, workshops, and training programs around the country where the topics of sexual orientation and gender identity were discussed with reference to youth involved in the juvenile justice and child welfare systems. These presentations, workshops, and training programs included the following: Culturally Competent Practices for Meeting the Needs of LGBTQ Youth in the Dependency & Juvenile Justice Systems, Presentation at the 74th Annual Conference of the National Council of Juvenile & Family Court Judges in NYC (July 25, 2011); Culturally Competent Practices for Meeting the Needs of LGBTQ Youth from Detention Through Post-Disposition, Presentation at the 5th Annual Models for Change National Working Conference in Washington, D.C. (Dec. 6, 2010); Domestic Violence in the LGBTQ Community: Myths, Facts, and Challenges, Presentation at the ABCNY & NYS Division of Human Rights at New York Law School (Oct. 28, 2010); Nanette Dembitz, The Changing Faces of Domestic Violence: Expanding Access for Non-traditional Litigants, Lecture at New York County Lawyer's Association (May 3, 2010); Improving Outcomes for LGBT Youth in the Juvenile Justice System, Presentation at the Child Welfare League of America Annual Conference in Tennessee (Jan. 27, 2010); Best Practices in Representing & Serving LGBTQ Youth in the Juvenile Justice System, Presentation at the Practicing Law Institute (July 30, 2008); NYC Bar Ass'n, Culturally Competent Lawyering for At-Risk LGBTQ Youth: Advocating Effectively in the Foster Care & Juvenile Detention Systems, Presentation at the City Bar Center for CLE Programs (Apr. 15, 2008); Pride in the System: Serving LGBTQ Court-Involved Youth: Challenges & Strategies, Presentation at the New York University School

of service providers needed this [\*29] information just as much as those serving LGBT youth and families from within the courts. As more and more young people are open about their sexual orientations and gender identities, the gap in the availability of community-based services such as counseling, shelter care, mental health care, and recreational and social programming for LGBT youth becomes glaringly obvious, and it is a major factor in driving them into a life on the streets. Without first becoming culturally competent, neither the courts nor these agencies can begin to meet the needs of LGBT youth, adults, or families. These outside training programs made an important contribution to the Work Group's mission as well. By training everyone to recognize the presence of LGBT youth in their communities and to understand the risk factors that were bringing LGBT youth into the court system, these community agencies gained a level of comfort in speaking about the issues and could better examine what role they could play in preventing LGBT youth from coming into the court system in the first place. The visibility of this topic and the broader discussion of the issues made it less intimidating for the court system to follow suit.

The visibility of LGBT people is growing, along with research into all aspects of their lives. Statistics are being gathered not only on the more traditional areas of inquiry, such as in "Race/Ethnicity, Gender and Socioeconomic Wellbeing of Individuals in Same-sex Couples,"<sup>43</sup> but also on the number of local gay newspaper and magazine publications that there are in the United States.<sup>44</sup> The significance of this cannot be overlooked. Together with the dialogue around cultural competence that can be seen from the Fortune 500 to the neighborhood drug and alcohol program, it is evident that governmental agencies, as well as public and private organizations, are far more comfortable discussing matters pertaining to LGBT youth and adults now than they were in prior years.

[\*30] The Williams Institute on Sexual Orientation Law and Public Policy at the UCLA School of Law<sup>45</sup> and the Judicial Institute became partners in 2010 by putting together an unprecedented full day training program for judges, referees, and court attorneys, focusing on LGBT issues in the family, criminal, civil, and supreme courts. This presented another opportunity to create a two-hour training program, which would be given at the Judicial Institute on March 22, 2011. Because there was time, the training could focus on what it means to be "culturally competent" in meeting the needs of LGBT youth in care. Rather than being limited to local presenters, funds were advanced to bring in speakers from other parts of the country with expertise in working with LGBT youth in detention facilities. The program was videotaped and uploaded to the Judicial Institute's website along with the PowerPoint presentation and accompanying printed materials so that it would be available for viewing by all court personnel.

## VI. Expanding the Focus

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of Law (Feb. 7, 2008); Youth At Risk: Legal & Community Responses, Presentation at the Center for Children, Families, and the Law at Hofstra University School of Law (Nov. 2, 2007); System Roles & Responsibilities: LGBT Youth in Detention, Presentation at the Juvenile Detention Alternatives Initiative National Inter-Site Conference in Dallas, Texas (Sept. 26, 2007); Improving the Response to LGBTQ Youth in the Dependency and Delinquency System, Presentation at the 30th National Juvenile and Family Law Conference of the National Association of Counsel for Children in Colorado (Aug. 17, 2007); Judicial Responsibility and Oversight for LGBTQ Youth in Delinquency Cases, Presentation at the Training-of-Trainers Program in Washington, D.C. (June 22, 2007); Youth Involved in the Juvenile Justice System: Train the Trainers, Presentation at the Annual Meeting of the Equity Project: Sexual Orientation in Washington, D.C. (Apr. 11, 2007); Addressing the Needs of LGBTQ Youth in the Juvenile Justice System, Presentation at the National Conference of the Child Welfare League of America in Tennessee (Nov. 15, 2006); Improving the Legal System's Approach to LGBTQ Youth in Foster Care, Presentation at the Opening Doors Project Listening Forum in New York City (Nov. 29, 2006).

<sup>43</sup> See Angeliki Kastanis & Bianca Wilson, Williams Inst., Race/Ethnicity, Gender and Socioeconomic Wellbeing of Individuals in Same-sex Couples (2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-Compare-Feb-2014.pdf>.

<sup>44</sup> See generally Local Gay/Lesbian Publications, gaydata.com, <http://www.gaydata.com/gmd2.htm> (last visited Nov. 2, 2014) (listing gay/lesbian publications in the United States).

<sup>45</sup> The Williams Institute at the UCLA School of Law is dedicated to conducting "high-quality, independent research with real-world relevance" that is disseminated to judges, legislators, policymakers, media, and the public. See Mission, Williams Inst., <http://williamsinstitute.law.ucla.edu/mission> (last visited Nov. 2, 2014).



In September 2009, a new administrative judge was selected to lead the NYC Family Court, and with the passing of that baton, the Work Group officially came to an end. In due course, I reached out to our new administrator, the Honorable Edwina Richardson-Mendelson, to discuss the possibility of reinstating the Work Group, of which she had been extremely supportive. At the beginning of Pride Month, whose theme for 2010 was "Liberty and Justice for All," Judge Richardson-Mendelson announced that she would reactivate the Work Group as a subcommittee within the NYC Family Court Advisory Council to the Administrative Judge and give it a broader focus. Her intention was to have the committee work to address the needs of all LGBT participants - youth as well as adults - involved in any type of litigation in the family courts, whether it be family offense or domestic violence, foster care or detention settings, guardianship, custody or access issues, adoption, or PINS. She designated me as the chairperson for [\*31] the newly created Committee for Lesbian, Gay, Bisexual & Transgender Matters. Membership in the committee was by invitation of the administrative judge.

Judge Richardson-Mendelson came to the committee's first meeting on September 16, 2010, to personally address the members and thank them for their participation. She communicated the importance of this work through her explanation of the purpose and goal she set for the committee. The goal was to see that LGBT litigants receive equal access to liberty and justice and be treated with dignity and respect in all of their interactions with the family court, from the moment they step inside the courthouse to the issuance of a decision in the matter. She envisioned that the committee would raise and discuss all of the issues confronting the family court as it endeavored to serve the needs of LGBT children, teenagers, and adults. The invitations to join the committee were based on her recognition that the family court's ability to serve LGBT communities is connected to the manner in which every governmental agency, private agency, lawyer, and social worker involved in these proceedings responds to the needs of LGBT communities.<sup>46</sup> Putting its purpose and goal in [\*32] this context, Judge Richardson-Mendelson charged the committee with two tasks: (1) identifying the policies and practices of the court and the agencies and organizations outside the court that contribute to the family court's ability to meet this goal, and (2) finding solutions for those that detract from it.

At the outset of the first meeting on September 16, 2010, every participant was asked to reflect on how he or she perceived the court was serving the members of LGBT communities, what issues he or she had identified for the committee to work on, and what she or he hoped the committee would be able to accomplish within the parameters of its mission. As expected, the list of suggestions was extensive, touching on numerous areas not previously recognized. Generally, the issues expressed fell into these categories: documenting the problems encountered by LGBT adults and youth when coming to court; collecting data on the LGBT users of the court process; training, policies, and practices; identifying issues related to LGBT adults in same-sex relationships and LGBT biological and adoptive parents; addressing issues related to youth and older teens; identifying resources available to serve diverse LGBT communities; and networking. With respect to the myriad training needs that were identified, the

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<sup>46</sup> Because of its expanded mission, the membership of the advisory committee increased accordingly. In addition to several family court judges, support magistrates, and court attorney referees, Judge Richardson-Mendelson extended membership invitations to the following people - all of them accepted: the NYC Law Department's Family Court Division Chief and a social worker from that office; a representative from the chancellor of the NYC Department of Education; the deputy commissioner from the First Deputy Chief Clerk of the NYC Family Courts; the vice president of Safe Horizons; the LGBTQ coordinator for the Commissioner of the Administration for Children's Services; the major and a captain of the NYC Court Officers; the general counsel to the NYC Commissioner of Police; the associate commissioner of the Chief Psychiatrist for the NY State Office of Children and Family Services; the executive director of the NY Society for the Prevention of Cruelty to Children; the deputy commissioner for the NYC Department of Probation; the executive director of the NYC Anti-Violence Project; the attorney-in-charge of the Legal Aid Society's Juvenile Rights Practice and several staff attorneys; the law guardian directors for the First and Second Departments of the Appellate Division; the director of the NYC Family Court Mental Health Services; the director of the Peter Cicchino Youth Project and the director of the Domestic Violence Project at Urban Justice Center; the executive director of the Sylvia Rivera Law Project; the executive director of Advocates for Children; the executive director of the NYC Chapter of GLSEN; the director of the Juvenile Justice Project at the Correctional Association of New York; the executive director of the Ali Forney Center; the director of Youth Justice Programs at the Children's Defense Fund in NY; and the executive director of Lawyers for Children.



committee members immediately recognized the danger of advertising the court as LGBT-friendly before having the staff trained to be culturally competent and responsive in an appropriate and respectful way.

In preparation for the second meeting in November 2010, the lengthy list of items that the committee could direct its efforts towards was prioritized into four major categories:

- . Making the courthouse environment friendly and welcoming
- . Assuring the safety of LGBT adults and youth in the courthouse
- . Creating training and outreach programs
- . Developing resource guides to community-based programs and services

Subcommittees with co-chairs were created for each category. Each member was asked to serve on one of the subcommittees. The co-chairs were reminded about the importance of maintaining an [\*33] awareness of the reality that the court is serving both a community of adults as well as children and adolescents. As the subcommittees analyzed the work to be done by the court in each of these areas, their inquiry was to be comprehensive, meaning that they were to consider all types of cases under the court's jurisdiction. In reflecting on how the court can improve its services to LGBT adults and youth, the subcommittees were charged with recognizing that LGBT communities are not a homogeneous group, but rather, an extremely diverse population that varies from one neighborhood to the next.

Inasmuch as the family court's ability to serve LGBT communities is directly impacted by the manner in which every governmental agency, private organization, lawyer, and social worker involved in these proceedings responds to the needs of LGBT communities, a practice of the former Work Group was reinstated at the committee's second meeting: having the members report on what steps they have taken to become gender-neutral and where they were with respect to implementing antidiscrimination policies and in-house LGBT training programs. When the committee met on January 26, 2011, it was possible to see that movement in a positive direction was happening. With regard to gender neutrality, there was much discussion among the governmental entities and private agencies about inventorying their intake, case management, and personnel forms, and revising them to be more inclusive. The city and state agencies spoke about how they were bound by the state's antidiscrimination policy, which only included sexual orientation as a protected classification. However, the representative from the Health and Hospitals Corporation, which provides mental health assessments in child protective and delinquency cases, reported that as a result of changes to the standards by the Joint Commission on Accreditation of Hospitals, nondiscrimination on the basis of gender identity would be required. The NYC Police Department reported on changes that were being made to its training program for new recruits. Several governmental and private agencies reported on the development of staff training programs or CLE programs about LGBT communities and best practices for serving them. A number of private agencies spoke about reviews that had been undertaken of employment practices and employee manuals and whether benefits provided are available equally to people in domestic [\*34] partnerships. Ironically, throughout all the years that the Work Group was operational, and for many months after the committee was formed, while the focus was on the development of nondiscrimination policies by their members, no one raised the fact that the judicial system was operating with a nondiscrimination policy that did not include gender identity and gender expression until January 2011.

Between January 2011 and March 2011, the co-chairs were asked to convene a meeting of their members and begin discussing the substantive and procedural issues that would arise within the categories they were assigned. In March, a new agenda was followed: the committee continued to receive announcements and updates from the members but, in addition, time was set aside for the subcommittees to meet. Before the meetings ended, the co-chairs were asked to give a synopsis of their progress in defining the scope of their work, including identifying the issues in need of immediate attention, prioritizing those issues, and formulating recommendations to address them. As the issues were refined, the committee resolved to develop the material into a formal report to the administrative judge. In thinking this through, an important question about the organization of the report arose - should it be

designed as a five-year plan or a one-shot deal? With the work of the subcommittees beginning to take shape, it became clear that we were creating a five-year plan. All of the recommendations could not be undertaken at once.

The committee set November 21, 2011, as a target date for the submission of each subcommittee's final draft of their piece of the report. Once all of the drafts were received, the subcommittee chairs and I sat down to write the final report. The report began by discussing the committee's review of the family court's existing policies, practices, and procedures, and the areas of concern that the committee identified in how the NYC Family Court serves **LGBT** communities. To address each of the concerns, a series of recommended action steps were developed. Aware that the judiciary was in a period of fiscal austerity, the committee's recommendations were described as a continuum of measures, ranging from those that could be done immediately at no or minimal cost to those that were more extensive and would require budgetary outlays or other funding. Ironically, the recommendations of paramount importance in the report, and the [\*35] ones upon which every other was dependent, were (1) the revisions of New York's Code of Judicial Conduct and the Code of Ethics for Non-Judicial Personnel that would prohibit judges and personnel from engaging in conduct manifesting bias or prejudice on the basis of gender identity and gender expression, (2) a revision of the New York's Lawyer's Code of Professional Responsibility to include "gender identity" and "gender expression" <sup>47</sup> as forms of unlawful discrimination in the practice of law, and (3) a revision of the Rules of the Chief Judge to include gender identity and gender expression in the Unified Court System's policy for ensuring equal employment opportunity.

## VII. Action Steps

When the report was finished, thirty-three action steps were decided upon within the four subject matter categories.

<sup>48</sup> The major ones are listed here:

Making the Courthouse Environment Friendly and Welcoming by:

- . Amending the Code of Judicial Conduct, the Lawyer's Code of Professional Responsibility, the Unified Court System's Code of Ethics for Non-Judicial Personnel, and the judicial system's policy for ensuring equal employment opportunity to include "gender identity" and "gender expression"

- . Posting the court's antidiscrimination statement - printed with culturally accepted, commonly known **LGBT** visual symbols on it - in all of its courthouses, on its website, on its Do It Yourself [\*36] (DIY) public access computers, and in public areas throughout the courthouse

- . Providing each litigant who files a case with a copy of a standard written notice explaining that the court's antidiscrimination policy covers sexual orientation, gender identity, and gender expression; giving each person the right to identify his/her gender and have the court correct it if it is inaccurately listed on the court's documents; and giving each litigant the right to have court documents reflect the person's preferred name along with their legal name so long as it would not be inappropriate (as in the case of a street name or a gang name)

- . Requiring each petitioner/plaintiff to serve a copy of the standard written notice on the respondent/defendant

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<sup>47</sup> Joel Baum et al., Human Rights Campaign Found. & Gend. Spectrum, Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey 3 (2012), available at <http://www.hrc.org/youth-gender> ("Sexual orientation describes an individual's enduring physical, emotional, romantic and/or spiritual attraction to another person. Gender identity and sexual orientation are not the same. Gender identity [reflects] one's innermost concept of self as male, female, a blend of both or neither - how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth. While most people develop a gender identity aligned with their biological sex, for some gender identity is different from their biological or assigned sex.").

<sup>48</sup> Report from the Comm. for **Lesbian, Gay, Bisexual & Transgender** Matters to the Admin. Judge of the NYC Family Court (Dec. 19, 2011) (on file with author).

- . Requiring that, when balancing the right of public access and the right to privacy, judges be sensitive to a request to close the courtroom to prevent "outing" someone if there are safety concerns
- . Revising the court's forms to be gender neutral by replacing "mother" and "father" with "parent," replacing "sex" with "gender/gender identity," and providing the option for people to identify as lesbian, gay, bisexual, heterosexual, male, female, and other
- . Designating "Single use/Family-type" accessible bathrooms in every courthouse with signs identifying the bathroom as an "All Gender/Family/Unisex/Accessible Restroom" and noting the location of these bathrooms on all printed floor plans

Assuring LGBTQ Adult and Youth Safety in the Courthouse by:

- . Developing techniques for safeguarding the privacy of LGBT adults and young people during court proceedings by keeping confidential any LGBT-related information disclosed to the Department of Probation, the petition clerks, the Corporation Counsel's office, ACS, the Mental Health Services, and other agencies, unless the person has given permission to disclose the information
- . Creating a uniform procedure for addressing and responding to all complaints of bias/discrimination or harassment and informing users of the court about its existence
- [\*37]** . Working jointly with independent community-based organizations that have offices in the family courts and training culturally competent staff to provide LGBT-specific materials, referrals, and a safe space in the courthouse for LGBT adults and young people
- . Creating interim policies that address how LGBT individuals entering the courthouse may be searched, when a hand scanner, pat down, or body search is required because a person is subsequently arrested or remanded to secure detention; and, once the revisions to the NYC Police Department's patrol manual are completed, reviewing their new policies and procedures to determine if they are suitable for adoption by the family court
- . Making judges aware of the revised policies of ACS and OCFS for working with LGBT youth in foster care and delinquency placements and training them to review the conditions and the environment at each facility where the court has placed LGBT youth
- . Training judges, when making their mandated visits to residential child care and detention facilities, to inquire about the LGBT cultural competence of the staff, their nondiscrimination policies and practices for working with LGBT youth, and their receptivity to working with and meeting the needs of LGBT youth and their families

Requiring Training and Education, and Providing Outreach by:

- . Mandating basic LGBT training for all judges, clerks, court officers, and other court personnel to become culturally competent in serving LGBT communities
- . Developing tools and teaching skills that will enable judges to intervene and effectuate their responsibilities under the Code of Judicial Conduct to take appropriate action when witnessing overt behaviors directed toward LGBT individuals in the courtroom that are disparaging (e.g., derogatory remarks, pointing, staring, visibly chuckling, snickering, or grimacing)
- . Teaching judges, clerks, and other court personnel about the importance of not using heterosexist speech and how to substitute gender-neutral language that does not presume heterosexuality and is inclusive of everyone
- [\*38]** . Teaching judges, clerks, and other court personnel to prepare court documents and orders that are free of heterocentric language and to scrutinize reports submitted by ancillary agencies for heterocentrism and address it with them

- . Incorporating the tools necessary to become proficient in serving LGBT adults and youth into new judge/staff orientation programs, in the court officer academy for new recruits, and at staff development programs and judicial seminars
- . Conducting a self-assessment and inspection to determine LGBT cultural competence training needs for all judges and court personnel and having those results reviewed by an expert in LGBT cultural competence who could then assist the court in developing training modules tailored to the duties required of each specific job title
- . Engaging trainers and facilitators from organizations serving LGBT communities who have demonstrated proficiencies and experience in LGBT cultural competency training to provide this training and videotaping it so that the training can be replicated without additional cost
- . Incorporating LGBT cultural competency into future training programs offered to judges and court personnel rather than continuing to offer separate programs on LGBT issues
- . Sponsoring ongoing CLE trainings that focus on LGBT substantive law and/or issues that impact LGBT communities for legal, mental health, and social work professionals involved with the court and videotaping them for online viewing
- . Maintaining regular contact with local bar associations, LGBT community centers, advocacy groups, and nonprofit organizations to get feedback regarding the experiences of members of LGBT communities when coming to family court and soliciting suggestions on how to improve services to LGBT communities

Providing Information to LGBT Adults, Families and Youth by:

- . Compiling directories of community-based agencies and organizations that serve LGBT youth and adults
  - . Disseminating a single page information sheet that directs people to the resource guides and organizations that provide legal and social services for LGBT families, youth, and adults
- [\*39]** . Making court clerks and other court personnel aware of the availability of these materials and utilizing their contact with the public as a means of distributing these materials to all who enter the family court
- . Uploading these documents to the family court's website and public access terminals
  - . Periodically reviewing and updating these materials to keep them current

The final version of the report was delivered to Judge Richardson-Mendelson on January 23, 2012. She then submitted copies of the report to the leadership of the judiciary in New York: the chief judge and chief judicial officer of the state, the chief administrative judge, the first deputy chief administrative judge, the deputy chief administrative judge for the NYC courts, and the deputy chief administrative judge for the courts outside NYC. They, along with the administrative board consisting of the presiding justices of the four appellate divisions, are the individuals who can make the policy changes set forth in the committee's report, particularly the amendments adding gender identity and gender expression to the judges', lawyers', and non-judicial personnel's codes of conduct.

While awaiting further direction from Judge Richardson-Mendelson, the committee planned and organized a celebration for Pride Month in June 2012. Banners for the five courthouses were created by teen probationers in an arts program operated by the Department of Probation. Literature tables were placed in the courthouses to distribute materials from agencies and community organizations providing services to LGBT individuals and families. A CLE program was created and delivered in each of the five boroughs by members of the committee. With Judge Richardson-Mendelson giving an introduction to its content, a video was filmed with twelve representatives from community organizations, each of whom gave a two-minute statement about their programs and the services they offer. The video was to run on the courthouse TV monitors for the people in the courthouse to view while waiting for their cases to be called. Resistance was again encountered, this time from the Office of Court

Administration, who would not permit the [\*40] "Celebrate Pride Month" banners to be hung or the video to be aired.<sup>49</sup>

After reviewing the report, Judge Richardson-Mendelson directed the Committee for Lesbian, Gay, Bisexual & Transgender Matters to prioritize the action steps across the categories and present her with a plan to effectuate them. I retired at the end of 2012, and two family court judges were asked to co-chair the committee beginning in 2013. The committee remains vibrant and active, and its work is continuing. In some respects, getting to this point was just the beginning. There are many hurdles and possibilities for resistance ahead. For every step forward, two or three in the opposite direction can be anticipated because change is not typically welcomed and is therefore difficult to implement.

### VIII. Going Forward

Over the past ten years, there has been a major shift in the audiences to whom we have presented our LGBT training programs and the receptions our programs have received. At the Child Welfare League of America conference in 2010, only fourteen people came to our presentation. They were extremely guarded, fearful of using LGBT terminology when speaking, and when we arrived at the Q&A portion of the presentation, they had little to say. They asked no questions about how to serve LGBT youth and left us with the impression that very few had any LGBT teens on their caseloads. Just the opposite was true for our presentation about LGBT youth in detention facilities at the Models for Change conference in 2013. Every seat in the room was taken and people were standing outside the doors in the hall. Members of the audience were conversant with the terminology and acknowledged that there were LGBT youth on their caseloads. Throughout the entire presentation, the audience asked questions and sought information about how to handle the problems raised in the cases of their LGBT clients, as well as what to do in areas where there is a dearth of community-based services that would permit probation officers to divert appropriate PINS and delinquency cases involving LGBT youth early on.

[\*41] It is evident that LGBT families, adults, and children are now being recognized throughout the family court in NYC, and the issues associated with their circumstances are more widely understood, not only in NYC but around the country as well. That is the driving force behind the burgeoning number of training requests coming to The Equity Project, with which I have been affiliated since 2007 as a member of their Advisory Council.<sup>50</sup> Cultural competency is on everyone's radar screen, and that is one of the major areas that private foundations and governmental entities have targeted for grant funding. They are aware that becoming culturally competent is the keystone for individuals and systems in order to move beyond blindness, avoidance, and intolerance of difference based on sexual orientation, gender identity, and gender expression, and, instead, to reach an understanding of, respect for, and acceptance of each person's right to express their gender identity as they choose and to live their lives consistent with that identity.

But the task of making our courthouse environments friendly, welcoming, and safe for the members of diverse LGBT communities we serve is far from finished. Conducting training programs for judicial and non-judicial personnel is a major undertaking given their work schedules and the nature of their assignments. Pursuing these goals and objectives requires strong judicial leadership.

Judges are in a unique position to bring about systemic change within their state and local judicial systems through coalition building, by coordinating education and training programs for judges, clerks, court officers, prosecutors, defense attorneys, law guardians, guardians ad litem, attorneys for children, probation officers, caseworkers, and

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<sup>49</sup> The same Pride Month activities were planned for June 2014, and in that year approval was given to show the video.

<sup>50</sup> The Equity Project

is an initiative to ensure that lesbian, gay, bisexual and transgender (LGBT) youth in juvenile delinquency courts are treated with dignity, respect, and fairness. The Equity Project examines issues of sexual orientation, gender identity, and gender expression (SOGI/E) that impact youth during the entire delinquency process, ranging from arrest through post-disposition.

Equity Project, <http://www.equityproject.org/> (last visited Nov. 2, 2014).

court-appointed forensic mental health evaluators. In addition, judges have the ability to participate in legislative and policy reform through various committees in state [\*42] and local bar associations. While all of these are permissible judicial activities under state Codes of Judicial Conduct,<sup>51</sup> not all judges will be willing to take on a project such as this. It is possible some will opt for a safe harbor in the language of the Codes cautioning them to maintain "independence, integrity, [and] impartiality" in their conduct.<sup>52</sup> Given the considerable visibility that LGBT youth have received, in particular those in foster care and detention facilities, and the visibility that the marriage equality movement has brought to same-sex relationships, there may be less hesitancy now than there would have been ten years ago when the Work Group started. My purpose in writing this article was to set forth a blueprint of concrete steps that judiciaries around the country could take to [\*43] improve the experiences of LGBT families, adults, and children when some aspect of their lives brings them into court. I am hopeful that this blueprint will provide the encouragement needed for judges in other jurisdictions to undertake a collaborative effort such as this in achieving meaningful reforms.

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<sup>51</sup> See Model Code of Judicial Conduct R. 3.7A (2010).

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

...

Appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice; ... making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and ... serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity: ... will be engaged in proceedings that would ordinarily come before the judge; or ... will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Id. Most state codes have been shaped by the ABA Code.

<sup>52</sup> Model Code of Judicial Conduct R. 3.1 (2010) ("A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not: (A) participate in activities that will interfere with the proper performance of the judge's judicial duties; (B) participate in activities that will lead to frequent disqualification of the judge; (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; ... ." (commentary omitted)).