



The logo of the National Center for Lesbian Rights.

National Center for Lesbian Rights by Victoria Shannon

Encyclopedia Copyright © 2015, glbtq, Inc.
Entry Copyright © 2009 glbtq, Inc.
Reprinted from <http://www.glbtq.com>

In 1980, Denise Kreps, despite scoring exceptionally high marks on qualifying exams, was denied a job as Deputy Sheriff in Contra Costa County, California because she was a lesbian. She sued and won, thus becoming one of the first openly gay law enforcement officers in the United States. In April 1986, Becky Smith and Annie Afflect became one of the first lesbian couples in the United States to be awarded joint custody of a child.

The organization that won these legal victories was the Lesbian Rights Project founded by Roberta Achtenberg and Donna Hitchens in 1977.

Origins

Both founders were young, politically savvy attorneys acutely aware of the disadvantages glbtq people face on a variety of legal fronts, ranging from employment discrimination and adoption issues to inheritance and visitation rights.

With a \$10,000 grant to Hitchens from the Berkeley Law Foundation to provide legal assistance to low-income lesbians when their sexual orientation presented a significant legal issue, the Lesbian Rights Project became the first public interest law firm to focus exclusively on the legal problems faced by lesbians.

In its first three years the organization concentrated on problems encountered by lesbian mothers in California. Since 1980, it has expanded its interests to include legal issues faced by glbtq people generally and across the country.

The two founders, who were also the first lawyers working with the Lesbian Rights Project, are no longer actively involved in the day-to-day activities of the NCLR, but their influence continues to be felt by the organization.

Achtenberg was elected to the San Francisco Board of Supervisors in 1989; and in 1993, when she was appointed Assistant Secretary of Housing and Urban Development by President Clinton, became the first openly gay person to be confirmed by the United States Senate for a major political post.

Hitchens, who was elected to a San Francisco Superior Court judgeship in 1990, knew first-hand the difficulties faced by lesbians in family court when she and her partner faced frustration in their (ultimately successful) attempt to adopt jointly their two daughters. Since her election to the bench, Hitchens has served as Presiding Judge for the Superior Court of San Francisco County and as Supervising Judge of the Unified Family Court.

NCLR Today

Renamed the National Center for Lesbian Rights in 1989, the organization now defines itself as a non-profit public interest law firm "committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education."

NCLR provides free legal assistance to more than 5,000 glbtq people and their families in all 50 states each year. The organization addresses the full range of legal issues that affect the glbtq communities, especially in such areas as employment discrimination, elder law, immigration issues, relationship recognition, transgender law, and families and parenting.

NCLR's national office is located in San Francisco. The organization maintains regional offices in Washington, D.C., Los Angeles, and St. Petersburg, Florida. With a staff of 27, it had a budget in 2008 of more than \$3,000,000.

In 1994, Kate Kendall joined NCLR as Legal Director; in 1998, she became Executive Director. Kendall came to NCLR from her position as a staff attorney for the ACLU of Utah, where she litigated a variety of high profile cases. At NCLR, Kendall has propelled the organization into a nationally recognized leader in protecting and expanding glbtq rights through legal action. Articulate and warm, she has emerged as an effective spokesperson for the glbtq political and legal movement. She lobbies tirelessly on behalf of equal rights and is frequently quoted in major media across the country.

Legal director of NCLR is Shannon Price Minter, who joined the organization in 1993 as a recent graduate of Cornell University Law School. As an intern, Minter helped spearhead a legal aid program for young people who had been forcibly hospitalized for psychological treatment to change their gender identity, an issue of particular interest for Minter, who attended Cornell as a woman but subsequently transitioned to become a man. Moreover, as Minter recalled in an interview with Washington, D. C.'s *MetroWeekly*, in high school when she identified as a lesbian she was terrified that her parents would put her in a psychiatric hospital.

During his years at NCLR, Minter has been involved in several high profile cases. In 2001, for example, Minter represented Sharon Smith in her successful attempt to win the right to file a wrongful death suit after her partner, Diane Whipple, was mauled to death by a neighbor's dogs in San Francisco. He gained national recognition in 2008 when he argued the "Marriage Case" before the California Supreme Court. In 2009, he appeared before the Court in the effort to nullify Proposition 8, the initiative that overturned marriage equality in the Golden State.

Among Minter's numerous honors include receiving a \$100,000 "Leadership for a Changing World" award from the Ford Foundation in 2005 for his work on behalf of glbtq rights and being named California Lawyer of the Year in 2009 by *California Lawyer*. He was also selected one of six Lawyers of the Year in 2008 by the national legal publication *Lawyers USA*.

Among other NCLR staff members are Helen J. Carroll, an acclaimed former basketball coach who directs the organization's Sports Project; Noemi Calonje, director of the Immigration Project; Jody Marksamer, staff attorney and director of NCLR's Youth Project; Joyce Pierson, consultant to the Elder Law Project; Melanie Rowen, a staff attorney who works on the full range of the organization's casework; Cathy Sakimura, a staff attorney who directs NCLR's Family Protection Project; Liz Seaton, Managing Attorney and Director of Projects; Christopher Stoll, senior pro bono attorney; and Amy Todd-Gehr, senior staff attorney.

In addition to litigation, NCLR also advocates on behalf of equal rights and educates the public about the needs of glbtq citizens. In California, it has worked closely with Equality California to inform legislators and the public generally as to the effects of proposed legislation on glbtq constituencies.

Projects

When NCLR was founded, most of its cases were related to ensuring that glbtq parents could retain custody of their children after they came out, and the organization continues to be active in family law and parenting issues. In 1986, NCLR introduced second-parent adoption as a legal strategy for protecting same-sex families with children, a strategy that has since been embraced successfully in several states. In 1988,

NCLR won one of the country's first custody battles for a parent with AIDS on behalf of Artie Wallace, a gay father, whose son was kidnapped by his ex-wife in 1987.

In 1993, NCLR became the first glbtq legal organization to launch an advocacy program for youth. The Youth Project furthers the rights of glbtq youth through education, public policy advocacy, and precedent setting casework. The Youth Project attempts to protect glbtq students from discrimination and to promote gay-straight alliances in schools. In addition, it helps to prevent the abuse of glbtq youth in foster homes and juvenile justice facilities and to safeguard the rights of transgender youth wishing to transition while they are in state custody.

Under Kendall's leadership, NCLR has dramatically expanded its advocacy on behalf of several glbtq constituencies, including senior citizens, immigrants, and the transgendered.

In 1998, the NCLR became the first national legal organization to establish an Immigration Project. The Project is concerned with the discrimination faced by bi-national couples, by glbtq immigrants, and by those living with HIV or AIDS. It has been particularly active on behalf of glbtq immigrants seeking asylum because of the persecution they face in their countries of origin.

In 1999, NCLR became the first glbtq legal organization to launch a permanent Elder Law Project. The Project is concerned with a wide range of challenges faced by glbtq senior citizens, from discrimination in nursing homes to financial planning, partnership protection, and end-of-life issues.

In 2001, NCLR became the first glbtq legal organization to launch a Transgender Law Project, which subsequently evolved into the Transgender Law Center. NCLR and the Transgender Law Center are recognized as national leaders in helping shape transgender law.

Also in 2001, the NCLR established a Sports Project, which aims to combat homophobia and transphobia in sports. Among NCLR's best known cases is one it filed on behalf of former Penn State basketball player Jennifer Harris, which alleged that she suffered racial and sexual orientation discrimination at the hands of women's basketball coach Rene Portland. While the case was settled out of court and the settlement is confidential, Coach Portland resigned soon after the settlement was announced.

California Marriage Cases

NCLR is perhaps best known for its work on behalf of marriage equality in California, but it has been involved in seeking recognition of glbtq relationships for a long time. It advocated strongly for the domestic partnership law in California and has sued to ensure its enforcement and to clarify its breadth. It has also filed amici curiae briefs in the marriage equality suits in numerous other states, including those that resulted in victory in Connecticut, New Jersey, and Iowa.

In California, NCLR was the lead counsel representing same-sex couples, Equality California, and Our Family Coalition in the marriage case that ultimately resulted in the California Supreme Court's historic ruling in favor of marriage equality.

In the litigation following San Francisco Mayor Gavin Newsom's 2004 order that the city clerk issue marriage licenses to same-sex couples, Minter prevailed in the initial trial, but this favorable judgment was overruled by the California Court of Appeals, thus setting the stage for the state's highest court to rule on the issue.

On March 4, 2008, Minter argued passionately that the laws banning same-sex marriage in California were unconstitutional. On May 15, the Court released its decision: a 4-3 verdict that declared not only that the

laws defining marriage as a union of one man and one woman were unconstitutional, but also that the state's equal protection clause must be interpreted to require that claims of sexual orientation discrimination be accorded the highest category of scrutiny.

In the stirring majority opinion, Chief Justice Ronald George wrote that "The right to marry . . . the person of one's choice . . . is of fundamental significance both to society and the individual."

With this decision, the Court cleared the way for same-sex couples in California to begin marrying on June 17. However, the 2008 summer of love came to an end on November 4, when California voters passed Proposition 8, the ballot measure that declared that in the Golden State only unions between one man and one woman could be recognized as marriage. The next day, the NCLR, joined by Lambda Legal and the ACLU and other groups, returned to the California Supreme Court with a petition asking the Court to rule Proposition 8 unconstitutional.

On May 26, 2009, in a 6-1 decision, the Court upheld Proposition 8. All seven justices, however, ruled that the more than 18,000 same-sex marriages that took place between June 16 and November 4, 2008, are fully valid and recognized by the State of California.

Although the Court rejected almost all the arguments made by NCLR and the other organizations seeking to have Proposition 8 invalidated, it dramatically narrowed the scope of Proposition 8 to the definition of a word and in the process strengthened the state's domestic partnership law, asserting that domestic partnerships must enjoy all the constitutionally based incidents of marriage. The decision characterized Proposition 8 as carving out a "narrow and limited exception" to the state's protection of same-sex couples, reserving the designation of "marriage" to opposite-sex couples.

In a press release issued soon after the ruling, Minter stated, "Today's decision is a terrible blow to same-sex couples who share the same hopes and dreams for their families as other Californians. But our path ahead is now clear. We will go back to the ballot box and we will win."

It may be, however, that Proposition 8 may be repealed judicially rather than at the ballot box. Soon after the California Supreme Court's ruling, two same-sex couples filed suit in the United States District Court for Northern California, challenging Proposition 8. The plaintiffs in *Perry v. Schwarzenegger*, as the suit is known, argue that Proposition 8 violates the U.S. Constitution's guarantees of due process and equal protection of the laws. The lawsuit was filed by Republican former Solicitor General Theodore Olson and Democratic attorney David Boies on behalf of the American Foundation for Equal Rights.

Soon after the filing of this lawsuit, several groups with experience litigating glbtq rights, including NCLR, the ACLU, and Lambda Legal, issued a joint statement questioning whether now was the right time to take the question of marriage equality to a federal court. These groups had scrupulously avoided federal courts out of fear that an unfavorable ruling by the United States Supreme Court might establish a precedent that would set back the marriage equality movement for a generation.

When Olson and Boies were not persuaded by their plea to wait until a more opportune moment, NCLR and the other organizations then filed a motion to intervene in the case. Olson and Boies opposed the plea to intervene, arguing that the participation of these groups that had opposed the suit from its inception might undermine the suit. Ultimately, Judge Vaughan Walker, who has expedited the case, denied the motion.

Conclusion

For over three decades, NCLR has battled in the courts for equal rights for glbtq citizens. Along with Lambda Legal, Gay and Lesbian Advocates and Defenders (GLAD), and the ACLU's LGBT Project, NCLR has been in the forefront of the quest for justice and equal protection under the law.

Bibliography

"Just a Case of 'Lawyerly Ego'?" *Advocate.com* (July 14, 2009):
http://www.advocate.com/exclusive_detail_ektid98191.asp

Knight, Heather. "Newsmaker Profile: Donna Hitchens: Compassion Hallmark of San Francisco's Top Judge." *San Francisco Chronicle* (December 9, 2002): <http://www.sfgate.com/cgi-bin/article/article?f=/c/a/2002/12/09/BA141526.DTL>

Lowery, George. "Unfair and Unequal: Attorney Minter Champions Rights of Sexual Minorities." *Cornell University Chronicle Online* (November 29, 2005): http://www.news.cornell.edu/stories/Nov05/Shannon_Minter.gl.html

Najafi, Yusef. "Legal Eagle Lands in D. C." *Metro Weekly* (October 9, 2008): <http://www.metroweekly.com/gauge/?ak=3821>

National Center for Lesbian Rights website: <http://www.nclrights.org>

Sandeen, Autumn. "San Diego's Marriage Town Hall: NCLR's Kate Kendall Talks about Prop 8 Legal Case." *Pam's House Blend* (April 3, 2009): <http://www.pamshouseblend.com/diary/10217/san-diegos-marriage-town-hall-nclrs-kate-kendall-talks-about-prop-8-legal-case>

About the Author

Victoria Shannon is an adjunct faculty member at DePaul University and Columbia College Chicago. At Columbia, she develops glbtq-related courses and teaches "Gay & Lesbian Studies," a course she created several years ago.