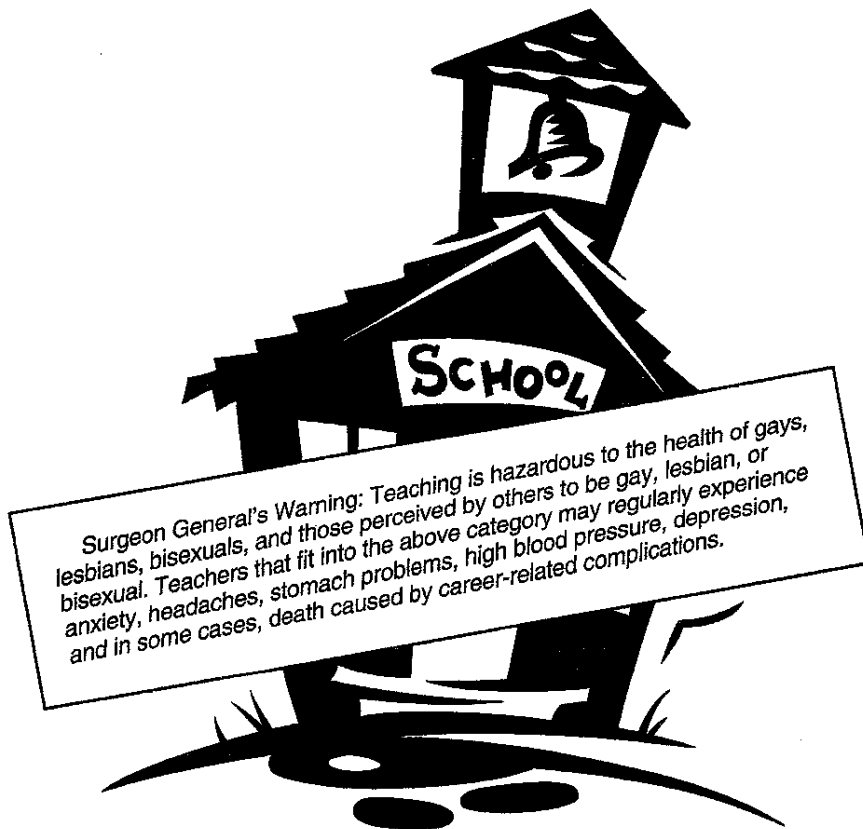


Where Are the Civil Rights for Gay and Lesbian Teachers?

By Christine Yared



While the Surgeon General has not issued such a warning, the statement is consistent with the experiences of many gay, lesbian and bisexual teachers. Consider the life and death of Gerry Crane, a gay, tenured, music teacher in Byron Center, Michigan.

Byron Center is a small town, outside of Grand Rapids. In 1993, Gerry Crane was hired to revive a floundering music program at the public high school in Byron Center. During the first two years, Crane received exceptional reviews. He was described as "the teacher who built the music program," "one of the best teachers on staff" and "a good role model for our students."

In the summer of 1995, Crane and his partner Randy began to plan their October commitment ceremony. In Sep-

tember, someone in Byron Center learned about the ceremony and word spread to school officials, parents and students. At the November school board meeting, angry parents attended the meeting and demanded that the gay teacher either resign or be fired.

In the months that followed, Crane endured pain and stress on a daily basis. Many parents removed their children from his classes. Crane continued to teach while the value of his life as a gay man was being publicly debated in the local, state, and national media. Fear prevented many of his colleagues and others in the community from providing public support for him.

At the December 1995 school board meeting attended by about 700, the school board issued a scathing statement that read

in part, "individuals who espouse homosexuality do not constitute proper role models as teachers." The board concluded with a warning to Crane that it would continue to "investigate and monitor" the situation and "take appropriate and lawful action when justified."

During the balance of the school year, Crane experienced the "investigate and monitor" portion of the statement in the form of harassment. For example, a school official released a list of the names and addresses of Crane's students to facilitate a propaganda campaign. The parents of Crane's students received a booklet and video, *Gay Rights/Special Rights: Inside the Homosexual Agenda*. The video explained that the "homosexual agenda" is harmful to the nation's school children. The video contains selected scenes from gay pride celebrations in large cities highlighting transvestites and gays clothed in leather. Parents continued to remove students from his classes.

While parents, educators, and clergy worked aggressively to undermine his career and character, Crane mustered the strength to go into a hostile work environment each day and teach. Throughout the struggle, Crane and his partner exhibited courage, integrity, and grace. At the end of the school year, however, Crane evaluated his options and concluded that like a poison, the hatred and fear were spreading and dangerous.

In July 1996, he entered into a settlement agreement with the school district that included one year's salary, health benefits and a letter of reference. In exchange, Crane agreed not to sue or seek employment in the district.

Five months later on December 27, 1996, Crane collapsed and went into a coma. Seven days later at age 32, he died. After conducting an autopsy, the forensic pathologist concluded that Gerry Crane died because of a floppy heart valve, a congenital condition that is usually not fatal. The doctor further concluded that the stress of his public struggle to maintain his job could have led to his death, stating, "It may have put him over the edge."

Gay teachers work in fear that a student, parent, or school official will discover their orientation. The ramifications for gay teachers who are "out" or "outed" are serious. The teacher's health is at risk as a result of both likely harassment and possible physical violence. In addition, in most school districts the teacher's career is also at risk. Gay teachers who remain "closeted" will also experience stress, anxiety, and depression as they attempt to hide their sexual orientation and family life from

those in their work environment.

In 1990, the Gay, Lesbian, and Straight Teachers Network (GLSTN) was founded. GLSTN's mission is to ensure that each member of every school community is valued and respected, regardless of sexual orientation. Yet, it is important to understand that for gay teachers (and heterosexual supportive teachers), the mere decision to join an organization such as GLSTN is fraught with fear.

Litigants have been unsuccessful in using federal legislation to support a claim of employment discrimination based on sexual orientation. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin. 42 U.S.C. § 2000 *et seq.* Courts have held that Title VII does not prohibit discrimination based on sexual orientation. *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69 (8th Cir. 1989), *cert. denied*, 493 U.S. 1089, 107 L. Ed. 2d 1061, 110 S. Ct. 1158 (1990).

The reasoning supporting this position has included reference to the failure of the bills that have been introduced in Congress over the years to amend the Civil Rights Act of 1964 to prohibit discrimination based on sexual orientation. *Blum v. Gulf Oil Corp.*, 597 F.2d 936 (5th Cir. 1979). In addition, the courts have dismissed claims of employment discrimination based on sexual orientation filed

In *Acanfora v. Board of Education*, 491 F.2d 498 (4th Cir. 1973), *cert. denied*, 419 U.S. 836 (1974), the plaintiff claimed that he was wrongfully transferred from a eighth grade teaching position to a non-teaching position after the school learned that he was gay. The Maryland District Court concluded that the transfer was justified not because the teacher was gay, but because students and parents knew that he was gay. The Court framed the First Amendment issue as "whether the speech is likely to incite or produce imminent effects deleterious to the educational process." *Acanfora*, 359 F. Supp. 843. The court explained that publicity undertaken by a known homosexual teacher:

... does not best serve the purposes of sexual adjustment maturation and student-parent relationships in the educational context. These questions are charged with emotion and of such a delicate and sensitive nature that the injection of controversy tends to breed misunderstanding, alarm and anxiety. *Acanfora* at 856.

Thus, the teacher's First Amendment rights are dependent upon the ability of the students and parents to process the information that one of the teachers is gay. In *Acanfora*, the teacher voluntarily discussed his claim of employment discrimination with the media. While observers may conclude that the Court's action in

er was confronted by an angry mother who wanted to know why petitioner was counseling her to accept her son's expressed homosexuality when such conduct was "against the Bible." Petitioner did not inform the mother of her own preferences, but did inform her vice principal, because she was "uneasy" that if the mother complained her own "job would be at stake". . . Finally, petitioner mentioned her bisexuality to some of her fellow teachers, first simply in the course of her friendships with them and later to enlist their support when it became clear that she would be disciplined for her bisexuality. *Rowland*, U.S. at 1017.

Justice Brennan further described the first conversation as being a natural result of the teacher's bisexuality "in the same way that coworkers generally know whom their fellow employees are dating or to whom they are married." *Rowland*, U.S. at 1018.

In challenging the logic underlying the majority's decision to deny certiorari, Justice Brennan reasoned "the jury was entitled to make rational inferences and apply its common-sense knowledge of the world, which includes the knowledge that most teachers are openly heterosexual and yet go undisciplined for that sexual preference." *Rowland*, U.S. at 1018.

In addition, the courts have upheld discrimination based on sexual orientation even where the record was void of

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under 42 U.S.C. 1981, 1985. *Blum* (42 U.S.C. § 1981); *DeSantis v. Pacific Tel. & Tel. Co.*, 608 F.2d 327 (9th Cir. 1979) (42 U.S.C. §1985). The Americans with Disabilities Act defines the term disability to exclude homosexuality and bisexuality. 42 U.S.C. § 12211(a) (Supp. V 1993)

The majority of the states have adopted the federal view. Michigan's civil rights legislation extends protection beyond federal criteria and precludes discrimination based on height, weight, and marital status. Mich. Comp. Laws 37.2102(2). Yet when faced with the issue of applying the Michigan law to a case involving sexual orientation, the court relied solely on federal precedent interpreting the federal law, and held that the Michigan law does not extend to discrimination based on sexual orientation. *Barbour v. DSS*, 198 Mich. App. 183 (1993).

While the courts discuss the need to examine these cases in light of interference with the educational process, the courts are unwilling to uphold a claim of discrimination even where the educational environment is not affected.

Acanfora related to his media interviews, in *Rowland v. Mad River Local School Dist.*, 730 F.2d 444 (6th Cir. 1983), *cert. denied*, 471 U.S. 1009 (1984), the U.S. Supreme Court upheld sexual orientation-based discrimination where the teacher revealed her sexuality during private discussions with school employees.

In *Rowland*, the Court found that the discrimination was constitutional even though the jury concluded that knowledge of the teacher's bisexuality did not interfere with the school's operation in any way. The facts in *Rowland* were summarized by Justice Brennan in his dissenting opinion: "Petitioner's first mention of her bisexuality at school apparently came in response to friendly but repeated questions from her secretary as to why petitioner seemed in a particularly "good mood" one day. When petitioner eventually responded that she was in love with a woman, the secretary apparently was upset by the unexpected answer, and reported it to petitioner's principal. On another occasion, petition-

evidence that the teacher was gay. In *Jantz v. Muci*, 759 F. Supp. 1543 (D. Kan. 1991), *rev'd*, 976 F.2d 623 (10th Cir. Kan. 1992), *cert. denied*, 508 U.S. 952 (1993), a teacher alleged that he was not hired because the school concluded that he was gay. The record stated that the teacher was married, with two children, and that he did not admit to being gay. The discrimination was based on the secretary's statement that the principal found the applicant to have "homosexual tendencies." *Jantz*, 759 at 1545.

In *Jantz*, the 10th Circuit Court relied on the U.S. Supreme Court decision upholding the constitutionality of Georgia's criminal sodomy law in *Bowers v. Hardwick*, 478 U.S. 186 (1986). Consequently, courts are using an opinion that addresses homosexual and heterosexual conduct to justify discrimination based on a person's status or perceived status as a homosexual.

Nine states, the District of Columbia, and numerous cities have passed legislation prohibiting employment discrimination based on sexual orientation.

Cal. Lab. Code 1102.1 (West Supp. 1996); Conn. Gen. Stat. 46a-81C (1995); Haw. Rev. Stat. 378-2 (1993); Mass. Gen. L. ch. 151B (1994); Minn. Stat. 363.03 (1994); N.J. Stat. Ann. 10:5-12 (West 1993); N.J. Gen. Laws 28-5-7 (1995); Vt. Stat. Ann. tit. 21, 495 (1994); Wis. Stat. 111.19-111.36 (1993); D.C. Code Ann. 1-2512 (1992).

Since most of these laws were passed in the 1990s it is not clear whether the laws will provide adequate protection for gay teachers. It is troubling to note that five of the nine state laws contain language limiting the application of the civil rights legislation. For example, in Massachusetts the civil rights law states that the

By the standards of many, wearing the "gay" ring could be interpreted to be promoting homosexuality in the educational institution. Assume further that the gay teacher walks to the snack machines in the school and opens his wallet in front of a group of students to obtain money for a drink. Another teacher walks by and notices that the gay teacher has a picture of himself with his partner in his wallet. The teacher reports that the gay teacher is confusing the teenagers by "flaunting" his sexuality. Armed with a homophobic teacher, a confused student, and an angry parent as witnesses, the "ring and photograph" stories could support a conclusion that

3245 (1996), the U.S. Supreme Court held that a state referendum precluding legislative, executive, or judicial action providing legal protection based on a person's sexual orientation violated the equal protection clause since it infringed on the fundamental right of gays and lesbians to participate in the political process. The majority in *Romer* specifically rejected the state's rationale for the law, "to respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality."

While the gay teacher cases do not typically involve the application of a broad state law, the school districts often

30 percent of completed teen suicides are by gay and lesbian youth.

provision should *not* be considered an endorsement or approval of homosexuality or bisexuality and should *not* be construed as legitimizing marriages between same-sex couples. (The Vermont, Connecticut, and California laws also contain a same-sex marriage exception.)

Would this law protect a gay teacher who is fired after she brings her partner to a faculty holiday party where the invitation includes "spouses"? Would this law protect a gay teacher in Connecticut who is fired for "flaunting" his sexuality by wearing a wedding band (which includes the symbolic gay pink triangle)? The Connecticut civil rights law states in part that the Act shall *not* be read:

(1) to mean the State of Connecticut condones homosexuality or bisexuality or any equivalent lifestyle, or

(2) to authorize the promotion of homosexuality or bisexuality in educational institutions or require the teaching in educational institutions of homosexuality or bisexuality as an acceptable lifestyle. . . .

(5) to establish sexual orientation as a specific and separate cultural classification in society. Conn. Gen. Stat. 46a-81r (1995).

the gay teacher is attempting to "promote homosexuality in the school."

Imagine a civil rights bill addressing discrimination based on race, sex, and disability that contained language explaining that the bill is not intended to "promote minorities, woman or the disabled in the school."

The issue of civil rights for gay teachers is also critical for youth. According to statistics provided by GLSTN, 30 percent of all completed teen suicides are by gay and lesbian youth. The physical and emotional development of gay youth and of youth (gay or straight) who have gay and lesbian parents, relatives and friends is dependent on a positive climate for gay teachers. Our laws currently facilitate and nurture an educational system where schools are able to use tax money to speak about respect while modeling bigotry.

Gerry Crane's public struggle and death mirrors the many private, symbolic and actual deaths that gays and lesbians experience and fear on a daily basis. While his story may energize some gay activists, for many teachers his story will lead them to remain in the closet with increased anxiety.

In *Romer v. Evans*, 1996 U.S. LEXIS

justify their action based on personal and religious objections of parents. The reasoning in *Romer* may thus be helpful in challenging alleged government interests based on emotion.

While activists need to lobby for laws decriminalizing sodomy and adding sexual orientation into existing civil rights legislation, lawyers litigating these cases should aggressively seek change by relying on existing free speech, free association, and equal protection balancing tests. Litigants must incorporate into the lawsuits data provided by the social scientists and human service professionals to dispel myths about homosexuality and educate society about the needs of children who are gay or who come from gay families. The legal profession should take the lead in securing civil rights for gay teachers.

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Rule of Law in Hong Kong (from Page 5)

Rights has been in close communication with a broad spectrum of the Hong Kong legal profession, many of whom submitted comments on the consultation document, and has summarized these responses. In general, the comments raise the following broad concerns:

- the proposed changes are unnecessary and Tung's claim that they are needed to harmonize Hong Kong's ordi-

nances with the Basic Law has not been substantiated;

- the proposed changes are based on a flawed interpretation of the ICCPR;
- the concept of national security is defined too broadly and could be used to restrict otherwise lawful participation in public affairs in Hong Kong;
- proposed amendments to the Societies Ordinance reinstating a registra-

tion system for nongovernmental organizations and limiting contact with foreign political organizations would subject the exercise of the right of freedom of association to prior government approval;

- proposed changes to the Public Order Ordinance subjecting peaceful public demonstration to prior police approval would unlawfully restrict the right to freedom of assembly.