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LGBT
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We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The Bar Comes Out in Houston



Houston lawyers and the organized bar protested Anita Bryant's appearance at the 1977 State Bar convention, an event that is credited with galvanizing activism in the LGBT community. Images courtesy of the Houston LGBT History website, www.houstonLGBThistory.org

Why was Houston the first city in Texas where lawyers organized a local LGBT bar association? The answer is rooted in the 1960s and the 1970s, when the City's LGBT community began to step out of the shadows. Old laws, which included the 1860 Texas sodomy statute¹ and a 1904 Houston city ordinance banning cross-dressing, also played a part.²

Early Struggles

Both the sodomy and cross-dressing laws provided excuses for the police to harass gay men and lesbians. This included an infamous 1967 raid on a lesbian bar in which 25 patrons were arrested. In 1973,

Texas adopted the Model Penal Code, but did not decriminalize sodomy as the Model Code recommended. No longer a felony and titled under the ominously vague captions "homosexual conduct" and "deviate sexual intercourse" (yet another puritanical comment), intercourse between people of the same gender became a Class C misdemeanor in what is now section 21.06 of the current Penal Code.

The first attempt to repeal section 21.06 was made in 1975 by Houston Representative Craig Washington, resulting in open derision and gay baiting on the floor of the Texas House of Representatives. Representative Washington commented, "I debated on the merits, they debated on the prejudice." The year 1973 marked the beginnings of organized politics focused on the LGBT community in the City when gay activists helped elect a progressive mayor, Fred Hofheinz. This led to the 1975 formation of the Houston Gay and Lesbian Political Caucus (now the Houston GLBT Political Caucus), formed by Pokey Anderson, Bill Buie, Hugh Crell, and Keith McGee—the first such group in the American South. Also joining Anderson as early and out community activists were Ray Hill, Jerry Miller, and Rev. Bob Falls.

Lawyers and the organized bar marched into Houston LGBT history in a big way in 1977. The State Bar of Texas held its annual convention at the downtown Hyatt Regency Hotel featuring national anti-gay crusader, Anita Bryant. Thousands of members of the LGBT community and its sympathizers took over downtown streets, creating what is now considered to be the first Houston Pride parade. This activism led to: the 1979 election of Eleanor Tinsley (a caucus-endorsed city council member); the 1980 repeal of the City's cross-dressing ordinance (a fight led by then-law student Phyllis Frye); and the 1981 election of Kathy Whitmire as mayor. The LGBT community in Houston was on a roll.

The HIV/AIDS Backlash

What seemed to be a growing and pro-

gressive acceptance of the LGBT community was cut short by the arrival of HIV and AIDS in 1981. In a stunning backlash, a 1984 City ordinance championed by Whitmire and Tinsley barring municipal and private employment discrimination based on sexual orientation was overturned by Houston voters by a 4-to-1 margin in 1985. It was a new and harsh reality.

Meanwhile in Dallas, a civil lawsuit challenging the “homosexual conduct” statute was brought by lawyers on behalf of a closeted membership group, aptly named the “Texas Human Rights Foundation” (THRF). The plaintiff, Don Baker, sued the Dallas County District Attorney, Henry Wade, and the district court declared the statute unconstitutional. The Attorney General did not appeal, but the Potter County District Attorney did, joined by the group, Dallas Doctors Against AIDS. Both the district court and a panel of the Fifth Circuit denied the appeal, but the *en banc* court found standing for the appeal and in 1985 reversed the district court by a 9–7 vote.³ On June 30, 1986, the Supreme Court handed down a 5–4 opinion in *Bowers v. Hardwick*, upholding Georgia’s sodomy statute and ending any chance for THRF to take *Baker v. Wade* to the high court.⁴ *Bowers* profoundly shocked and angered the LGBT community with both its result and dismissive reasoning.

A State Court Assault on the “Homosexual Conduct” Statute

However, Patrick Wiseman, the lead attorney in *Baker v. Wade*, regrouped, and in 1990 filed a new civil test case for THRF in state district court, *Morales v. State*. The State under then-Attorney General Jim Mattox, did not actively defend the “homosexual conduct” statute, which the district court ruled unconstitutional under the Texas Constitution. Newly elected Attorney General, Dan Morales (no relation to the lead plaintiff), actively defended the statute on appeal. But in 1992, the Austin Court of Appeals affirmed, reasoning that the statute violated the right to privacy and that pub-

tutional under the facts in *Morales*.⁵ To lawyers defending the LGBT community, it was better than a loss on the merits, but a somewhat contrived dodge of the real issue.

LGBT Lawyers Come out of the Closet (Sort of)

In 1990, Ryan White died of AIDS-related complications. He was only 18. His death was arguably the first AIDS-related death which captured the general sympathy of the American public. Treatments for HIV/AIDS were just beginning to be approved by the FDA. It is fair to say that this was a grim period for the LGBT communities.

But change comes out of adversity. Shimon Kaplan, a Beaumont legal aid lawyer who also holds a Ph.D. from Columbia University, decided something had to be done. Kaplan was friends with John Paul Barnich, a Houston lawyer who was also a community organizer for HIV/AIDS issues, and the two determined that a local bar association for gay and lesbian lawyers was needed. Neither Kaplan nor Barnich sought the spotlight, and, as a result, the early history of the association they founded was not well documented. What is known is that on August 22, 1990, Kaplan and Barnich, joined by lawyers Mitchell Katine (an early leader in HIV law) and Mende Snodgrass, incorporated the Bar Association for Human Rights of Greater Houston, Inc., also known as BAHHR. Much like THRF, BAHHR hid its LGBT nature. As stated in its articles of incorporation: “The specific purpose of the Corporation is to promote human rights through all lawful means.”

The first year was consumed with the board of directors debating membership issues. After much hand wringing, a decision was made to elect the board from the lawyer members, but to keep member names confidential. The board began designating officers in April 1991, choosing Clyde Williams as the first president (1991–1994). Katine was its second president (1994–1995), followed by Chris Bacon (1995–1996).

Despite the concession of a confidential

HOUSTON LAWYERS FORM ASSOCIATION FOR HUMAN RIGHTS

Officers, Board Members Chosen; Panel Discussion on Legal Problems Of Breaking Up Set for June.

HOUSTON — On April 2, the recently formed Bar Association for Human Rights of Greater Houston [BAHR] adopted by-laws and elected its first board of directors. Clyde Williams, a well known criminal defense attorney, was elected President; Chris Bacon, an attorney with Vinson & Elkins, was elected Vice President; and Mitchell Katine was chosen as Treasurer. Other board members include James Kuhn, Shimon Kaplan and Wayne Bailey.

Over 20 attorneys attended the first meeting of the recently founded group. Membership is open to law professors, corporate counsel, attorneys from large firms as well as solo practitioners. A wide range of legal practices are also represented in the organization, including family, criminal, civil rights, employment and tax law.



Officers and board members of newly formed Bar Association for Human Rights of Greater Houston: [back row, l-r] board members Jim Kuhn, Wayne Bailey and Shimon Kaplan; [front row, l-r] Vice President Chris Bacon, President Clyde Williams and Treasurer Mitchell Katine.

TNT NEWS photo.

The first major project of BAHHR is a panel discussion set for June dealing with the problems gay and lesbian couples face when they break up. Panel members will include lawyers, academics, judges and counselors. The presentation will be open to the public.

BAHR was formed primarily to provide a forum for attorneys in the Houston community to exchange ideas and information of mutual concern. For more information on BAHHR and any of its activities, contact Chris Bacon at (713) 524-5549.

TWT APRIL 26 - MAY 2 1991

This Week in Texas (Apr. 26–May 2, 1991)
(photo courtesy of houstonLGBTHistory.org)

lic morality, the State’s only argument, was insufficient to justify the intrusion on privacy. In a somewhat tortured 1994 opinion, the Texas Supreme Court held that due to the bifurcation of civil and criminal appeals at the highest level of the Texas court system, the trial and intermediate appellate courts (which have no civil-criminal jurisdictional limitations), had no jurisdiction to declare the “homosexual conduct” statute unconsti-

Anti-Bryant, gay rights march planned

By ED JAHN
Post Reporter

Houston gay rights activists met Monday night to organize a candlelight protest march they claim will bring about 4,000 sympathizers here Thursday when Anita Bryant sings at the State Bar of Texas convention.

Meanwhile, supporters continued to rally around Bryant's cause, the most recent being entertainer Dale Evans.

Although a showdown Thursday may be inevitable, Gibson Gayle Jr., president of the bar, said the former beauty queen will receive the "tightest possible security" during her night in Houston.

Gayle said he has contacted the Houston Police Department, the Harris County sheriff and members of the Harris County district attorney's office for help.

"We don't mind marching or practicing any other form of free speech," Gayle said. "No one is going to commit any illegal acts either," he pointed out.

Approximately 65 persons are to serve as street coordinators for the march.

The march will begin at McGowen and Bagby. Demonstrators, wearing black arm bands, will walk two abreast on sidewalks on Louisiana and Smith Streets. Organizers said the march will begin at 8:30. Marchers will walk to the reflecting pool near City Hall, then re-

turn to the starting point.

Organizers of the march said they will have their own security monitors to insure that the demonstration is peaceful.

They said the marchers will not stop at the Hyatt Regency where Bryant is to sing. The marchers will pass the hotel, however.

Protest leaders said approximately 200 attorneys who will be inside the hotel where Bryant is to sing will put on the arm bands to share in the protest as the marchers pass the hotel.

Although no parade permit has been obtained by the marchers, police spokesmen said they would allow marchers on the sidewalks and assign a small detail

of police personnel to cover the demonstration.

Police said they doubt that 4,000 protesters from throughout the state will march, but they plan to monitor the protest and send in extra officers if they are needed.

The Thursday night protest is sponsored by the Texas Gay Political Caucus, Gay Task Force and the Houston Human Rights League.

The Houston chapter of the National Organization for Women, Inc. (NOW) voted unanimously Saturday to deliver a resolution to the bar members which

Please see Gay/page 18A

★ The Houston Post 19A
TUES., JUNE 14, 1977

Gay rights activists plan march to protest Bryant

From page 1

condemns the association's "blatant insensitivity to human rights" by inviting Bryant.

The resolution says the bar's action is an implicit endorsement of Bryant's anti-homosexual stand.

Gayle said it was doubtful the NOW resolution would be taken up during the resolution committee meeting Thursday.

He said the filing date for resolutions had passed and only authorized delegates would be allowed inside the committee meeting room.

Private arrangements have been made with off-duty lawmen to screen all those entering the convention area at the Hyatt Regency Hotel, he said.

NOW's organizers said they will picket and distribute leaflets around the hotel.

The state bar at one time withdrew its invitation to have Bryant entertain at the Thursday night dinner. Bar officials later reconsidered and Bryant accepted the invitation to sing and then give religious testimony at a prayer breakfast the next day. She'll get \$7,000 for her appearance and the money will come from the dinner ticket sales, Gayle said.

Image courtesy of the Houston LGBT History website, www.houstonLGBTHistory.org

membership list, few if any closeted lawyers joined BAHHR. In BAHHR's early years the members consisted primarily of solo practitioners, with the notable exception of Bacon, a young associate at Vinson & Elkins, and also the first openly gay lawyer at a major Houston law firm. BAHHR held several CLEs throughout the year, a holiday party, and an annual business meeting. A newsletter, which reported relevant LGBT legal issues, also began during Bacon's presidency. The *BAHR Reporter* was compiled by University of Houston Law Center students under the direction of Professor Mary Anne Bobinski, filling an important need in the pre-Google world.

Formation of the State Bar Section

In May 1996, good news arrived from the U.S. Supreme Court with *Romer v. Evans*, which held that an amendment to the Colorado state constitution that prohibited laws protecting the rights of homosexuals was unconstitutional.⁶ Things were

improving in the fight against HIV, which was no longer a death sentence. There was hope. And BAHHR became the vehicle to move forward on a statewide level.

After two unsuccessful challenges to the "homosexual conduct" statute by THRE, Wiseman voiced his wish that activist gay lawyers branch off from the State Bar Individual Rights and Responsibilities Section and form their own section. In 1996 Katine, then a young associate at the firm of Wiseman's friend, Gerry Birnberg, collected the 50 signatures then needed to form a new State Bar section and asked BAHHR president Connie Moore and BAHHR board member Charles Spain to join him in presenting the petition at the October 4, 1996 State Bar Board of Directors meeting in Fort Worth. Frye wrote a letter to the board to protest the proposed name, the Gay and Lesbian Issues Section, because it was not transgender inclusive. Despite the trio's lobbying and advocacy, the board narrowly defeated the measure. Adding to the loss's sting was a parade of directors

who voted against the proposed section, assuring the trio that the rationale was not anti-gay, but instead motivated by the fact that the issues could be "better represented within the existing Individual Rights and Responsibilities Section."

What initially seemed like a defeat, quickly turned into good news. After the vote against the proposed section, the Honorable Norman W. Black, judge of the United States District Court for the Southern District of Texas and the federal judiciary's liaison to the State Bar Board of Directors, pointedly and publicly criticized the board. Judge Black was quoted in the *Texas Lawyer* for his rebuke: "I've always learned a lot about my fellow members from these meetings... Today's the first time I wasn't real proud."⁷ The State Bar promptly re-gamed the system by passing more stringent rules for forming a section, but the 1997-1998 BAHHR president, Anne Pike, another Vinson & Elkins associate, started the process to create a new transgender-inclusive State Bar section. BAHHR

collected the 200 signatures needed and jumped through the rest of the new hoops. The State Bar Board of Directors voted on April 17, 1998 to approve the creation of the Sexual Orientation and Gender Identification Issues Section, the first such section of any unified bar in the nation. Judge Black's 1996 rebuke was republished in the *Texas Lawyer* days before the board meeting.⁸

BAHR recognized Judge Black the year before at its spring 1997 annual meeting for his role as an outspoken guardian of human rights. Judge Black told the BAHHR members that his deep, personal commitment to human rights was kindled as a Jewish youth growing up in segregated Houston, matured throughout his judicial career, and nurtured through his collegiality with individuals such as Fifth Circuit Chief Judge John Brown, who served during the Civil Rights Era. Judge Black exhorted the BAHHR members to continue the fight for an LGBT law section, concluding with words attributed to Winston Churchill: "Never give up." Unfortunately, Judge Black did not live to see BAHHR's success in 1998.

BAHR Comes Out...


Over the next seven years, BAHHR maintained a very close relationship with the State Bar section because the first seven section chairs were from the Houston area. BAHHR finally dropped the confidential status of its membership. In spring 2000, BAHHR changed its name to the Stonewall Lawyers Association of Greater Houston, Inc. To recognize its long tradition of welcoming non-lawyers as associate members, in fall 2002 the name was changed to its current form—Stonewall Law Association of Greater Houston. Stonewall Law is an affiliate of the National LGBT Bar Association, and since 2010 has partnered with other local minority bar associations to promote diversity initiatives.

Stonewall Law's relationship with the Houston Bar Association has evolved over the years. Stonewall members have always been welcome to participate in the AIDS Outreach Committee of the HBA, and during the presidency of Jerry Simoneaux

(2002–2004), the HBA president invited Stonewall Law to participate in the HBA monthly local bar leader lunches. Over the years there have been discussions about Stonewall Law transforming into an LGBT law section of the HBA.

Stonewall Law is now 26 years old, and the current president is Ashlee Dunham. The world has changed for the LGBT community since the 1969 Stonewall riots. The U.S. Supreme Court has declared the Texas "homosexual conduct" statute unconstitutional, overruling its regrettable *Bowers* opinion,⁹ and finally recognized marriage equality in *Obergefell v. Hodges*.¹⁰ Stonewall Law today focuses on networking, CLEs for its members, recognizing emerging leaders from recent LGBT law school graduates, and working with other local minority bar associations to improve diversity in the legal profession.

Six sessions after *Lawrence v. Texas* the Texas Legislature still has not repealed the unconstitutional "homosexual conduct" statute, and marriage equality is not altogether welcome in the Lone Star State. The line between zealous advocacy on behalf of clients and public LGBT-activism remains narrow. Stonewall Law is now proud to have honorary members such as Phyllis Frye, Kathy Hubbard, Ray Hill, and Annise Parker (former Houston mayor). They are role models for us all.

As Judge Black told Stonewall Law members 19 years ago, "Never give up." We won't. 

The Hon. Charles Spain is an Associate Municipal Court Judge in Houston and an LGBT activist.

Endnotes

1. Act passed Feb. 11, 1860, 8th Leg., R.S., ch. 74, art. 1, art. 399c, 1860 Tex. Gen. Laws 95, 97, reprinted in 4 H.P.N. Gammel, THE LAWS OF TEXAS 1822–1897, at 1457, 1459 ("If any person shall commit with mankind or beast the abominable and detestable crime against nature, he shall be deemed guilty of sodomy, and on conviction thereof, he shall be punished by confinement in the penitentiary for not less than five nor more than fifteen years.").
2. The source for the much of the article's historical background comes from the author's three decades of experience as an LGBT activist and the fellow travelers he knows. The best general work on the subject is Yale Professor William N. Eskridge Jr.'s *Dishonorable Passions:*

Sodomy Laws in America, 1861–2003 (Viking 2008). The author is flattered to be mentioned on page 310 as one of a "new generation of legal activists."

3. *Baker v. Wade*, 553 F. Supp. 1121 (N.D. Tex. 1982), rev'd, 769 289 (5th Cir. 1985) (en banc).
4. *Bowers v. Hardwick*, 478 U.S. 186 (1986). The author of this article was a Baylor law student when *Bowers* was handed down and that morning announced to his fellow students and professor in a family law class that "The Supreme Court just issued the second worst opinion in the Court's history." The author was not yet out of the closet.
5. *State v. Morales*, 826 S.W.2d 201 (Tex. App.—Austin 1992, pet. ref'd [by Court of Criminal Appeals]), rev'd on other grounds, 869 S.W.2d 941 (Tex. 1994). The Texas Supreme Court acknowledged that the jurisdictional problem in *Morales* was not present in a similar civil case from the Austin Court of Appeals declaring the statute unconstitutional. 869 S.W.2d at 942 n.5; see *City of Dallas v. England*, 846 S.W.2d 957 (Tex. App.—Austin 1993, writ ref'd w.o.j.).
6. *Romer v. Evans*, 517 U.S. 620 (1996).
7. Janet Elliott, *Bar Denies Gay Issues Section*, TEX. LAW., Oct. 14, 1996, at 1.
8. Janet Elliott, *Two New Bar Sections Garner Support*, TEX. LAW., Apr. 13, 1998, at 1. In 2010 the section was renamed the LGBT Law Section.
9. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) ("Bowers was not correct when it was decided, and it is not correct today."). The defendants, John Lawrence and Tyron Garner, were arrested in Houston. They called Hill from the Harris County jail, who referred them to Katine, who served as their local counsel. *Lawrence* vindicated the author's opinion of *Bowers*. See *supra* note 4. The *Lawrence* legal team did not emphasize that the statute was arguable void under *England*, see *supra* note 5, instead successfully going for a nationwide win.
10. *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015)



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