



## **Module 14: Mazzoni Center**

### Case Study: David Rosenblum

I'm David Rosenblum, I'm the legal director here at Mazzoni Center, I've actually been the legal director here only for two years but I was part of the founding of this organization when it was a separate entity before it sort of morphed into Mazzoni about five years ago. So I've been doing this kind of work for 15-20 years but officially at Mazzoni for the past 2.

So we offer sort of a wide range of legal services. The only requirement, we have sort of two requirements. One is that it be civil not a criminal matter, because there's plenty of places that can handle that. But then secondly it just has to be related to someone's sexual orientation or gender-identity. And that can be a host of things, right? It sounds very narrow but when you start talking through it it can be an employment discrimination matter, it can be families coming together, it could be families splitting apart, it can be wills being drafted for people. We're seeing a lot of senior issues now as more older, individuals come out or are out. So issues about benefits and senior housing, and also because people are coming out at a much younger age we're seeing a lot of issues coming up in the schools; the good, the bad, and the ugly. Sort of the happy stuff I want to take someone to the prom, and the sad stuff of bullying or things like that.

So there's an unmet need for LGBT individuals, I'm sure you've heard this phrase before, Lesbian, Gay, Bisexual, Transgender and we're the only organization in the state that addresses specifically these issues particularly from low-income people. But there are on the one hand bad laws out there that say we're not going to recognize your relationships and then other situations which we see much more of, there's just sort of a silence. There hasn't been.... When laws were written they didn't think about how's this going to impact on a gay person? On a transgender person? On the same sex couple?

So there is absolutely a need, both to have people who understand the cultural competency piece, right? So that if someone comes in and says, "My partner and I want to get a will for each other." We don't respond, "What? That's someone of the same gender. That can't be done." But then there's certainly much more nuances about what is employment discrimination, how does it play out? Subtle things that people just don't think about. And I don't think that they're necessarily homophobic or trans-phobic or whatever, but they haven't been confronted with this so having a transgender individual in the workplace is a new barrier for them, or a new issue for them to sort of address. And so our job is to try and sort of have everyone breathe through it, and figure out what's the best way to address the situation.



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I think that... The two most popular kinds of cases that we see come in here would be employment discrimination situations where it might be something like a hostile work environment where people are calling people names or making innuendos about someone's sexuality. Coupled with that we have a good number of transgender clients and as I was sort of alluding to, there is a lot of misunderstanding about this. So if someone transitions while they're working somewhere, there's a question of what bathroom do you use and what name do you use and what's your legal name, what's your quote unquote "real name". Those sort of complicated questions that come up, right?

So it is that employment matter but then sort of piggy-backing on the trans-cases. People changing their names generally, both for work, it might be for school, it might be to qualify for benefits, section-eight housing; all kinds of things that you don't think about that are tied into your name. And there's a real concern that when someone transitions that they're going to be accused of fraud. You used to be this person now you're this person, you're lying to us. And that's just not the case with trans-people already, they're hopefully sort of getting all their identity issues all aligned and part of that certainly has a legal component to it.

This summer was an exciting time with the Supreme Court ruling finally that DOMA, the Defense of Marriage Act, is unconstitutional; we sort of knew this for quite some time but it's nice to get that confirmed. And that has opened sort of the flood-gates of all kinds of issues because people think of marriage as just you're going to have a big party and wear your big fancy clothes and invite your friends over, but from a legal point of view so many things are tied into that. At the federal level there are 1,072 rights that have been identified tied into being married or not being married. Yeah, it's pretty remarkable. And so things like your taxes, right? Filing joint taxes. Things that you don't think about it until you're actually seeing the situation.

In my own personal case, I'm actually in a bi-national couple. My husband is from Austria. And prior to DOMA's demise, I couldn't sponsor him for a green-card even though we'd been together for ten years. Now I can, and we've gotten married and that's all official now. Things like I mentioned before some senior housing issues that come up, Medicare has rules about if you can live in a retirement home with your spouse. Spouse used to not include same-sex couples, now it does.

So there are lots and lots of things, employee benefits, and things like this which have honestly a real impact on can people get health coverage? Can people live on retirement funds if one partner passes away, can they collect social security benefits? And veteran's benefits? All of these things that will make your head spin that lawyers just love to sort of dig into. But there's all these rights that previously in the eyes of the law, there was no such thing as a same-sex couple, and so with bans on marriage gone, well, it has opened up all of these exciting areas where we can take care of our own families and insure, from a public health point of view, stability.



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Yeah, I think that a real significant thing that we're looking at now to do some affirmative litigation around, is insurance policies that have blanket exclusions that say they will not cover anything related to someone's trans-gender status. And in some cases that's something like surgery, in other cases it's the same sort of procedure that they would offer to a non-trans person. So something like a hysterectomy, that if you are a woman who needs a hysterectomy there's no problem with the insurance company covering that. But if you're a trans-woman who wants to become a man and so part of that procedure would involve that, they'll say, "Well we're not going to cover that."

So we've even seen some outrageous situations where insurance companies have said, "Because you are trans, we will cover nothing." So we had a case, believe it or not, where somebody broke their arm and they said, "Well you're trans, and so your policy does not cover that." As if their broken arm is somehow related to their trans-status. And this goes against all of the sort of medical research and things like this about medical necessity of it which is always the standard for insurance but some insurance companies still have this notion of, this being cosmetic surgery. This being no different from a nose job or something like that, which clearly is not the case with these folks.

I think that tied into sort of the issues that I've spotted already, affirmative marriage equality laws, because so many things are tied into it, a lot of these things despite the big victory at the Supreme Court at the federal level, lots of states including Pennsylvania where we are right now do not recognize same-sex couples, so... There are 1,100 federal rights that we talked about, but there's another 900 state rights that are presently denied to same-sex couples, at the state level. That's a big deal. Because that's going to open up, again, taxes, inheritance, and all those fun things.

Also things like insurance coverage that will make more sense and have it be an individualized assessment. I'm not saying everyone should be allowed to come in with a nose job and say this is part of my trans-status, that's not going to work. But sort of looking at what the insurance companies say that they base it on. What is medical necessity? So changes in the way that you look at that based on their research and what the DSM-5 is saying now about people who identify as trans-gender.

I think also, and it sounds sort of not that closely related to health issues, but it is; non-discrimination laws. It seems pretty obvious but if you are living in a state that you can be fired from your job because you are gay, lesbian, bisexual, or trans-gender this is not good for your mental health, this also can lead to losing your job for completely lawful reasons of, "We don't like you because you're gay." And tied into that of course is so many peoples' health insurance that you get through your employer. It becomes sort of a vicious cycle. So I think that those, seemingly unrelated issues,



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all sort of lead to what Mazzoni talks about as the holistic approach to things, right? This whole-health healing of making sure that you are able to be a vibrant member of society.

Well I think that my personality and sort of the way that I approach these situations is to not go in guns-a-blazing, and assuming that a person is homophobic, trans-phobic, or whatever. But rather see it as a teachable moment and really educating the other side. We had an issue that came up last year about voter I.D. and Pennsylvania was challenging whether photo I.D.'s could be used at the polling places. And I wound up writing a letter to the Secretary of State for Pennsylvania saying when you pass these laws, nobody was thinking about transgender people, I understand that, I'm not calling you a homophobic, I truly believe the legislators were not thinking about this. But we've got statistics to show that this had an impact of something like 7,000 trans people in Pennsylvania who were not able to get identification that would meet the new specifications.

And so, as a result of that, we actually had a really nice victory which was that the Secretary of State said, "We're going to take gender off of what's called the 'I.D. of last resort'." So when you go to vote you can get a free I.D. from the state that says this person can vote regardless of what gender you think they are or what gender they identify as, so that was a nice victory without it being a complicated law suit. We do, I don't want to suggest we don't, engage in litigation, we certainly do. A lot of times though, I have to say, the threat of litigation goes really far.

To tell another story, we recently had somebody who was working at a chain steak-house restaurant who was transitioning at work and they were told by their boss, "Okay we understand what that means, you can't use either of the bathrooms here because this will freak out the customers." And they instructed her to go, I wish I was making this up, down the street where the instruction was, "We think there's a Dunkin Donuts that probably has a single bathroom there, and we'll give you a 15 minute break to go down the street to that place." Well this was not really a very sane response to a situation and so I called up the other side, and got the general council for this national chain, who first started saying, "Well, I need to see medical records and find out whether this person has had surgery or not, because we're concerned about all these unrelated fears of what could happen in a bathroom." And threaten them with, you know, here's what the law says. You're now violating federal law about what is sex-discrimination, you're denying them access to a bathroom which violates OSHA regulations, you know, I try to be creative in a nice way, I try not to be too mean.

And in this place there was actually a local ordinance that was really strong, and it's in the middle of Pennsylvania where you wouldn't expect there to be a nice ordinance but there was a really nice trans-inclusive law that we could point to and say, "They're chomping at the bit for it to be the first case to address this. So do you want to be that case?" And happily, they caved after a lot of education, and built their own single bathroom in the back for employees to use, male



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or female, or people who are transitioning. So I think that it's about using the law creatively and certainly knowing when to threaten and when to educate.

There are plenty of folks who will sort of have a scorched-Earth approach to things, I don't think that that makes the most sense in every situation. There are certainly cases where we get resistance from the other side and we say, "Let's go to court. Let's have the courts work this out." And I think what's really nice about doing what we call direct services here, is that we're not talking theoretical, we're not talking policy things like, "Should gay people be allowed to marry?" "Should trans people be allowed to use bathrooms of their own choosing?" More specifically it's a direct services piece, should this person have to walk down the street to go to the bathroom? Should this person have been fired because he told his boss that he was gay? I think there's real power in advocating for an individual person in that regard.

I think, one other... Well there are two cases that we're actually working on right now. One is a very young trans-identified child who's in elementary school. The parents have contacted us and said we want to get a legal name change for this person, who I think was five or six years old. And we sort of said, well why? Not to be funny, they don't have a driver's license, what are they changing their names on? And what the parents told us was, the concern was about going into elementary school and what name the teacher was going to use, what bathroom facilities they could use, and things like this. And the school was saying, "Well the only way we can do this is if you get a legal name change." I understand that rule, they are concerned about other parents and things like this.

Happily, we got the student's medical records and things like this and saw that there were psychological diagnosis that were tied into the child's very real trans-identity. I mean she had been living as a girl for three or four years, starting at like two or three years old, pretty remarkable. And we went to the school, and said, "We don't think we want to get the courts involved. Whether it's for a name change or for a lawsuit against you, but how can we accommodate this?" And when we said the word "accommodate", the school said, "Oh, wait. We know how to accommodate disabilities, learning disabilities, or mental impairments of some kind." And they said, "We've got a form for that, we know how to do this. So let's see if, based on the diagnosis that she had from her therapist, etcetera, if there's a way to come up with this."

And happily, without much fan-fare, and without putting that kid in the spotlight because that's exactly what we don't want to do, we worked out a way to insure that that child can be identified by the name that she identifies as, the gender, she can use the bathroom and all this. And they're going to revisit it every year just you would any other disability accommodation. Not to suggest that being trans, itself, is a disability. So that was kind of a nice thing.



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The other case of word that's ongoing now that I think is helpful, for folks to sort of grasp. We have a 60-ish client, transgender woman, who has been living as a woman for 30, 40 years. Pretty remarkable. She is very low-income, there's no other way to put that, and is now on Medicare and wants to get the last bits of her procedures done to fully realize herself as a woman. And along the way there's also been some complications about procedures because she still may have parts that the insurance company says, "We are confused. You are a woman on paper, how can you have conditions that affect men?" Trying to be careful, about this.

So because she's on Medicare, this is not even about challenging an insurance company, but this is going to big systems like this. So we are presently going through a, not surprisingly, complicated appeals process. They keep denying it and denying it, but they get what we're trying to do, that we ultimately want to get this before a judge and say, "Look at this person. This is not someone trying to scam the system, who's going through, what is amounting to months and months and will probably be years, of appeals and litigation, just to say, 'Can you please cover this procedure?'" She obviously cannot afford these procedures by herself.

So these are exciting things that sort of bring together what we call here in medical-legal "partnership", right? That this person was also a client of our medical center, so she was connected with us to say, "Okay so I'm getting my medical issues addressed over here but I keep hitting this wall with benefits and insurance and things like that." So it's an exciting time to sort of figure out, what are they going to do with these situations? And not sort of abstract, there's been surprisingly good cases out there about procedures being covered for inmates in correctional facilities in other states, and so we think that, oh my gosh, our client is not a criminal, so if you're covering it there, why wouldn't you also do this here? And again there's that power in seeing her as a real human being, and that's the sort of, "Can we change that policy" we abstract, and certainly there are people out there doing that advocacy work but I think there's more power to say, "Here she is. Listen to her story."

I think, and I'm sure that the other people that you spoke to would echo this, cultural competency goes a long way. That when someone feels comfortable talking about what's going on with their relationships, with their bodies, just in their lives generally, you will be able to help them more. And we all face these situations that are unfamiliar to us. I recently was representing a trans client before an administrative agency. And the person who was conducting the interview said, "This is my first trans client, and I hope that I don't mess up pronouns, or say something inappropriate. If I do, tell me, because I want to learn from this process." I thought that was just a fantastic thing, because you know, we deal with lots of law students that work with us, and we say, "Look, we don't expect you to show up here the first day knowing what it's like to be a 65-year old African-American trans-woman on Medicare." Right? That's just not going to be their experience as a law student of a suburban law-school.



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But I think that the cultural competency really does matter, because look, we're not here to judge people. We're here to find out what happened to them and how can we fix that situation. And if they hide the ball on things, that's not going to help whether it's legal, medical, mental health, whatever else - we need to know everything that's going on. And it's one of the nice things about having legal services integrated into the rest of Mazzoni is that we can share information about that. We can say, "Here's the whole person." Right? Because none of us are just legal beings, or just medical beings, or just psychological beings - we are all integrated, so I think that the teaching piece of that is to treat the person as a full person, acknowledge your limitations, and treat them the way you would want to be treated. It seems very common-sense but I think it really does go far.

When we have new clients that come in here, we say, "What pronouns do you use?" "What name do you prefer?" "Is that your legal name?" Because we probably need to know that, you know, and then we go from there. So I think just not making assumptions, and being nice to people - it seems so basic, right? But I think that it makes the world of difference because people then, at the end of the process say, "We were afraid to come talk to a lawyer, but you made it as happy of an experience as possible." You know, I joke that people don't come to lawyers to say, "Everything's great in my life." Right? No one ever does that. So it's good to be there to sort of be the friendly face on that, to ease them through an unfamiliar process.