

Child's Best Interest



Transgender Parent Issues Workshop & Discussion

What are the additional issues that a trans person faces when they are also a parent? What legal parenting protections exist or do they? What defines the qualities of a parent – birth gender, love and affection? Mother, Father, birth parent – how do you fill out your child's school forms, how do they respond to, "Who is that?" from their friends? What happens when the non-trans parent re-marries or begins a new partnership?

Best Interests of the Child will present a glimpse at the social, psychological and legal topics related to being a transgender parent.

- Custody determinations, evaluations, psychological testing, ethical guidelines, legal guidelines, arguments against the transgender parent.
- Non-custodial parenting, the new step parent, the children's schools/activities, filling out forms, protecting the biological, transgender parent's rights.
- Current court cases including Kanteras v. Kanteras with video clips from the CourtTV case.
- Legal protections, wills, pre-nuptials, the divorce/custody decree.

An open discussion, question and answer period will follow the presentation.

Presenter Introductions

- Shannon Minter
Esq., Sr. Staff Attorney, NCLR
- Jack Keegan
Board Member, Pride NW
- Paula Funatake
Founder/Director, TransParentcy

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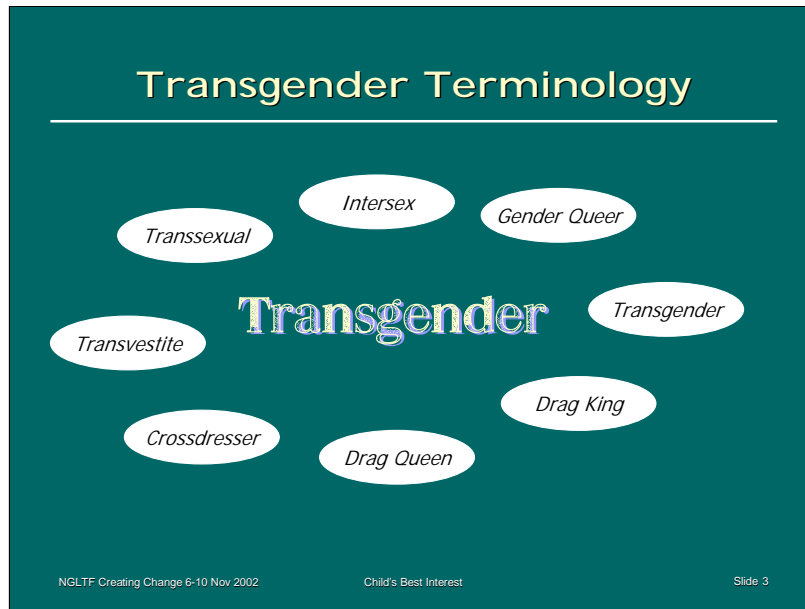
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•Shannon Minter joined NCLR as Staff Attorney in 1993. In addition to directing NCLR's pioneering Immigration Project and Youth Project, Minter is a volunteer attorney with the San Francisco Bar Association HIV & Immigration Project and a founding member of the San Francisco/Bay Area Lesbian & Gay Immigration & Asylum Rights Task Force. Minter is in great demand around the country as a speaker on queer youth, immigration and transgender legal and policy issues. He received a B.A. from the University of Texas at Austin in 1983, completed four years of graduate study in English and American literature on a four-year Mellon fellowship at Cornell University, and worked as a researcher and editorial assistant for Henry Louis Gates, Jr. at the African-American Fiction and Periodical Project at Cornell. Minter received a J.D. from Cornell Law School in 1993, and was an editor for the Cornell International Law Journal. In 1993 Minter was awarded a two-year Equal Justice Fellowship from the National Association for Public Interest Law which funded his first two years of work with NCLR.

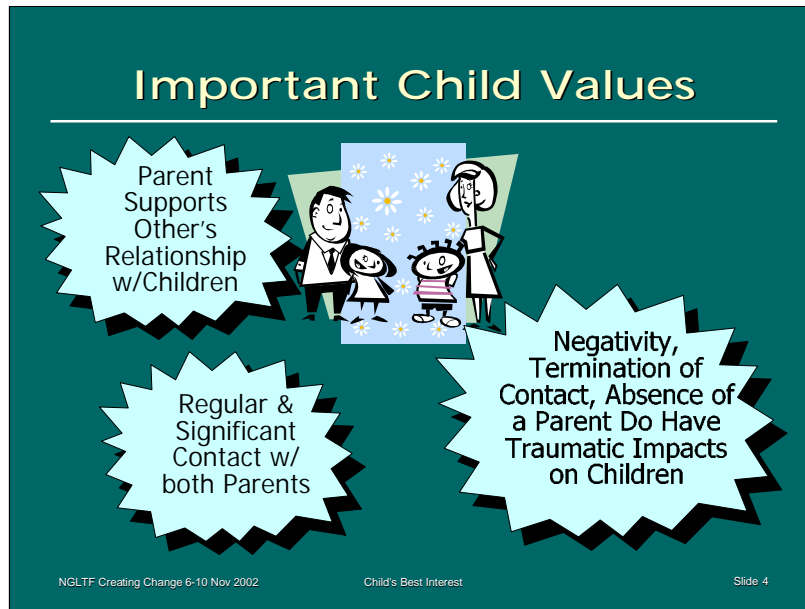
•Jack Keegan has been increasing transgender awareness in the Portland metro area for about three years. He is on the board of directors of Pride Northwest, the board that organizes the Portland LGBT Pride Celebration. In addition he is the faculty advisor for Queers and Allies, Portland State University's Queer student group. In his real life, Jack is a research metallurgist and is the non-custodial biological parent of two kids.

•Paula founded TransParentcy in 2001 near the end of her own divorce/custody dispute. In addition to her work with TransParentcy, Paula has volunteered with the Northwest Gender Alliance, Basic Rights Oregon, Cascade AIDS Project, and It's Time, Oregon!, participated on educational panels on transgender issues and is a member of the National Center of Lesbian Rights, It's Time, Oregon!, PFLAG Portland Chapter, Oregon Safe Schools and Communities Coalition and the International Gay and Lesbian Human Rights Commission. Paula has two (2) children, a daughter, 27, and a son, 5.



This workshop will use the term, Transgender, as a communication, umbrella term to be wholly inclusive of anyone whose gender identity or expression falls outside the stereotypically perceived or expected behavior of female and male. Not all persons whose gender identity or expression differs identifies as transgender and we do not make any attempt to assign this label to them. As you encounter parents remember that they may not identify nor accept the transgender label.

Again, transgender is used to be fully inclusive but not to be a broad label.

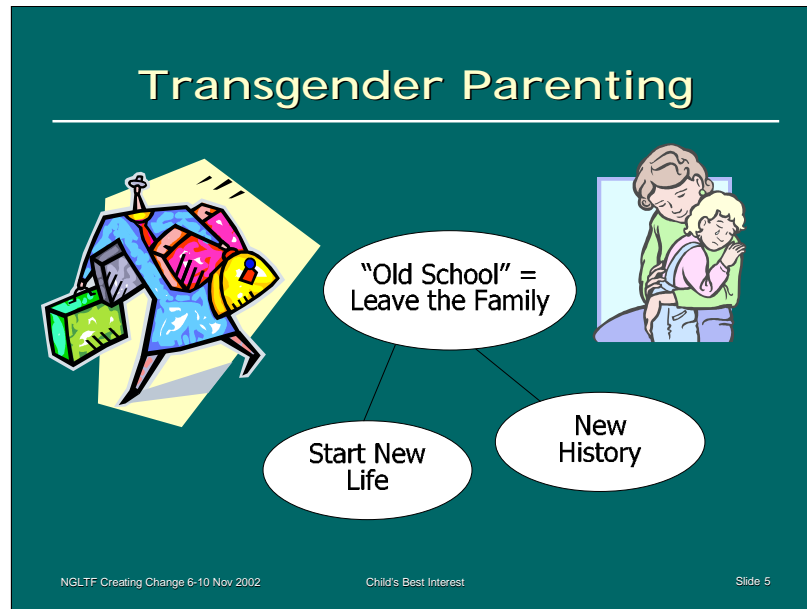


- Both parents acknowledging and supporting the importance of the other parent's relationship to the child.
- The child needs both parents
- Any negativity affects the child

In general, few would argue about the important values that are in a Child's Best Interest. These values are strongly supported by most mainstream organizations such as the Board of Psychologists, the Forensic Psychology group and on.

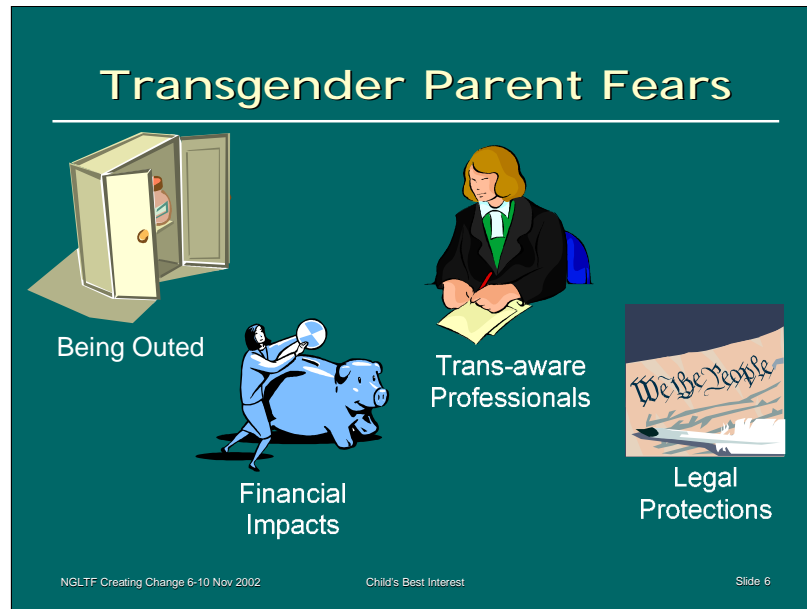
These are at odds in divorce even when no trans issues exist, often, the process is a fight to "win" more than how can the adults best serve the needs of the children.

But what happens to these values when the issue involves one parent being transgendered? These issues are not primarily for the transitioning parent, but for anyone who falls under the umbrella term, Transgender. Much of this information presented will focus on those who are or have transitioned, but, again, these issues are not exclusive to the transsexual.



- In the past, mostly there was no transgender parent.
- Not that long ago, the standard practice was for the transsexual to abandon their family. Not doing so would be marked as a failure to transition by the presiding therapist. They had to have a clean history, they had to estrange themselves from any connection to their male/female past.
- This likely has left some bad images and reputations as far as what being trans means to a family.
- There has been the need to move toward transition quickly (from the non-trans parent's perspective), not giving them time to adjust, learn or understand. This, too, leaves the trans parent portrayed as bad on the family, leaving the pain and emotional scars behind.
- Recognition for the value of a transgender person retaining their parenting rights has been a slow, on-going process.

{ Personal Experiences – Jack, Paula; Professional perspective – Shannon }



- When custody is disputed, the trans parent faces not only legal but personal challenges.

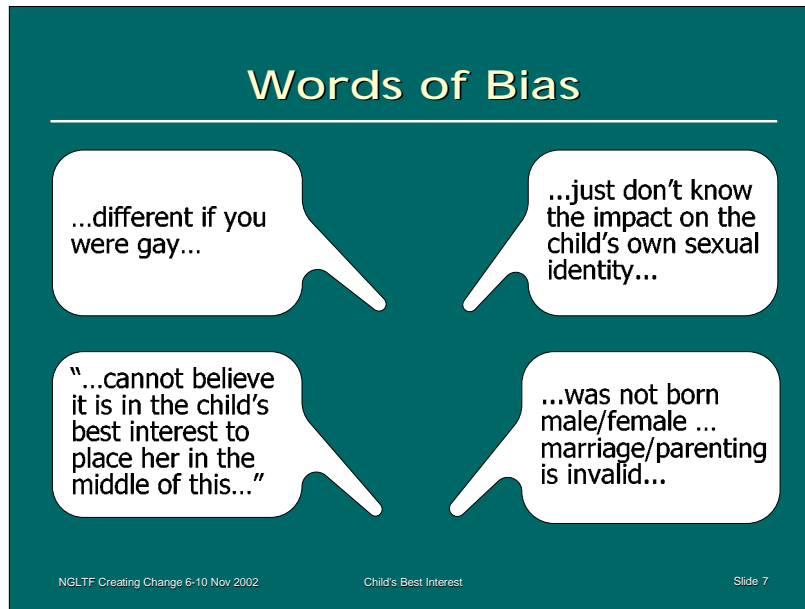
- How ready are they to be constantly outed, what about witnesses that are called, what is the risk of being outed (employment, family)? Depends on where in transition the person is. What about the non-transitioning trans person? What and how has the non-trans parent shared information to mutual friends and/or neighbors? Often the fight ends before it has even begun, the battle appears to the trans parent as futile, hopeless. Again, the children lose.

- Many do not know their rights, how custody is awarded, what are their jurisdiction's specific guidelines? Do they have legal rights or protections as parents? There are no jurisdictions to date that explicitly include gender identity in their statutes governing the dissolution of marriage or custody determinations. Many do not know the guidelines stated for determining custody awards, most knowing that it should be the "best interest of the child." Important to know, to identify the trans parent's strengths in the areas used, as often the non-trans parent will find weaknesses in those same areas.

- Who are trans-affirming attorneys? Are there any in their area? What about evaluators? Judges? The trans parent's attorney may have an uphill battle, how ready are they to stand and fight? In Portland, to date, I have heard of only one lawyer who left the client feeling like they were represented, who did not back down (that was my attorney). What about the smaller towns, supportive attorneys become few and scarce. Some trans parents have represented themselves, others, again, are left lost and/or "defeated."

{ Information from Shannon }

- Legal fees can add up quickly. – attorneys, filing costs, evaluators, mediators, time off work... If there is a significant difference in income, that in and of itself may control the outcome.



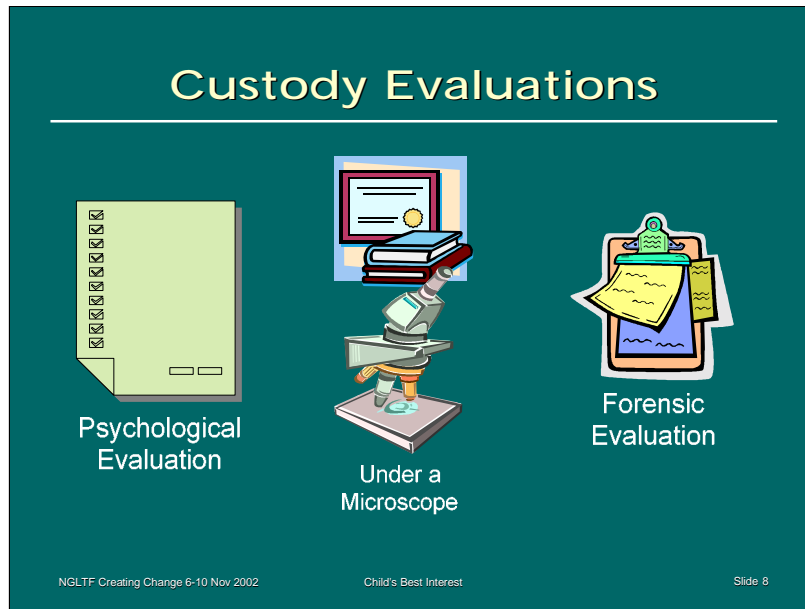
- There are many ways non-support of the transgender parent is communicated, most to support an ignorance and bias that truly has little to do with the relationship between the child and their parent.

- How disheartening to hear these words from “professionals” who are by oath to act from a position of objectivity.

- These are real statements, made by evaluators and judges during actual hearings or sessions or in the recommendation report from evaluators.

- What affect would these words have on you, knowing that you have been a good, loving parent? These hurtful words from people you believe or trust are objective?

The trans parent must be tuned to these words, that if they catch them early enough and have any choice in the person, it is time to find someone else (mediators, evaluators, psychoanalysts).

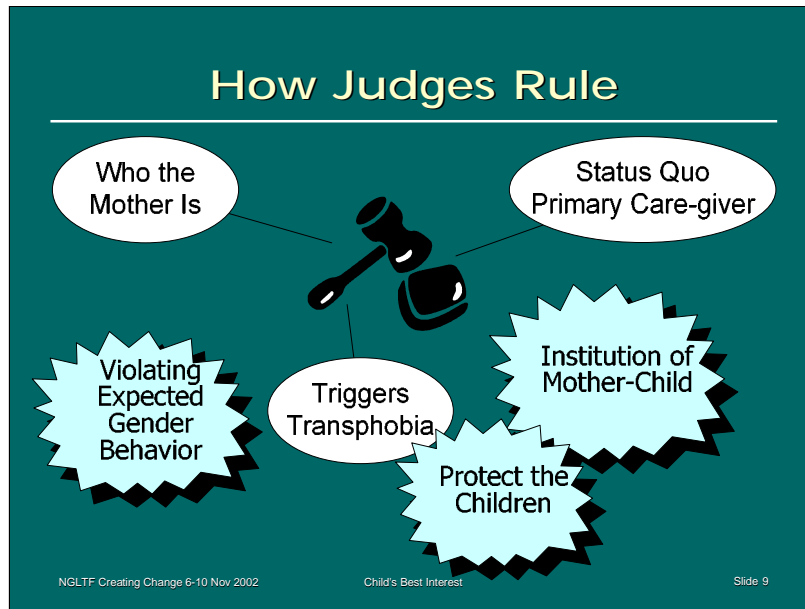


Another institution that is involved in disputed custody cases are custody evaluators.

- Despite guidelines, still at the mercy of the evaluator's bias'. You and your life may be put under a microscope, who you "hang out" with, where you live, your friends.
- What method will the evaluator use?
 - Psychological – mental health inventory, very open to evaluator's bias', little to no checks and balances to ensure the evaluation is objective.
 - Forensic – based on many aspects, data and research driven, all areas used to reach a more objective evaluation. But still no guarantee.
- Unlike medical evaluations, getting a court-ordered second opinion is all but impossible. Choose wisely.

Regardless of the type of evaluation, the outcome cannot be guaranteed to be free from bias. There is also a group of psychologists who strongly question the validity of forensic psychology in the area of custody evaluations, that the true motive is financial over the child's welfare. They argue that forensic psychology developed from a financial need of the psychology profession and not from a need to address the short-comings in focusing on the child's welfare.

There are excellent organizations working to change that, some are LGBT specific, some are not like the Children's Rights Council (Formed in 1985, the Children's Rights Council (CRC) is a national non-profit organization based in Washington, DC that works to assure children meaningful and continuing contact with both their parents and extended family regardless of the parents' marital status.)



- This isn't true in all states and all courts, but in general, courts still prefer mothers over fathers when it comes to custody of children. In order to get custody over Mom's objections, most judges would require that Dad show something pretty distressing that Mom has done as a parent, like driving drunk with the children, offering drugs to the child, or leaving a young child unattended for quite a while.


- In addition to the “normal” bias’ the trans parent may trigger additional, negative reactions.

- Their notions of gender behavior
- Their comfort with gender identify/expression variance.
- The long standing belief in the mother/child or father/child institutions and the expected behaviors those roles represent.
- All to “Protect the children”


- May also see avoidance of recognition of the trans parent, changing the argument from value as a parent to acknowledgement of the trans person’s self identification, to defining who is a male or female as if it is the determinant of a worthwhile parent.

Research: What activities has the judge participated in, professional panels, legal proceedings, all may give a clue as to what they believe or stand for in the court room.



Custody Case Law



- Suzanne Lindley Daly v. Naon Toews Daly
- In re Darnell

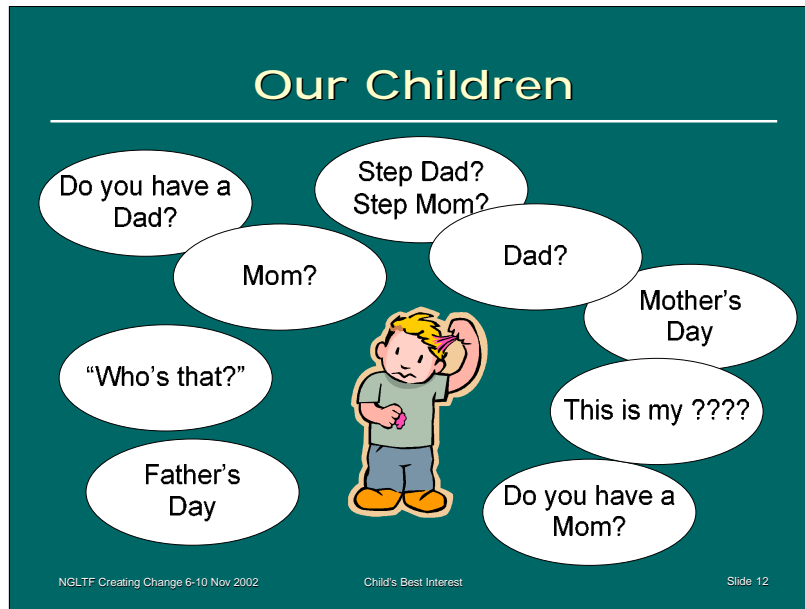


- Forrester v. Forrester
- Kanteras v. Kanteras
- Christian v. Randall

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- Custody case law, while helpful, may not yet be fully useful in custody cases. There are as many bad as good rulings, so there are no clear paths to predicting an outcome.
- Sadly, it is far too many times that we hear of parenting rights terminated, the children will no longer have this parent in their lives.
- Slowly, the scales are tipping the other way. With increasing news and television coverage, with the rapid flow of information through the internet, more people are hearing about the bias and unfair treatment of transgender parents. More transgender parents are armed with better information, more supportive lawyers, judges, evaluators who understand that being a parent has nothing to do with their gender, or sexual orientation, race.
- Forrester v. Forrester set a precedent in Ontario Canada, this was the first case this jurisdiction had heard. Justice Theo Wolder of the Ontario Court of Justice in Brampton ruled that “the applicant’s transsexuality, in itself, without further evidence, would not constitute a material change in circumstances, nor would it be considered a negative factor in custody determination.”
- Kantaras v. Kantaras is awaiting final ruling. Last, Michael was awarded temporary full custody following the children’s mother violating the temporary parenting plan provisions. {current status from Shannon}
- What is court like? <View Video>



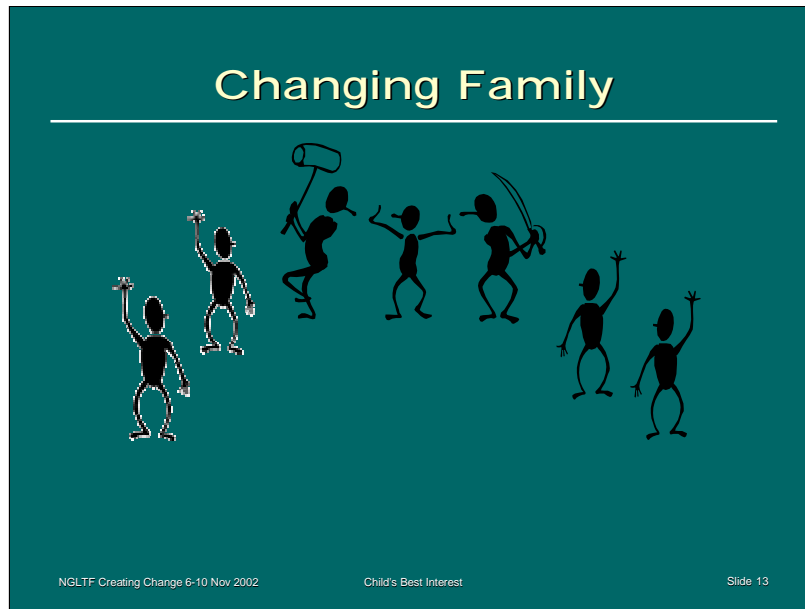
Custody, for the Trans Parent is one of the most visible of issues facing them, as a trans person and as a parent. However, there are also on-going issues the trans parent must face. The grace and ease will also depend a lot on the relationship with the children's other parent. Even if you have custody, there are issues that will come up through out your children's lives.

Depending on the relationship between the children's parents, some of these issues may be greater or lesser.

- Starting School, who are you? Mother? Father?
- Friends asking, "Who is that?"
- Re-marriage or new partners. Now who is Mom, Dad, Mother, Father? Who fills out forms, whose name goes where?

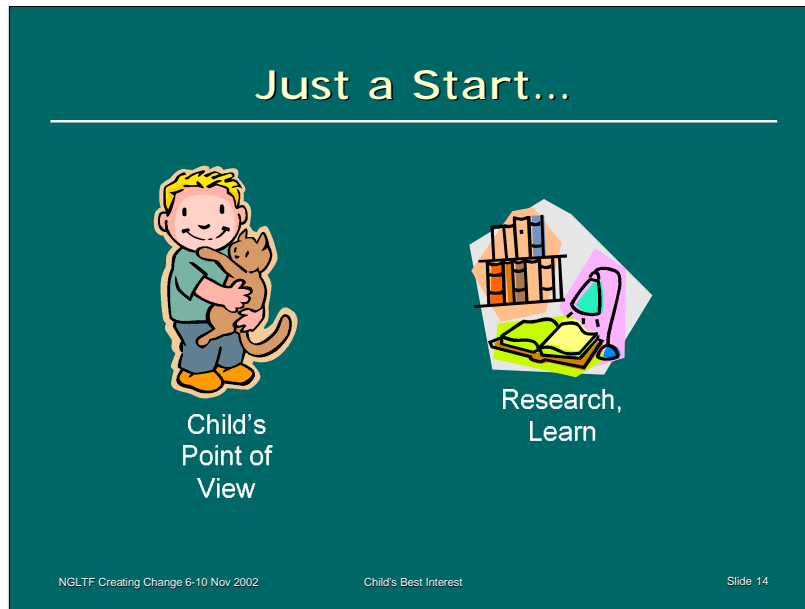
Some institutions are moving into the twentieth century – forms have Parent 1 and Parent 2. Be pro-active in meeting with your child's teachers, care providers.

Some of these issues exist even when the parents remain together. That adds how do you honor the non-Trans parent and minimize dealing with potential conflict over being trans?



Parents that do not get along, place the child in the middle, no matter how “secretive” they think they are. One or the other may act to alienate the child from the other parent.

As the child’s family changes, new partners, maybe new siblings. If the transgender parent is non-custodial, non-joint legal decision-making, risk of being alienated even more. The children’s other family may allow them to feel more “normal,” so they can fit in with their friends. There are no real protections, no true assurances that the non-custodial transgender parent’s rights are protected.



- The focus of our actions must remain focused on the children, even when it is not what we would like to see. Revenge, anger or resentment toward the other will have an affect.
- The purpose of this workshop is to raise awareness and visibility to the issues faced by trans parents. Silence is not golden in this case. There are increasing numbers of trans parents standing up to defend their children’s right to continue to have a relationship with their parent. More are saying what I lived, “If I lose time with my children, you will have to take that away, I will not give it away.” The successes provide hope to others, show that continuing one’s relationship with their children is possible.
- What has been presented here is but a pebble of sand on the beach. I encourage you to continue to talk, to ask questions, to learn more.



From the Children's Rights Council, they summarize the need to really think about the affect of negative parenting time on children.

"... consider how you, as an adult, would feel if you could see your children only four days a month. Like most parents, you would miss them terribly, even with your adult level of emotional maturity. Children, with their fragile, still-developing emotions, often suffer much more. Children naturally love and need both parents."

This is not just about young children, this affects teens and adult children as well. My [Paula's] parents divorced when I was 16, it took several years to really come to grips with the impact this had.

Dr. Richard Green



... the time is overdue for the transgender community to fight for parental rights with the same intensity as other, more publicised, battles raging for equal protection and fair play.

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For those who do not know, Dr. Richard Green is the only person to have done studies on the affect on children raised by transsexual parents. His first study was done in 1978, the second in 1998. In both, he concluded that having a transsexual parent does not negatively affect the children's development, including their gender identity.

While a recent statement of his focus' on the male-to-female transsexual, the beliefs and issues apply equally to the female to male transsexual.

“Divorcing male transsexuals [trans women] are confronted by implacable resistance from their spouse against continuing their parenting role. Mothers, mother's new male partner and some psychiatric experts forge an alliance that ruptures the parent-child relationship and ensures its slow death by denying contact. The mother's "implacable opposition" to continuing transsexual parent-child contact is portrayed with such intensity that the consequences of requiring contact are judged more damaging to the child than effectively terminating the relationship.

During the protracted period of litigation, an even longer interval in the relatively short experience of the child, the non-transsexual parent promotes a negative image of the transsexual parent (the Parental Alienation Syndrome) and any positive images fade in the absence of continuing positive experience.

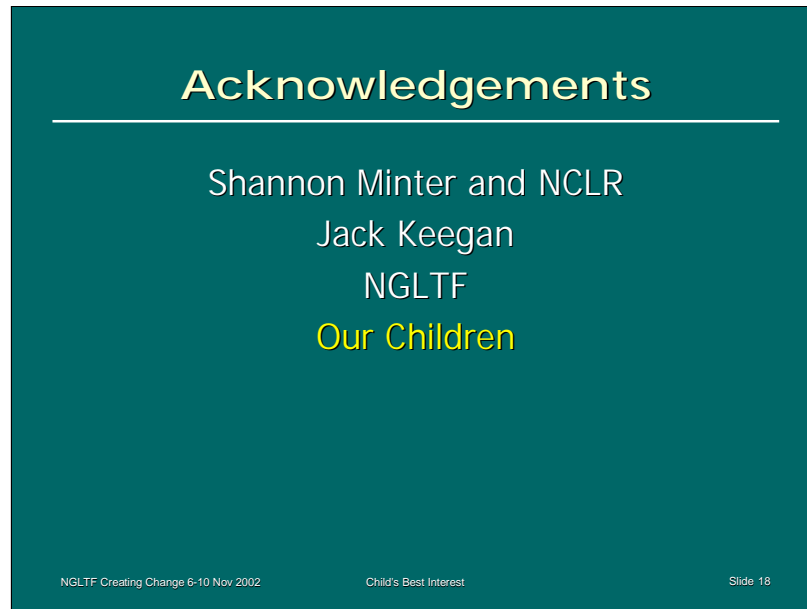
With no hard data demonstrating harm to a child from continuing direct contact with a transsexual parent, and many anecdotal experiences of a positive nature, the time is overdue for the transgender community to fight for parental rights with the same intensity as other, more publicised, battles raging for equal protection and fair play.”

Resources

- **Legal Issues for Transgender and Transsexual Clients** – Shannon Minter, NCLR (<http://www.nclrights.org/>)
- **Transgender Persons and Marriage** – Shannon Minter, NCLR
- **Transgender Policy and Law Institute** (<http://www.transgenderlaw.org/>)
- **TransParentcy** (<http://www.TransParentcy.org>)

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These are not all inclusive, but provide a starting point for learning more about trans parent rights and issues.



- Thank you to Shannon and NCLR for all the help, inspiration and resources, and for taking the time to be a part of this workshop.
- To Jack Keegan for reminding me of the on-going issues that trans parents face beyond custody and the divorce decree.
- To NGLTF for this conference and allowing us the space to share this workshop.
- And most of all to our children whose love inspires us to fight the battles and stand up for what is in their best interest ... their parents.

Questions & Answers

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Questions and Answers