

Alex ([00:02](#)):

Hi, and welcome to Making the Case with Lambda Legal, a podcast from Lambda Legal highlighting impactful cases and policy work. I'm Alex Burke, a journalist and host, and I cover all things LGBTQ+ and the issues that impact us.

Alex ([00:17](#)):

Today, we're going back to the turn of the millennium with one of Lambda Legal's groundbreaking cases for youth, Colleen, the Orange Unified school district. After deferring action on their application for several months, while denying students permission to meet, the Orange Unified School District Board formally denied an application by the Gay Straight Alliance to become a recognized student club. The board insisted it would only reconsider the club's application if the group changed its name and agreed to limitations on speech not required of other clubs. On today's episode, I'll chat with Laura Brill who worked with Lambda Legal as joint counsel on the case. Brill is an attorney in California and a former Lambda Legal board member.

Alex ([00:55](#)):

We're also joined by Lambda Legal's CEO, Kevin Jennings. In 1990 Jennings founded Glisten, a national education organization that works to make schools safe for all students, regardless of sexual orientation, and or gender identity. Glisten developed the Gay Straight Alliance student clubs that this very case encompasses. As GSA's faced new waves of attack from the far right, this case feels more relevant than ever. Let's get into my conversation with Laura Brill and Kevin Jennings.

Alex ([01:25](#)):

Welcome Kevin and Laura. Thank you so much for joining me.

Laura ([01:27](#)):

It's great to be here, Alex. Thank you.

Kevin ([01:29](#)):

So exciting to be here.

Alex ([01:30](#)):

Well, I have to say conversations like this are definitely a bomb for the moment that we're in. So let's start with you, Kevin. When you were a high school teacher, you helped students create the first Gay Straight Alliance in 1988. Take us back to that time period. What was that time period like for LGBTQ+ students? Why did you feel compelled to create safe spaces in public schools?

Kevin ([01:51](#)):

Well, I graduated from high school in 1981. And the strategy back then, if you were LGBTQ+ was keep your mouth shut until you graduated from high school, go away to college, come back and drop the bomb at Thanksgiving. So in the eighties and early nineties, it was very much a don't ask, don't tell environment for LGBTQ+ students. And when we started the GSA in 1988, it was really revolutionary. People had never seen anything quite like that before. And the climate was very hostile. The LGBTQ+ students were next to invisible. So one of the things we had to do was simply convince people that LGBTQ students existed. I don't know whether people think LGBTQ+ people were like Athena and we

sprang from the head of Zeus full grown, but they definitely didn't think there were LGBTQ+ students in their schools. It was complete denial.

Alex ([02:45](#)):

Yeah. You mentioned the climate was quite difficult. This case came about a decade after the formation of Glisten. Clearly there was pushback and denial. Laura, you joined a few other legal colleagues to take on the case. Why was this a compelling case? And why did it feel important to be part of the team?

Laura ([03:01](#)):

Yes, well, this really builds on a lot of what Kevin was just saying. What these students were doing in Orange County, Anthony Colleen and Heather Zetten and their friends and families who were supporting them. It was so important for themselves personally, and it was important for their communities to be treated fairly. And what the school was doing to them was terrible. They wanted to form a club. There was a lot of bullying going on at the school and they just wanted to be able to meet and talk about these issues on the same basis as other kids. The school had a juggling club and religious clubs and all kinds of other clubs that were allowed to meet.

Laura ([03:41](#)):

It was our understanding at the time, actually, that the principal wanted to approve the club, but she thought she would be fired by a very reactionary school board that was coming in. And so if the principal won't stand up for her own students, it was just a total no brainer to say yes, who doesn't want to stand up for the kids in the face of people who are supposed to be taking care of them and are turning the other way?

Alex ([04:09](#)):

Kevin, I just saw you nod along there.

Kevin ([04:11](#)):

Yeah. I think that one of the things that we were dealing with was in the nineties, the religious right made a concerted effort to capture control of local school boards. And the National School Boards Association did a survey and found that over half of all school board members in this country were religious conservatives. So teachers and administrators really lived in fear of their school boards. So the principal who wanted to do the right thing, but was afraid of the school board was not alone in America in the 1990s. And frankly is not alone in America in 2022 either. School boards tend to be dominated by very conservative forces, whereas educators tend to be very progressive. So there is often a friction between the teachers and the school boards.

Alex ([04:57](#)):

Gosh, there are just so many aspects to this that feel so timely. And like we could be talking about when this was actually happening or talking about today. But just to back us up a little bit, on this podcast we often talk about the strategy and approach to cases. And Laura, it's clear that the Equal Access Act was key here. What is the EAA and how was it critical to this case?

Laura ([05:18](#)):

Yes, well, the Federal Equal Access Act is a federal statute that really implements first amendment principles for public high schools. And it came about really as a means to protect religious student groups because school boards and school districts were feeling that if they allowed a religious club to meet that they would be found to be violating the establishment clause. And so what the Federal Equal Access Act did and does is to say if a school board or school district is receiving federal funds and it allows one or more non-curricular student groups to meet on campus, then it can't discriminate based on other student groups based on the content of what they're going to express at student meetings. And so this case was the first time that a preliminary injunction had been granted recognizing that the same principles that were protecting religious speech were also protecting the rights of LGBTQ students to meet on the same terms.

Alex ([06:24](#)):

Laura, what happened with this case? How did it progress and how did it end?

Laura ([06:28](#)):

We filed a lawsuit and we saw a preliminary injunction, which is a ruling from the court saying that we would be likely to succeed on the merits. And the judge granted the preliminary injunction. Usually preliminary injunctions are granted just, you file briefs and you file declarations with them. And the court looks at it and decides. This judge wanted to have a hearing. He wanted have the students come in and he said, so when are they available? Well they shouldn't miss school, so we'll just keep the court open and they can come in after school and start giving testimony tomorrow. So this was amazing for the kids to be able to come in and tell their stories. And we were able to cross examine the school representatives about whether they had other non-curricular clubs that were meeting. That was their defense, that this was curriculum. GSA was a curricular student group. So we got to say, well, there's other student groups meeting, and actually you're not teaching the stuff that the kids want to talk about as part of your curriculum.

Laura ([07:33](#)):

And John Davidson, of course from Lambda Legal was involved and people for the American Way Foundation was involved. And the two lead students, Anthony and Heather ended up testifying. And after we got the preliminary injunction, there were a number of different episodes that occurred. But eventually we were able to settle the case with a retired judge serving as our mediator and the kids got everything they wanted. They were able to meet on the same terms as other student groups, they were allowed to be in the yearbook. And then it was a published opinion that could be cited in other places to get the same result.

Alex ([08:10](#)):

It seems especially crucial that the students were able to deliver the testimony in their own words and talk about how this impacted their lives. Kevin, how did the results of this case impact GSAs and the formation of clubs within public schools?

Kevin ([08:23](#)):

It revolutionized the situation. The standard response when a student wanted to start a GSA in the nineties was no. And we didn't have a legal basis to do anything about that. Once Laura and her teammates won this case, we at Glisten where I was at the time, began educating students and saying

they can't tell you no anymore. And the number of GSAs exploded across America and it simply would never have happened without the Colleen versus Orange Unified verdict.

Alex ([08:53](#)):

I can't help but think about the wave of attacks that we're seeing against LGBTQ+ youth and schools today, and how it just feels like LGBTQ+ kids and young people have been used as tools in political attacks. So Laura, what role do cases like this play in protecting young people now?

Laura ([09:11](#)):

Yes, well, I think as Kevin said, it's very much the same thing. If there's a GSA or other student groups that are being persecuted by their school districts or discriminated against, it provides a basis to send the school district and their lawyers a letter that says you can't do that. And you know, any lawyer worth his or her grain of salt will tell the district, you have to let the kids meet. And so once the kids are meeting, then it's beautiful because they become the agents of their own political empowerment by talking to another and speaking back and being a force to say, look, when you're doing crazy stuff like book bans and failing to protect the youth that are in your charge, it lets people come together and be a response to that and authentic in school response to what's going on.

Alex ([10:06](#)):

On the 30th anniversary of the formation of the GSA at Concord Academy, Kevin, you actually gave a presentation where I'm going to read a quote that you said. You said, "Law one of gay history, the more visible you are, the more you will be attacked. Law two, the more you are attacked, the more you will fight back." I mean, it really feels like we are living through law one yet again. So to that point, how are recent attacks against trans youth in particular connected to visibility?

Kevin ([10:33](#)):

Well, I think an important factoid here is that the Gallup poll two months ago found that one in five members of generation Z identifies as LGBTQ+. So trans youth have never been as visible as they are today. And the attacks on them, which are horrific and multiple, really are proof of what I said in law one, which is the more visible LGBTQ+ people are, the more we will be attacked. The great thing is watching these young people and their adult allies fight back, because it's really infuriating people to see their children being attacked. And we're seeing the parents and the community and the students themselves really mobilize. And what the other side doesn't realize is every time they attack us, more people come out, more people become more visible and we gain more power. So keep attacking us idiots. We're going to win in the end.

Alex ([11:26](#)):

Kevin, I really like that your attitude is like, we dare you because we are ready, which I feel like it's really, in these times, it's easy to feel a sense of despair about everything that's going on. And I have to say, I've also seen a lot of the adult LGBTQ folks around me feel really moved to fight for the next generation. So Kevin you've also said that if we erase LGBTQ+ people from the past, we will not be able to envision future equality. If we know our history we'll know that we can make it. So what would you say to the next generation of students feeling attacked or alienated because of their sexual orientation or gender identity?

Kevin ([11:58](#)):

You follow in a very proud tradition of amazing people who in frankly, tougher times than you're facing, took on the system, beat it and won. Let me tell you very specific story. One of my favorites. Jose Sarria, Jose Sarria was a Latino drag performer in San Francisco in the late 1950s and repeatedly in LGBTQ+ bars back then the police would come in, rough people up, extort them for money, mistreat them. And Jose finally got tired of seeing that happening in the bars in which they were performing. So in 1961, 8 years before Stonewall, when being LGBTQ+ was a crime in all 50 states, you know what Jose Sarria did? They ran for office as an out LGBTQ plus person. So if Jose Sarria could do it back in 1961, 61 years ago, young people can do it today. And I actually have enormous hope for the future. I think this generation has a much more sophisticated understanding of sexuality and of gender and of race than my generation did. And I think that you generation Z are going to lead us to a new era of liberation. So go for it.

Alex ([13:08](#)):

I have to say that I'm completely with you on all of that. Laura, can you give us the final word here? Do you have any words of advice or hope for gen Z and for the next generation of students who are going to take on this fight for themselves?

Laura ([13:22](#)):

I have so much hope for this generation. They're incredible. They've lived through two years of COVID and they've had enormous challenges and they are in the middle of some very dark stuff going on. And I was thinking back to the radical right sent bus loads of people to the school, to attend school board meetings. And their objective is to polarize people and to make things harder and to create splinter issues and divide us from ourselves. But the young people don't like that. That's not what they're interested in. They want together, together. They want to be themselves. They want to support their friends. And so I think the spirit that they bring to it, I hope they will continue to embrace that spirit. And to know that they still, despite all of the obstacles and challenges to our democracy. They have enormous political power when they use their voices when they vote, when they gather together and when they speak up.

Kevin ([14:25](#)):

Yeah. If I can piggyback on that, an important history lesson here is that every major civil rights movement in American history has had young people at the front and center. When you look at the people who sat in at the lunch counters back in the 1960s to break segregation, the first four of them were college students and the youngest one was 19. So I really believe that young people can play a particularly critical and pivotal role in creating change on a whole wide range of social issues today. Greta Thunberg, the climate activist is a great example of that. So you have the power. Seize it and use it.

Alex ([15:02](#)):

Well, I think that is the perfect note to end this conversation. Thank you both so much for joining me.

Kevin ([15:07](#)):

It was really fun, Alex. Thank you. Thank

Laura ([15:08](#)):

Thank you, Alex. This has been really great.

Alex ([15:13](#)):

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