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EXCLUSIVE INTERVIEW: TOM HOMANN

Attorney Tom Homann is scheduled to receive the Ceil Podoloff Award from the American Civil Liberties Union for his work and contributions to the cause of civil rights in general and for the lesbian and gay community specifically.

Recently, Tom sat down and spoke with SDGT's Rick Duffer and spoke about his involvement in San Diego's lesbian and gay community.

Homann came to San Diego in 1974 from Monterey where he had lived after graduating from UC Santa Barbara in 1971. Homann went to law school here and passed the bar in 1978. He then went to work with attorney George Haverstick. At the time he joined a very small group of openly gay attorneys; Haverstick, Al Smithson, Bob Lynn and Jim Walsh.

These were dark days for gays and lesbians in San Diego. The police were selectively arresting bookstore owners and employees for selling "hardcore" gay material while still allowing straight material to go unbothered. They were also staging raids on bars and bathhouses.

In defending the bookstores, Homann and Haverstick continued to lose the cases in court but did finally succeed in shaming the police into ceasing their one-sided enforcement of the law.

Homann's career has had many notable highlights. He, along with National Gay Rights Advocates, defended Al Best when he was fired from his job after becoming San Diego's first openly gay candidate for city council. In another case, sponsored by the ACLU, Homann sued Sheriff John Duffy when he publicly stated he would refuse to hire gay or lesbian deputies. This case provoked a written statement from the State Attorney General to Duffy advising him that this homophobic policy was illegal and threatened to join Homann's lawsuit. Homann has also been involved in numerous gay and lesbian military cases, and in 1980 convinced a federal judge to block the discharge of a sailor who was "thought" to be gay.

When AIDS first became an issue, Homann represented two of the first active duty sailors less than honorably discharged because of AIDS infection. These cases, co-sponsored by the ACLU and National Lawyers Guild, brought forth a lot of publicity and were instrumental in convincing the US military to take a more compassionate position when active duty personnel became ill with HIV disease. He continues his work today on behalf of those HIV infected.

Homann considers as a highlight of his career, arguing a case before the United States Supreme Court in 1984. The case involved police entry and search of a motor home and even though he lost the case, he feels privileged to have argued before the highest court in the nation.

Attorney Tom Homann has dedicated his life to defend the rights of the citizens that are due them under the constitution, he has often defended those others refuse to even consider. For his tireless work on behalf of civil rights, Tom Homann will receive the ACLU 's highest annual honor, September 9, as one of the community's most respected and admired leaders of principle and integrity, committed to defend the rights of us all.

The following is a sampling of Mr. Homann's thoughts and comments on his career leading up to this award.

Rick Duffer: *Should lesbian and gay Americans have faith in the American legal system?*

Tom Homann: I think that there has been a tremendous overemphasis on the power and the ability of the legal system and the courts specifically to address our legal system and the courts specifically to address our legal problems. The courts by their very nature are conservative and not very progressive institutions at all. I think that it has always been a mistake to look to the courts to blaze new trails and rights for us that haven't been recognized anyplace else. My own experience reflects that as well. Litigation of gay and lesbian issues over the years has generally been unsuccessful in the courts. We win very few issues there. I have certainly lost my fair share of gay and lesbian issues there as well. That's not to say that the courts aren't a useful resort because a lot of the pressure that results from even an unsuccessful case goes to changing people's attitudes, changing politicians' ideas and really creating the kind of atmosphere where legitimate helpful change can occur.

On the whole, the courts have not been friendly to us nor our issues. Not ever. The only exception to that I can think of has been in the California Supreme Court when we had Rose Bird. We really did have some success that really made a difference. There have been a few other cases that have scattered through the Federal Courts and states here and there but I think that for gays and lesbians to think they're going to get justice or progressive reforms through court actions, I don't think that's the way we're going to win.

RD: *This is our country and are our laws and yet we are turned away so often. How should we feel?*

TH: Persistent, I guess. I am not suggesting that we ignore the courts and abandon them as possible avenues because there are the unusual wins here and there. As I said, I think that litigating cases even when they are lost can frequently have an educational effect on the public.

It creates pressure. It just creates a whole atmosphere where we're more likely to see change. Let me give you an example: before the HDO came along, there wasn't really any recognized protection against employment discrimination. We have always operated as though it was against the law for private employers to discriminate against gay people in employment situations and we just acted as if there were a law prohibiting that kind of conduct. Virtually whenever an employer was confronted with it they also acted like there was a law there and so we just kind of faked everybody into thinking there was a law. In fact, there was no protection at all, at least until the HDO came along. And it kind of worked. So even though the issue had to be decided by courts, and they'd always ruled against us, everybody just acted as if there was

protection, including employers. Part of that is, I think that employers are reluctant to be portrayed as bigots and homophobes and they always just seemed to accept the premise that it was illegal to discriminate against gay people.

RD: *What was your role and your goal with the HDO?*

TH: I think my role has been overstated over the years. Rob Dekoven really was the author of it long ago. I kind of agitated around that we ought to get something written and made some suggestions how to put it together. I made some revisions to his initial draft. My role was just one of the little people trying to get it passed.

I think that HDO was important at least as a political gesture. To some extent, a lot of what is in the HDO was already covered by state law in terms of public accommodations, housing facilities and public employment. Certainly, all that was covered by court decisions or state statutes. This just provided another remedy and basis for protection so I am not saying it is useless. In the employment area of course, there was no protection from private employers. I think it was significant most of all as a symbolic gesture.

RD: *Do you think in this case or in cases across the country that the law follows social change or change follows the law?*

TH: The law is very stodgy, very conservative, very slow moving. The law, I think is traditionally quite way behind social attitudes.

RD: *In view of the AIDS crisis and the traditional gay movement what are our priorities for the next couple of years.*

TH: I suppose we ought to focus on the most egregious forms of homophobia that are still out there. The most obvious example is the military and its anti-gay policies. I would like to see that changed. That would really be gratifying to me. That is about the only last vestige of open upfront official policy that says gay people are inferior. I think there is a lot of public sentiment out there on our side of the issue now. There's another area [the military] where we have never won anything in the courts at all, we've litigated that issue and continue to litigate it like mad. We've never won anything, but nonetheless, I think the result of all the litigation, the Ben-Shalom litigation, all the pioneers in that area have created pressure on the military and the public attitude which has really changed the way people think on that issue from how they did ten years ago or so. I think that it is a winnable issue.

RD: *The ACLU of San Diego and Imperial Counties is giving you the Ceil Podoloff Award. What does this mean to you?*

TH: Ceil Podoloff was the ACLU for many years. She ran initially out of her kitchen. The award is presented to people who over a long period of time have devoted themselves to protecting the civil rights of other people. I am really proud to get it. I have not been a great joiner of organizations, however the ACLU is one organization I have consistently worked in and given money to, really done everything I can to help and there are lots of reason for that. In San Diego, locally, there is virtually no other organization that has consistently litigate the whole

range of gay and lesbian issues and supported our cause whenever we needed help[, other than the ACLU. I support the national organizations, Lambda Legal Defense, National Gay Rights Advocates, and all the rest. In San Diego, the ACLU has been the only story in town as far as legal action to protect our rights. I think that the history of the ACLU will show that they've been vigorous and generally pretty successful for us. I think it's an absolutely critical organization for our continue progress.

RD: *Can you speak some about your work defending the bathhouse and the bookstores?*

TH: Sure. The bookstore work I have always done that, since I started practicing law with George Haverstick about 12 years ago. George represented a lot of them then. I think the bookstore legal problems are really interesting. The first amendment litigation that goes along with defending those stores is challenging intellectually; it is very principled litigation. It's stimulating and it's something I have found really enjoyable. I say modestly, 'I am pretty good at that!' That is how I have earned my living over the years. I do a great deal of public interest litigation and legal work; a lot of it for free. That's all been made possible as a result of my work for the bookstores, F Street in particular.

As far as the bathhouses go, when I first started practicing law in 1979 or so, bathhouses at that point were still considered little refuges from a hostile straight world and were as much a social center of our community as the bars. And even better than the bars, really, since straight people were excluded. I thought they were an important social institution. And I still do think that.

In 1979 or so, when the police raided the 4th Avenue Club, we pulled out all the stops to defend the privacy of the people inside and the real character of the place as a sanctuary. We were successful in those days, as a matter of fact. We won search and seizure motions and got 'not guilty's. That was a pretty good experience.

I understand nowadays that there are competing interests at stake on the bathhouse issue, on the other hand, I continue to represent them and defend them and probably, I always will because I think that to some extent, well, I don't think I want to go on. I just continue to do it. I think there are legitimate reasons why the bathhouses can and should continue to exist.

I think they function as a social club and as a sanctuary that is useful and healthy. I don't go to them; I don't know what goes on there anymore. I do not believe that the bathhouses are operated in 1990 like they were in 1969. I know there is a lot of difference between a 1970's bathhouse and 1990's bathhouse.

RD: *The women's movement and the lesbian movement often converge, while others claim that abortion is not a "gay issue."*

TH: Oh, abortion is as important a gay issue as any of them and not because lesbians are gonna want to have access to abortions but because the legal theory behind the whole abortion debate is really one of privacy and personal control of your own life and lifestyle. If Roe v. Wade goes down that will be a serious, serious blow to us and to our rights even though none of us would have a need or an interest in having an abortion.

I don't think gay and lesbian people can discount at all the issue of abortion. I don't think we can have two sides of that in our community. I think it is really important to make a strong and unequivocal statement in favor of a woman's right to control her own health and her own body.

RD: *There is always some hope and buoyancy when a gay person is elected to office. Do you see this happening in San Diego; is it important for us?*

TH: Well, I guess it is important symbolically. There are all sorts of people I'd like to see in public office, from our community. I suppose it lends a lot more respectability to us and our cause. Yeah, I'd like to see it. On the other hand, there are lots of straight politicians who have been useful and helpful to us.

RD: *What about the judicial system and its impact on the gay movement?*

TH: If I were to evaluate, state courts first, or to choose who has been the most harmful political person for us and our community, I would not choose Dannenmeyer, and those kind[s] of freaks. I think they are viewed in general out there as kind of cranks and I don't think they have widespread public support in their off-the-wall crazy opinions. George Deukmejian has done more to harm us and stem our progress than anyone in the country. That goes for more than just vetoing the funding bills, vetoing AB1 to appointing judges who are backward looking, conservative and non-progressive and really mean in a lot of respects. The judges he has appointed run the gamut from the trial court all the way up to the state supreme court and all of them, with very few exceptions, are mean and nasty and we're going to get no satisfaction and no help from that crowd. I think that his impact on us has been serious and extremely harmful. I am hoping that we will have a new governor soon who will appoint better judges. If Feinstein wins, maybe we will see some of the damages done by Deukmejian unraveling to some extent.

As far as the United States Supreme Court, I am not optimistic, but remember, the United States Supreme Court has never decided a case favorable to us anyway. They have at times, it seems gone out of their way to decide cases unfavorable to us. That was even before the loss of Brennan and Powell, who wasn't a particular friend but at least not so much an enemy as a lot of the rest of them. Unfortunately, of the folks that are on the Supreme Court, the good ones are very old and the bad ones are very young. So, we are going to get to live with this Supreme Court a long time. All this goes back to what I said at the beginning, we can't expect the courts to vindicate our rights and to protect our rights. We're going to have to go and find other forums to help us. That's not to say we shouldn't keep applying the pressure. I'm a great one in believing that pressure should always be applied through the legal system and any other means, including demonstrating on street corners, in cathedrals and anyplace elsewhere pressure can be applied. But, we're not going to get vindicated in the courts.