
ENDOWED PAPER DINNER

Friday, August 27, 1993

Second Annual International Conference on Transgender Law and Employment Policy

Speakers include:

- *Martine Aliana Rothblatt, Health Law Director, ICTLEP*
 - *Daniel J. Shea, Attorney, counsel in a transgender disclosure lawsuit*
 - *Latisha K. Frederick, Winner, Phyllis Randolph Frye Endowed Writing Competition, University of Houston Law Center*
 - *Leslie Feinberg, Author, Transgender Liberation and Stone Butch Blues*
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By Phyllis Frye:

We have a few announcements that I do want on the record before we start. Many of our Transgender Nation, and I want to make sure it's on the record as well as telling you, folks are here today, if you would like to order a t-shirt that says, "Transgender Nation," they are available. You have to specify sizes: medium, large or extra large. The total price including shipping and everything else is \$12 and you can send that to Susan Stryker. The address is 702 Aileen Street, Oakland, California 94609.

Also available upstairs tomorrow is the latest issue of "Tapestry". IFGE was very generous in bringing some copies for us to sell to raise money for our benefit and they're regularly \$12. They're on sale for \$10. This is so new that they were delivered to IFGE — it was either, I think it was — Tuesday of this week. Therefore, they won't even be in the mail for a couple of weeks.

So, if you want the latest issue, you will notice an extremely handsome man, our very own Mr. Taylor just as macho and arrogant and strutting his stuff and suffering from acute testosterone poisoning. He's really — I'm tempted to say beautiful, but I know he would take that as an insult — so, he's extremely handsome and his story is in here. [*indicating "Tapestry"*] Also in here is the report from the first "Proceedings" on the Health Law Report out of the first "Proceedings", word for word in the "Tapestry" as was presented by our terrific Martine Aliana Rothblatt, who you'll get to hear in a minute.

And the March on Washington pictures are in here and the speech that I was very privileged to make from the podium to over 400,000 people is in here word for word. And you'll get to hear it tomorrow night because a bunch of people have bugged me about it. So, I'm going to play it tomorrow night. So, anyway, go upstairs tomorrow morning and bring yourself a ten dollar bill and go home with a copy of this. It's for a good cause. It's for your law conference.

It's Friday night and we have some terrific speakers lined up. But first, on your chair, is a questionnaire. You must fill it out if you want to eat Saturday night. In addition to paying for your meal on Saturday night, if you do not show up with one, you will be turned away from the door, given a blank and be told to fill it out. We need the input. Okay. So, take it with you and fill it out.

Now, I want to acknowledge and I want a very warm round of applause for a very large contingent of our guys. Our guys are here tonight in force. We're proud to have them, and I want to emphasize again that this law conference is for both male-to-female and female-to-male. In addition, I want to emphasize again that we

are not just opened to all races, we are encouraging and inviting and imploring all races to get involved in this thing. Diversity is what makes us strong, and the next law conference I want to see less white faces out there. Let's face it. Okay.

PEOPLE WANT YOU FOR YOUR BRAIN

By Phyllis Frye:

I want to introduce a friend, someone who is one of our — I introduced Laura last night — one of our three out of the closet, practicing full-time, fully accepted, making it professionally lawyers in our community. Her name is Martine Aliana Rothblatt. She is our Health Law Director, and I want you to give her a very warm round of applause as she comes up and gives us some words.

By Martine Aliana Rothblatt:

She knows I'm a juvenile so that's why she plays the Star Wars music. Thanks a lot, Phyllis, for giving me this chance to talk to you tonight. Like Laura, I've been through the very exciting, positive, exhilarating experience of coming out in my professional community. I really lived first-hand the old adage that your fears of the reality really bear no relationship to the actual reality. When you come out as yourself, the people around you really are inspired by your strength and your courage and being able to say who you are.

I'm a lawyer, but mostly I work in the satellite communications industry and I help work together to implement different types of satellite communication systems. All my life I had the feminine gender identity, but I was scared to come out because I was scared that people would laugh at me or think I was stupid or whatnot. And bit by bit over the years, I overcame that. I owe a lot of that to "Tapestry", the first magazine that I ever found that provided me with real, honest, true information. Before that all my sources have been information from really defective-like books on transsexualism in libraries that didn't recognize real people like us and whatnot.

So, it was wonderful to read "Tapestry". I realized that to be transsexual and to have gender creativity was to live normal and healthy; there wasn't anything wrong with it. It was something to celebrate, and I began to



Martine Aliana Rothblatt, Attorney
Health Law Director, ICTLEP

celebrate myself that I could feel free enough to express my gender identity. It then was very natural that it shouldn't be something that I did part-time, it should be part of my normal working life.

So, I began coming out to my peers and people I work with and said, "I know you've always related to me as a man, but that's not how I feel about myself. I feel about myself that I have a feminine personality, and I'm going to begin expressing that, and you will begin seeing me as a woman and I hope you relate to me as a woman." And reactions of people were really — very much fell into a standard type of categories. It was like, "We're very surprised, but that's a matter of your personal lifestyle. We work with you for your brains not your body, and we accepted you." I think that that's what everybody pretty much will experience.

You know none of us here are likely to be working in the sex industry and even if we were it wouldn't matter. People want you for your brain. That's the reason they hire you at some job; for your strength or your dexterity. That brains or strength or dexterity is the same when you come to work wearing jeans or wearing a dress. And people will not change their pattern of relating to you. It's possible that you'll run into some simple-minded people or people that can't deal with that, but I think the experiences of people, like Phyllis and others, have shown if you keep going ahead to different employers and whatnot, you'll find people that want you for who you are.

Also, it is very nice to live in the nineties. People do appreciate the strength and courage it takes coming out as being gay, lesbian or trans. So, that's been my experience. It's been very, very rewarding and positive. You know we all only have one life to live, so live it to its fullest. Be yourself, be free and be happy. Thank you.

CIVIC VIRTUE: WHEN IN DOUBT, DISCLOSE!

By Phyllis Frye:

I kept my tape player hooked up so I can embarrass somebody else with a fanfare. You may have read about a lawsuit that recently came up concerning the duty to disclose one's transgendered nature to a prospective lover. We have the lawyer here tonight that is pursuing that lawsuit. I have personally advised him often, and I am very proud of what he is doing.

I first met Attorney Dan Shea this past January. A probate judge, Jim Scanlan, referred Dan to me on a case involving guardianship for a drug addict who also happened to be dealing with her transgendered transition. Dan was very sensitive to me and to his client. He fought hard to ensure that this transgendered person was treated like the woman she was even though preoperative and was given private hospital care as a woman and that her transgendered counseling went in parallel with her drug counseling. Please welcome a true advocate for the transgender community, Attorney Daniel J. Shea.

By Daniel J. Shea:

Thank you Phyllis. I have to tell you that Phyllis' reputation preceded her. When we were dealing with the transgendered case last year, this case came into my office through a drug counselor. And I had had little or no exposure to the transgender community at the time this case came in. So, like most uncourageous lawyers, I decided to call a judge for guidance. I did, and much to my great surprise; he told me not only should I take the case, but that I should allow myself to be largely-guided by Phyllis. I relied upon the judge's advice, and I want to tell you that really enhanced my practice to become involved with your community.

So, Phyllis, your reputation not only precedes you but I guess it should be object lesson for both you and

me and anyone in the legal profession how much our own personal integrity and reputation in the community is really an asset that is highly regarded. It's worthy. It's just a golden asset in anyone's life, and you have that. I want you to know that, and I want your peers to understand that's the kind of reputation that you have in the City of Houston especially among the judiciary.

Now, I had a wonderful text. Have you ever been called upon to give a talk and you really think you've got it together? I was supposed to come here tonight and talk about the duty to disclose. The duty to disclose, in one particular lawsuit in which I'm involved, has to do with whether or not a transgendered person should or must disclose to a potential lover who does not know about the transgender history. Whether or not that person, indeed has been born chromosomally and biologically male or female. I've got all the law written down and it's pretty dry. Instead, what I'd like to do is talk about some more fundamental issues regarding the duty to disclose and some other duties which I like to think about as civic virtues.

If you have an opportunity to go down to the City Hall, I recommend that you go in and look around the rotunda. One of the captions on the wall that the City of Houston is supposed to be promoting is civic virtue. I saw that a number of years ago when I was in a law school, and I thought to myself, well, what is civic virtue? I've always associated virtue with being fundamentally religious.

In the interest of disclosure, I once studied to be a Catholic priest. I have a graduate degree in theology from a papal university and all that sort of thing. I always figured that virtue was something that religion deals with and that civil society is basically unvirtuous. So, if you want to be a virtuous society, send your kids to church. I know there's a lady in the audience from Boston. I came from the Irish Catholic educational system in Boston. We got our virtue from the nuns. I mean where else do you learn those kinds of things?

Well, something happens to you when you go through law school and you begin to study about the separation of the church and state. Something also happens to you when you begin to reject theology because the way it treats, not only transgendered people, but gay people, of whom I am one. And so I began to think that, if I somehow reject religion, does that mean I'm going to end up on the outside looking in and being a person who has absolutely no virtue? Well, there are some who may conclude that, but I'm not willing to accept that.

Nevertheless I found that in the years that I went to the law school, which is not that long ago, that there are a number of interesting points in the law that are, what we can point to and say, yes that's a civic and not



Daniel J. Shea, Attorney

religious and moral virtue. And so I'd like to talk about two of those civic virtues which I think might be relevant to this group. The first one has to do with promise making. I noticed in the family law discussion this afternoon that there was a lot of discussion in terms of whether or not we as a community should be actively pursuing same-sex marriage or freedom for people to marry without regard to biological history. Should two adult people be able to form a community of life in a marriage or what is typically known as a marriage contract?

Well, in order to answer that question I think you have to give a one-minute overview on what contracts are all about. In the English common law, we have what is known as contracts. And a contract is a very simple notion: I will give you a promise in exchange for you doing something. Or I will give you a promise in exchange for your promise to me. And these mutual promises are supported by some kind of consideration. Now, I have to tell you that, in the few years that I've practiced law, in every contract case in which I have represented either a plaintiff or a defendant, either that plaintiff or that defendant would come into my office absolutely shocked that somehow the law would be enforcing a private promise. Stop and think about it.

I say to you, "I'm going to buy your car for \$500." And you say, "we got a deal." And then I renege on the deal and that appears to most people to be a private promise. But yet, if you renege on that promise, I can drag you down to the courthouse and put you in front of a jury and get the law to enforce that promise. That tells us that somehow this society considers promise formation and promise making to be a very fundamental and a very important thing.

Now, is that a moral issue or is it civic virtue? Historically, it's a moral issue. I recommend that you read a book by a Professor Berman, who was a professor of law at Harvard University. He wrote a book called the "Formation of the Western Legal Tradition." And Berman goes back into our Jewish antecedents, goes all the way up through the formation of Canon Law and the formation of Germanic Law, the formation of English Common Law. All of you lawyers here know all about that. But essentially the whole notion of the importance of the promise formation had to do with religion. It came really out of the Roman Catholic Law of Marriage, the notion that making a promise was a sacred act. And remember, if you read the Old Testament very often when you made a promise, you would put your hands on your father's gonads to indicate the seriousness and the sacredness of making a promise. That's the moral background to law.

But in this society, if we really are going to have something called civic virtue that does not depend upon religion, can we find some rational basis for that? I think we can, but it has to do with what is called the Uniform Commercial Code. If you read the UCC, the Uniform Commercial Code, it's nothing more than a bunch of people getting together, as a statutory body, and saying, "We no longer need consideration to support promises. The only reason we think promises are important is that promises have something to do with reliability."

If I make a promise to you, I should be able to foresee that you're going to take the deal that I made with you and go make another deal on it. And the person that you make a deal with will then take your deal and make another deal. And so we end up in a very interdependent society in which people rely upon each other, not so much for moral purposes, but for the fact that we have to have commercial and personal reliability.

Otherwise, the whole thing falls apart. So, I'd like to submit that, one of the reasons that we're beginning to fall apart in this society is, we don't teach our kids about the importance of making promises. Think about that. The Japanese do. The Japanese actually have a civic virtue curriculum. If you're raised in Japan, the state teaches the civic virtues. We don't. You really have to get it down at the local religious emporium or you're not going to get it at all.

If you get it at a religious emporium, you're not going to get the specific value of reliability. They'll tell you its important. You've got to tell the truth and you have to make promises because God said so. And that may or may not be true depending on your personal lives. That's not my point.

The point is we ought to be able to — as people who live in a democratic society — we ought to be able to point to a value system that is uniquely democratic and uniquely flows from our Constitution. And I would submit to you that that's one of them right there. We have to be real careful and real sensitive to meaning what we say and say what we mean when we make promises. That's point number one.

Now civic virtue point number two, I think is a corollary to that. And it has to do with the topic of what I call in the case, the duty to disclose. I think as a general rule as a lawyer, I can't think of any client who will come into my office to whom I would not say, "When in doubt, disclose." Why is that a civic virtue? I think it's a civic virtue because, in a democracy, we have a basic notion of equality. When decisions are going to be made between two human beings, somehow there's some sense of equality in the decision making process. In other words, if I'm going to get involved in an intimate relationship — and let's talk about an intimate sexual relationship — is it my place, really, to make the decision about what kind of truth or what kind of information you're going to have in order to make your decisions?

Now, the notion is disclosure. So, what's the evidence of that? If you look at where we've coming as a nation in the last twenty years, especially since the Nixon era, the whole thrust of the way that this democracy has evolved has been in the direction of freedom of information. That's point number one. We don't make decisions in a free and democratic society by withholding the truth. And I would submit to you that that's just a very, very fundamental civic virtue and has nothing to do with religion. You don't have to learn that at the synagogue or at the Vatican. It's something that we as a free and democratic people can decide upon as intelligent people to embrace as a civic value.

So, having said that, I think that my notion of living in a democratic society has everything to do with being responsible. Responsibility translates into telling the truth and being reliable. To tell you the truth, I can't think of a heck of a lot more civic virtue that we need to embrace other than, you know, those fundamental principles.

SELF-DEFINITION: TAKING THE NEXT STEP

Continuing with Dan Shea:

Now, the reasons that I got into that had to do with a talk we had this afternoon concerning, what's our anthropology? Who are we, as human beings? What are some of the fundamental principles that the transgender community can use to form the basis for the rights that it seeks in a free and democratic society? And I was asked to write down a few words. I gave this a little thought over the last couple of hours and I think I'd like to share them with you in concluding my remarks.

I have a notion, first of all, that the way we have to define ourselves fundamentally isn't as male or female, black or white, religious or non-religious or even human versus other animals. I think that fundamentally, that's arrogant. I had a great experience. I met a young man who took me to Sea World a couple of years ago. I was watching the whales and dolphins through all the thing and looking at all their marvelous intelligence. He said to me, "Isn't it arrogant to think that — us as humans to think that — we're somehow better than them." It really took me down a bit. It pushed me back to a notion of first principles. Somehow I shouldn't fundamentally define myself as being human before I should fundamentally define myself as a living being that's part of this ecosystem we live in.

Okay. So, I'm a living creature and I am interdependent with all other living creatures on this planet and I think that's reality. Nobody does that any more. Take a ride in a spacecraft. I think the next thing we have to understand is we exist and we live in interdependence with all other living things. Again, that has nothing to do with race. It has nothing to do with history, ethnicity, gender, male, female, black, white or anything else. Those are fundamental things that we've got to understand as a basis for proceeding with the transgender

movement or the gay movement for that matter.

Now, I'm going to tell you about the second book I think you should read. It's Carl Sagan's book called, "Our Forgotten Ancestors." I read it twice and I need to read it at least six more times. It has to do with the notion that somehow evolution made a decision that we were going to have sexual differentiation as a way of spreading the DNA around. That's all that that means. It has nothing to do with morality; has everything to do with reality. It's just the way that this carbon-base life form that we share with other mammals and other living things is about.

But, as a human being, I have the freedom to change the course of that life evolution on this planet. That I think is what separates me from my cat at home. Skippy doesn't really have the opportunity to change the direction or course of life history, but I do and you do. And I don't think that that's a statement of arrogance, it's a statement of human responsibility. So, I would prefer to be redefined or to be defined, not by what my rights are, but by my responsibilities and my opportunities in what it is that I can contribute and so forth.

Not only do I have the opportunity and the responsibility to change the course of life on the planet — that's an opportunity and responsibility to affect the lives of others — but also to affect my own life. So, I have the freedom and I have the responsibility of self definition. See how we're beginning to narrow it down. I can change the course of biological history and human history. If I can do that, and if I have the right and responsibility to do that, why can't I, as a human being, decide that I'm a male or female. Why do I have to be caught up in my own personal biological history? There's no reason. It's putting the cart before the horse. And I think that that's a freedom that we have as human beings whether we're transgendered people, gay people, blacks or whites, or males or females.

Self definition seems to be one of the fundamental characteristics that we have as human beings. And self definition is fundamentally a responsibility and our right. And if that's the case, then I have the responsibility to treat others without regard to the following — and I'm going to use four words, and I'd like you to think about this, and maybe these are four words that describe the whole civil rights movement including ourselves, and they're not words that you typically hear — I have the right to treat other human beings or the responsibility to treat other human beings and to be treated myself "without regard for biological determinism."

That has everything to do with male/female issues. Seems to me it has a lot to do with gay issues. It has everything to do with saying that I'm not locked into the evolutionary decision, that might have been made three billion years ago, that we're going to have sexual differentiation. So, I have the right to be treated "without regard to biological determinism," and to treat others that way. Those are my responsibilities.

Secondly, ethnicity. Ethnicity has a lot to do with history. Probably ethnicity is a second cousin to both religion and spirituality or history and spirituality. I think that I have the right to redefine myself not only biologically — which largely is what I see the transgender community is about — I also think that I can redefine myself, ethnically, spiritually, and historically. In my particular case, I come from a very well defined ethnic background. I was an inoculated Roman Catholic when I was in the womb, God knows. But not only am I recovering Catholic, I'm an escaped Catholic. And that's not a right, it's a responsibility.

You see, I really think that there are times in life when you confront the labels that they put on us: boy, girl, black, white, gay, straight, whatever. And not only do you have a right not to be confronted or confined by those labels — I think sometimes you really have a responsibility to throw those labels off. I've been through a lot of soul searching in the last ten years about whether or not I could continue to belong to the Roman Catholic family, given the attitude that they had about women and gays. And I finally concluded that I just — not only did I have a right to escape my ethnic predetermination — I had a responsibility to escape it. That's what I'm trying to get to.

As I look out and I look at you, I see people who just aren't looking for rights but people of enormous

opportunity. I must tell you that I admire the courage that it has to take, and again I'm not speaking as a transgendered person. It seems to me that you have to be enormously courageous to overthrow the most fundamental label that's put on all of us. You may call us Christian or Buddhist, or you may call us Irish or Italian or Americans or whatever. But the first label you get when you're born and the last one they put on you when they put you in the grave is your gender. And so while it's been something of an intellectual exercise for me to toy around with my ethnic identity and my historical identity and my spiritual identity, you have taken that next step. It's the same step that I've taken, but you've taken probably one that's the most courageous of all. I must say that I admire you for it and I'm privileged to be here tonight.

By Phyllis Frye:

Well, we're two speakers down and two to go. You think you can handle it? We've got some dynamite folks here tonight.

LAYPEOPLE: WHO SHOULD BE WRITING LAWS?

By Phyllis Frye:

Two years ago my spouse who's here tonight, Trish, most of y'all know her, Trish and I were very privileged to endow an annual writing competition in the area of transgender law for law students at the University of Houston Law Center. For those of you who are interested, any law school will gladly take your money. So, if you want more research done on our transgendered issues, I suggest that you enter into an arrangement with your law school if you're a lawyer. And if you're not a lawyer and you have more money than you need and you've already given the law conference as much money as you're going to, then please consider endowing another competition in another law school. Our wonderful Laura Skaer has also done this at the University of Missouri Law School, and her first scholarship winner will be announced in the Spring of '94.

This year's winner is Latisha Frederick, and she is here with her spouse, Michelle Ozbun. We're glad y'all are here. And I want you to give a very warm reception as Tish comes up to present her ideas.

By Latisha Frederick:

I am very excited to be here, thrilled beyond what I can express. We just heard what the judiciary feels about Phyllis and how they view her. I can tell you that Phyllis is an inspiration to me, Phyllis and Trish both. If I can come even near the professionalism and the preparedness that Phyllis shows everyday in the courtroom, then I'm confident that I will be a very good attorney indeed.

I just graduated from law school in May. I've never even seen a jury so I may be a little nervous, and I am. I have however faced a sixty-grade class room after having talked about a story about life in the ghetto and one child helping another child to live life successfully in the ghetto. And at the end of the discussion having someone in the Woodlands classroom raise their hand and ask me, "Ms. Frederick, what is a ghetto?" Once I finally explained what a ghetto was, the next question was, "Well, why don't they move?" So, I feel that that was the most difficult explanation I ever had in school. And if I can face that, hopefully I can face a jury and certainly that makes this evening a piece of cake or flan as we had this evening.

The name of my paper is very unwieldy, but I'll read it to you anyway and hopefully my spouse will be handing out some timelines. I don't have enough for everyone. If you want more, it will be included with my paper which Phyllis will be distributing. But the title of my paper is, "From Eugenics to the New Biology, the

Impact of Science on the Law's Intimate Relationship with Gays and Lesbians." I wrote this as part of a legal aspects of bioethic seminar at the University of Houston.

Last October, I attended a conference in Chicago of the National Lesbian and Gay Lawyer Association, and there was an individual there, Kay Diaz, who turned out to be a journalist who was literally ranting and raving and raging about science and science determining gender identity and isn't this ridiculous? And basically I think one of her comments was, "What does a rat's erection have to do with my sexual identity?" And while she was fairly amusing at times, it worried me that there was so much hostility. I wanted to go back and research what science was actually saying about gender identity in this point in our lives.



Latisha Frederick, Winner of 2nd Annual
Phyllis Randolph Frye Endowed Student Writing Competition,
University of Houston Law Center

What that inquiry led me to was to go back to the 1800's in the beginning of the Eugenics Movement. There's one thing, if you do not already know it and even if you do know it you need to share the knowledge, the Eugenics Movement has its basis and its impetus at the turn of the century in America. What ended up resulting in the Nazi camps in Germany in the extermination of lives "unworthy to be lived" began in America. And it began at Cold Spring Harbor. Now, if you know anything at all about genetics research today, you should know that Cold Spring Harbor is the seat of genetics research, probably internationally. It is still there, and that gave me chills when I first determined that the eugenics record office was established in Cold Spring Harbor in the early 1900s.

Another thing that I think is important to remember is that there was a Dr. Laughlin from America who was a premier witness at congressional hearings talking about why we should limit immigration in order to keep the superiority of the Anglo-Saxon race pure in America. Dr. Laughlin was instrumental in writing to Mussolini about the urgency of racial purity and that Mussolini should help speed things up over in Europe. I think it's not widely known what a strong and important role America played in the entire Eugenics Movement. I think we should never forget that. It should not scare us into no research. It should urge us into, as we just heard, greater responsibility as intelligent and thinking people about what our science is doing and saying and how it is applied.

Now, the other thing that I noticed was that in the 18th century, the late 1800's and early 1900's in Germany,

there was, I didn't know, a virtual renaissance of research into gay male sexuality. And that was by Dr. Herschfeld. Dr. Herschfeld published findings, gathered literature, performed experiments and petitioned his nation repeatedly to repeal what is known as paragraph 175 which made male homosexual acts illegal. Female homosexual acts were not addressed because females generally were not important enough to be addressed at that time. Transgenders probably weren't even known since it seems that even today in this country too many people are not even aware of the transgender issues.

Which reminds me, Phyllis had asked that I be sure to address transgender issues. I must tell you that I'm a person who does not join things because I don't know what "issues" are. I couldn't tell you what lesbian "issues" are. It gets confused between, "Is this a gay issue?" or "Is this an issue everyone should worry about?" And so I'm going to be addressing what thinking people — what in my opinion thinking people — should be worrying about or looking at in terms of science and sexual identity.

Herschfeld continued very actively to try to get things changed in Germany. His research was every bit as good as, if not better than, the genetics and eugenics research that was going forward at the same time in America and eventually made it across the ocean to Germany. However, when the political upheaval came, the eugenics research of the time, which we now know was bogus, was accepted and preferred. The backlash against the science and the research, which was done into sexual behavior and identity, was so severe that paragraph 175 was expanded. Homosexual conduct was outlawed. Herschfeld's library was raided and burned to the ground, and his research lost to us.

It seemed to me, during last fall as I was doing this, that in these last two years we've had three major studies — one by Swaab, one by Wittelson, and one by LeVay — all tending to indicate that lesbian, gay and transsexual orientations or identities are genetically based and molecularly based. Yet at the same time we see again, as we did at the beginning of the century, you see Oregon's Proposition 9 and Colorado's Proposition 2. And at the same time within the last two weeks, you see Cobb County, Georgia, declaring that homosexual lifestyle is against community standards and then going further to say, "We will fund no art in this county if any art contains any homosexual content."

I'm not sure that you can say that there is a direct parallel. I think it is something that we need to be aware. It seems that, every time that we're really close to trying to define and empirically and scientifically look at where a sexual identity orientation comes from or what influences it, the political and legal backlash is incredibly severe.

Why is it important whether we have sodomy laws or whether we have laws which prohibit you from changing your birth certificate if you change your gender identity? Because those laws can always be enforced if they're there. Because paragraph 175 was never repealed, it was very easily strengthened and enforced in 1935. It had never been enforced so everyone said, "So what's the big deal? They don't go after any of those people." Well, the big deal was in 1935. Then they could. They didn't have to add it. And that's something that we need to always keep at the forefront of our thinking about "so what's the big deal?" How does that affect me day-to-day? If it doesn't today, it certainly and easily can in the future.

Swaab did a study. This is going to be a little difficult to present, partly because my own level of knowledge which is not terribly great. The people studying genetics are at such a small level of things that they have names we don't even recognize. But Swaab studied what is called a super chiasmatic nucleus of the hypothalamus. And Swaab found that there was no differentiation between male and female, between gay and straight or lesbian and straight, but that there was some size differentiation in the transsexual versus straight-identified. However, the transsexuals, that he studied were only male-to-female; therefore, he did not encompass the whole thing, the whole range of transsexualism. But he did find some differentiation.

Wittelson found that there is some hormone differentiation and that hormone levels at different stages of development seem to influence the way the sexual identity turns out. Although it doesn't affect lesbians — I

don't know if we're lucky or not — but there was nothing to correlate to lesbianism.

LeVay is perhaps the most famous researcher that we have all heard about who seems to have identified a very tiny region in the brain. He studied the interstitial nuclei anterior hypothalamus, INAH-4, and found, he claims, there was a difference in gay males and the rest of the population.

Now, Swaab had two transsexuals in his study, male-to-female only. Wittelson had a range of study subjects, but still did not cover the entire spectrum of gay/lesbian and transsexual. LeVay had, I believe, less than 20 brains that he studied relying on the diagnosis of AIDS on some of them to identify them as gay males when differentiated between gay male and straight male. The ones who aren't either of those were simply women, because, again, the sexuality didn't seem to matter. The reason that I say this is because the studies that are receiving very large coverage in the press are really a little bit shaky on the basics and that needs to be kept in mind as well. Not enough research has been done yet to sit and talk results about things. It is a start. It is a help that these things are happening.

Another thing to consider about LeVay, he is the only researcher whose sexual identity has been part of every story that has covered him, because he is a gay male. We don't know if Swaab is gay or not, or is gay or transsexual. I don't even know anything about Swaab except the last name. Wittelson is Joan Wittelson. We don't know whether she is lesbian, straight or transsexual. We can assume straight or heterosexual because we don't hear about it. The bias in the media — I think we need to start calling the media on that, too. I would urge us to say, "It's irrelevant. Why should this study be looked at a little more carefully because Dr. LeVay is a homosexual man studying homosexual orientation. We have never questioned the heterosexual studying heterosexuality. We don't need to question the transsexual studying transsexuality. We simply need to look at the results and the strength of the science." And I think that's a very important thing to do.

Now, as we go forward with science and the law, there's a constant struggle between who is right and who should be writing the law. Who are the experts on what needs to be done in this area? Keep in mind, physicians were the largest professional part of the Nazi party. Physicians were the largest professional group in the Nazis. Physicians were the only group during the trials, which came to be known as the doctor's trials, who did not apologize for anything they had done. Not one. They maintained, "We are not here to determine values. We are simply here to report empirical facts. The ethics are for someone else to decide."

I firmly believe we must never let that happen again. If scientists are going to say, "The ethics aren't for us to decide," then we need to stand up and say, "Well, here I am, and I think about it, and I'm ready to help you decide the ethics of this, if you think you are doing simply empirical research."

To conclude, like I said, you have the time lines. Please, anything that you think of or that comes to mind after this, I would welcome any correspondence, any phone calls or whatever. Phyllis has my address if you wish to have it. You're welcome to please publish it in the proceedings so that any input — I think that thinking people communicating about these things is the best thing that can happen for all of us.

[Note: Tish Frederick, 2028 Gostic, Houston, TX 77008-4448, 713/868-3423]

At the end of my paper, I explored possible ethical constructs for dealing with what they call the New Biology. No one will say "eugenics" anymore, although, we are doing the same things that the eugenicists did. We have court opinions from 1978 that say that, "it is against the public policy of Pennsylvania to either abort a healthy fetus or to allow an abnormal fetus to be born." That's the same as eugenics, but we call it our New Biology.

Laurence Tribe, whom many of you are familiar with him, wrote an article in 1973 that urged an ethical construct which allows us to view the developing technologies as part of ourselves, rather than as something happening outside ourselves. Tribe stated that whatever is one's perception of where the threats originated,

and how they've been woven together, the emerging pattern has been an unmistakable and increasingly shared sense that our society's technological capabilities have moved out of our phase with our capacity to understand and direct their development to humanize and contain their impact and to integrate their evolution within our cultural and natural lives. Tribe recommends the way to integrate technology with ourselves is to recognize that technology is a subject/object relationship and that the act shapes the actor no less than the actor chooses the act. His ethical evaluation would assume the personal aspect of all developing genetic technologies, and would not allow the question of whether life is worth living to be disposed of in a court opinion as needing not to be addressed here.

Specific questions of life and values will always be addressed as inextricable from technology itself. Tribe has three guiding principles: 1) identity, 2) human existence, and 3) rationality. Identity with Tribe's analysis would be a fluid in reciprocal motion of personal and communal identity. Human existence would be a recognition of an existence, one in which wanting and knowing are integrated facets of a common reality. And rationality would be one that is more personal and more deeply rooted in a life history of the individual. Tribe used this as an organic shaping of an inseparable triad consisting of people, tools, and values as the three defined and constitute one another over time.

As I went back and reread this, I couldn't help but think of, I believe it's in footnote 32, the draft from the Health Law Project which notes — it's something to the effect that — the surgical options that are opened now and the techno-evolution of transgenderism are just the same as a bridge and a spacecraft. Is that correct? Tribe seems to fit exactly into that understanding. And another attractive feature of Tribe's construct and relation to transsexualism, gays and lesbians is the emphasis which is placed on personal identity, on individual history. The emphasis would allow for greater individual freedom against the entrenched traditions so deeply rooted in state and constitutional law.

Tribe's construct allows individual input into focus, goals and implementation of new and developing technologies. I would add to Tribe another ethicist that impressed me, Norman Fost. F-o-s-t, if you want to look up any of his things. Fost notes that it's difficult to distinguish between pure science and technology. The distinction blurs as the interval between basic and applied research narrows. I think that's exactly where we are today because we are quickly identifying the genes that cause various things such as Huntingtons and multiple sclerosis or muscular dystrophy. Then we are able to look at going in very quickly after that discovery and apply it actually to human beings. So, the distinction blurs as the interval between basic and applied narrows.

Fost also notes difficulties and a prohibition of some areas of research from immediate application. That is the harm caused by suppressing research and the continuing attempts to impose a false, value-free framework. And he says no activity — none — is value free. Scientists engage for a variety of self serving reasons — some of them innocent, some laudatory, some corrupt — just as those who would restrict science often do so for ideological reasons. So, do governments support science in general or in particular areas for political and ideological reasons?

Fost would prohibit then those with a vested interest, i.e. monetary interests from having the sole decision-making authority. You would have to have a multi-disciplinary approach to evaluating the new technology and the new science. You would need input from lay people who would have to have everything explained to them as well as from the government scientists whose paycheck is drawn on and depends upon the government's approval of what they are doing. So, Fost would allow a balance of all of the values of society to go into the decisions about science and how it should be applied to all of us.

Fost is based very firmly in the Hippocratic principle of "first do no harm," and that doing harm is worse than failing to do good. First, do no harm. I think that Fost's approach is flexible one, it's an inclusive one. It will, when put with Tribe applying all the values of identity, human existence, and rationality coupled out with a multi-disciplinary approach to evaluating the discoveries it develops, I believe, will be the best way to approach science. To the extent that we see that not happening, we should speak up.

The human genome project is going forward at an incredibly fast pace, mapping the genes. It is funded by the government. It has devoted three percent of its budget to ethics. The good news of that is it is the first ever science project to devote part of its budget to the ethical considerations of what it is doing. The bad news is that it is the first project to ever devote any of its money to the ethics of what it is doing. But to the extent that it's at least trying, it's worth writing to. It's worth talking with those people. It's worth trying to input about what you think Swaab's study may say, what the importance of it is and how you think the science and technology should be applied.

The Tribe-Fost construct will protect our rights by opening technological development to the individual and community interests of the non-scientists as well as by preventing complete governmental control. Adding this particular construct to the Nuremberg Code which evolved out of World War II will provide adequate protection against unwarranted technological intervention not only in the lives of gays and lesbians, transsexuals, heterosexuals, but in everyone's life.

That's basically how my research concluded. I don't think it's as complete as I would have liked. I think that the ethical framework within which we all move and operate and evaluate the world around us needs to continue to be studied. It needs the input of every individual in this room and every thinking and intelligent person and responsible person that you know. And it needs all of us to constantly pay attention to prevent any atrocities happening again in this country or in any other or with this country's lead in happening in other countries.

In conclusion, I guess I would like to say that too often, people from the outside looking in, who have not been educated enough and are looking at the gay and the lesbian and the transsexual lifestyle, would like to define our lifestyle as a ghetto, which they don't understand. But once they understand they want to know why wouldn't you leave. The answer to that is because there is life here and the life is good, and this life is mine. Thank you very much.

By Phyllis Frye:

Tish, I would like to say that Trish and I think we got our money's worth. Thank you. And when you do pass the Bar, I might even let you buy me a beer. But I'm looking forward to it. She's doing her internship with the District Attorney's office, and I already told her I can't wait to go into a trial against her. Actually what I'm looking forward to is when she's on the other side of the Bar and we can do some legal magic together.

OUR HISTORY: AS A TRANSGENDERED PEOPLE

By Phyllis Frye:

Last April, I was very privileged to address over 400,000 people on the west end of the Washington, D.C. Mall. They were waiting their turn in line to enter the street and begin their participation in the March on Washington for Lesbian, Gay, and Bi- and Transgender Rights. I was the national speaker for the transgender community. I cannot begin to tell you what an honor that was. It was both heady and sobering. It was exhilarating. Quite a few people here have demanded that I play my speech tomorrow night, which I will do.

Tonight, I want to say that there should have been, if not more than but, at least one other person on the podium to represent us. And Leslie, if you remember, I did fuss about that extensively. It should have been our next guest from New Jersey. Leslie Feinberg is our next guest, and he really needs to be introduced by our friend, Martine Rothblatt. Martine, would you please give the introduction.

By Martine Rothblatt:

Thank you. It's great honor to introduce Leslie Feinberg because as we believe, Leslie is one of the most important people alive today. That's a very heavy statement, and let me tell you some of the reasons for this statement.

Leslie Feinberg is a person who has put his life on the line repeatedly over the past several decades to protect gender rights. Not to protect transsexual or transvestite or transgendered alone or male-to-female or female-to-male, but to protect the gender rights of all of us regardless of boundaries. Leslie Feinberg has put his life on the line, has literally been threatened with death and bodily harm by police, by thugs, and others because Leslie has been willing to stand up not only for his own gender rights but for those of other people that he sees in dangerous situations nearby, across the street, in the same club, and the back alley.

Leslie is a person of immense personal courage. And that courage is an inspiration to all of us in this room and throughout the country and indeed the world. But not only that, Leslie couples his personal courage with a intellectual brilliance and ability to write and express views and get them out. Over the past two years, Leslie's published two books. One of them, Transgender Liberation is, to my knowledge, the first comprehensive history of the people who have gender creativity, and who are willing to stretch the definitions of sexual identity and gender identity. And in this book, Leslie went back and documented gender people, gender creative people going back thousands of years from now because, in Leslie's words, a people can't know where to go into the future unless they have a map of where they have been from the past.

So, Leslie provided us with this map and did it in a way that is something anybody can read in twenty pages, and it costs a couple bucks. That shows another aspect of Leslie's background and ability. He's a working class person, proud to be from a working class background. Hence it's never been a top-down message to anybody; it's been a everybody-together message for everybody.

More recently this year, Leslie published Stone Butch Blues which is a compelling fictional novel account. I say fictional because the names and places have been changed to protect the innocent or something like that. But it's the true life story of what people of creative gender and of creative sexual identity and orientation have been through during the fifties, sixties, seventies and eighties in this country. It's a compelling story because when you're done reading the book, you realize we aren't just gays and lesbians and transgenders. We aren't just transvestites and M-to-F's and F-to-M's. We're all people who want to live a free and decent life in the beautiful words of the winner of our award just a few minutes ago. We're people where we live and we love who we are. And Leslie makes us proud of all of that. And without further ado, please join me in welcoming Leslie Feinberg.

By Leslie Feinberg:

I was hoping the fanfare would be Star Wars. I could just picture a transgender Darth Vader saying, "Luke, I am your mother." I've never had so much trouble following my own introduction. Martine, you're a hard act to follow. The irony is not lost on me that here I am about to turn 44 years old, a gender outlaw my entire life, and I'm speaking at a law conference. I can only credit the courage of a vast movement, of transgender movement, that has begun to coalesce, and the individual members in our community for the fact that this is possible, or the fact, that I ate at the Courthouse Club last night.

I timed my talk tonight, you know, to the minute. It's a compulsion of mine. But I'm going to ask you to indulge me in introducing myself before I do because when I got off the plane in Houston, the issue came up of whether I was a man or a woman. Was I a he or a she? And I said, "I must be at the right conference."

It's a serious subject. I know that each one of you in this room have had to grapple with people asking you the same questions. It has shaped most of our lives. Frequently, having to answer about our own sex or our own gender expression has been demeaning and degrading and dehumanizing. But I feel that it opens up an important subject tonight about the diversity within our community. So, if you would indulge me a few minutes, I would like to tell you who I am.



Executive Director discussing choice of fanfare for Leslie Feinburg, Author, Transgender Liberation

Since this is the last time this weekend I'm going to do it so you better listen up. Someone asked me, "Well, are you a woman or a man?" And I said, "I am transgendered. I was born female and this is my gender expression. I'm not transsexual." Over a quarter of a century ago, I took hormones and had upper body surgery. If I were asked today would I do the same thing? In a hot minute. I did not cross over a river to an opposite bank and come back. My gender expression is creative and exquisite. I dove into the river between those two banks and I have explored my own transgender expression for my entire life. I stand up here, and if you ask me if I am a man or a woman, then I tell you, "I am proud to be transgendered."

Now, other people have had names for me. There has been no scarcity of those names since I've been growing up. I've been referred to as a he/she, as a drag butch, as a full-time female-to-male crossdresser, a transvestite, as a passing woman, as a transgender F-to-M. None of these words or phrases, except the transgender F-to-M, are any that I have particularly chosen.

For my transsexual brothers and sisters, for sake of simplicity, you were born assigned to sex and a boundary was drawn around it. What has shaped your life was crossing that boundary. For me, I was born with a gender boundary around me, and I have crossed that. That is what shaped my life and who I am. Do you want to be called he or she? Well, I will separate the questions this weekend because there are some who said, "I want to know how to be most sensitive to you. Would you prefer to be called he or she? I just don't get what you are." Now, "I don't get what you are" is a question that should cut and sear everyone in this room, and it doesn't even need to be said with malice in order to injure us.

For too long, those of us who are transgendered have been told that there is nothing — there is no human condition — between he and she. There is only "it". To the non-gendered community, I say, "You have to deal with the fact that I was born female. And you have to refer to me as she because you have to see what is a

contradiction between my sex and my gender expression." So I ask you, "What the hell makes you think there's a contradiction?" And to my own gender community, I am most frequently referred to as he to honor my gender expression. And that's not unusual I think for many of my cross-dressing transvestite sisters who refer to themselves as he in certain situations and she when they're with us together as a community.

Someone said to me, "Well, you're really just a lesbian." The word "just" is terribly loaded in a homophobic society. It also strips me of the identity that I have fought for and have willing to die for. Then the question is also, what does a lesbian look like? There's a lot of lesbians in this room that I don't look anything like. It's our gender expression that's visible, not our desire.

This wasn't said with malice, but I think the real question that it begs is what is the relationship between the lesbian/gay population and transgender population. To me, coming out before Stonewall, it was lesbian-and-gay transgendered population that was the visible tip of the iceberg in society. When the rest of that iceberg was below ground and closeted, there were no closets big enough for us to hide our gender expression. For a long time, people collapsed a view of gender expression and sexual orientation, "Aw, they look gay."

Well, we helped midwife the battles that gave birth to the modern gay/lesbian liberation movement which enabled this entire population to begin to emerge. We could see how large and diverse the lesbian/gay community was and how much gender diversity there is within it. But there was still a view that these drag butches and these drag queens, they're kind of the dinosaurs. This was the Jurassic Park theory that if we ignore them maybe in a generation or two they'll go away.

But now that a gender community, another iceberg is emerging. We're beginning to see, for the first time historically, too, how broad and diverse the gender community is, and how wide the range of sexual preference/orientation is within that community. The way I see the relationship between the two communities, it would be two huge circles, those populations, and they partially overlap. I am one of those people who has a foot in both communities. Like having a foot in one of each of two row boats, I have an enormous personal need for them not to go in the opposite directions.

You know gender baiting is the enemy of the lesbian/gay movement. I can remember every time there was a lesbian/gay rights bill before the City Council in New York City. The New York Times would run this stock editorial. "What are these people asking for; men in high heels and dresses to be firefighters?" And there are those in the moderate leadership saying, "No, no, no. We don't need those people over there. We're not all like that. Some of us are normal." Normal? Who the hell wants to be as normal as Jesse Helms? Is that what we're striving for? We'll never be normal enough for our enemies. Our answer should be, "Any transvestite would know to wear sensible shoes on a job like that." We won't stand for discrimination in jobs against anyone.

Gay baiting against the transgender community is understandable. People have been told all their lives, "You'd just rather change your sex than admit that you're gay." It's understandable that the response would be, "I'm not gay!" But "I'm not gay," in an anti-gay society also weakens our movement. I remember a friend who was macheted to death, a transvestite in Brooklyn, by a gang of bashers who kept yelling faggot while her wife was at home making dinner. Having said that she was not gay would not have changed the nature of that attack at all.

And so, I would remind you that the Stonewall Rebellion was made by people like myself, who cannot separate our gender expression from who we love. And I not only have a foot in both communities, but my whole life is dedicated to fighting homophobia and fighting genderphobia and fighting transphobia. I believe that "Chrysalis" has these wonderful six words on the cover of its issue this month. It says "Value Diversity in the Gender Community." I think this is not only a matter of unity, it's a matter of survival for us. And this enormous, eloquent Bill of Gender Rights is being drafted at this conference. The very first sentence says, "All Human Beings Carry Within Themselves an Ever Unfolding Idea of Who They Are and What They Are Capable of Achieving."

I am here to say to you tonight that my whole life is spent defending the right for you to be who you are. In return I ask you to defend my right to be me. I was born in 1949, and the doctor declared, "It's a girl." That may have been the last time anyone was quite that certain. The question of, "Is that a boy or a girl?" hounded me as I grew up in Buffalo, New York in the 1950s. The problem wasn't the answer, the crime was that the question had to be asked in the first place. I was already found guilty.

This was the 1950s and, for those of you who don't remember, Pentagon planes were bombing Korea, and Jim Crow apartheid laws were the law of the land. Homosexuality was not only illegal, it was not considered a fit topic for discussion. When families watched television, if you could afford this new invention, everyone sat around and guffawed at Uncle Milty Berle putting on a dress for laughs.

I was four years old when the news broke about Christine Jorgensen, and it seemed to me as I was growing up as though she was being ridiculed out of humanity. It seemed that she stood alone. What I knew, was what I had thought; I was the only one in the world until I heard about Christine Jorgensen. Thousands of kids like myself were growing up, each of us thinking that the earth really was flat. And we were going to fall off the edge of it at puberty, because we just hadn't seen any adults like we thought we were going to look like when we grew up.

So, whether we were growing up transsexual or transvestite or otherwise transgendered, each one of us knew that Christine Jorgensen's struggles meant we weren't alone. When our struggle is difficult now, we can remind ourselves that no young transgendered child growing up now will ever, ever be as alone as Christine Jorgensen was. We are creating a community for those kids. And we must remember that when the first reported sex change took place, it was at a time of the archaic witch hunts which were in full progress. We were warned that communists were hiding under our beds. And commie, pinko, Jew, fag; they were all synonymous. They meant the enemy.

It was a period of rigidly enforced conformity. The message was "don't rock the boat", "don't speak up", "don't trust the person working next to you", "don't think", and for God's sake, "don't organize". My family was working class and Jewish living in an industrial project. They remembered the horrors that our relatives faced in the Czar's Russia, the turn of the century in Poland, and in Germany in World War II. They feared fascism, and McCarthy-ism stank like Naziism. And so like many working class families in the fifties, they feared having a child who was gender different. One member of the family who stuck out like a sore thumb threatened danger for everyone. Feeling powerless against the real enemies they faced, they blamed me. They threw me overboard, and I don't think I'm the only one in the room who's experienced that.

When I found the pre-Stonewall gay bars, I discovered a huge community of transgendered gay people. In the factories, people like myself were referred to as he/shes. As I said, referring to people as "it" or "he/she" or "she/males" were common colloquial terms in those days for transgender. It felt so good to find a community, so good to find other people like myself. But the oppression that hounded us individually on the street followed us into the bars. Sheer numbers didn't stop the harassment. Only a conscious organized movement can. When gangs of bashers broke into the bars, at least we could roll up our sleeves and fight. Our sisters could take off their high heels and show what a weapon those could be.

But the moment of greatest terror was when the cops raided the bars because they had the laws on their side, because they were the law. They busted us on laws of how many pieces of clothing we were wearing. I had to be wearing three pieces of women's clothing: my sisters had to be wearing three pieces of men's clothing. But these were harassment laws. Frequently, we weren't even charged following our arrests. The sentences were all too often carried out in the back seat of a police precinct cruiser or on the cold cement floor of a cell. There was only one night a year we didn't face arrest on these laws. That was Halloween, and we never knew why.

I might never have survived this long if something hadn't happened to shape my life in a different direction

because I was very marginalized on the outside of humankind it seemed. But I became part of the movements, in the sixties and seventies, for social change. I joined Worker's World Party, a socialist organization, more than 20 years ago. For the first time I learned what it was like to work in dignity and with respect with people from different nationalities and age groups and regions and backgrounds. I was able to do this because they understood the most basic trade union tenant is that an injury to one is an injury to all. That none of us are free until all of us are free.

I had the opportunity to research and study and struggle and explore for an answer to the question that was life or death to me. "Why am I a gender outlaw in this society?" Who decided what is normal in the first place? Why are so many people punished by law for their self expression or for who they love? And for that matter, who determines what is co-defined as law? Who empowered the police and what role do they play? Do the courts stand above societies as an impartial arbiter?

I battled for understanding because sometimes consciousness is all we have to fight with. I brought to this struggle a lifetime of being blue collar and Jewish and lesbian and gender different. And to this, I added a historical study of the development of classes which brings me to the topic of tonight which is "Transgender, the Class Struggle and the Law."

There's a wise African proverb that says, "Until the lions come to power, the hunters will write the history." To transgendered people, one of the most powerful weapons to keep us down, to keep us enslaved, is theft of our history. History is like a road map that helps chart the course of liberation. Reclaiming that history and demanding a reinterpretation of what's been written is a crucial component to guide our struggle. There is enormous evidence, enormous evidence — although it has been expressed differently in diverse historical periods and economic systems and cultures and regions and nationalities and classes — that there has always, always, always been gender diversity in the human population.

But we have been taught that transphobia and genderphobia is an immutable fact of human nature. It's sort of what I call the Fred Flintstone School of Human Anthropology. The way it is now is the way it's always been. What's the message in that? "It's always going to be that way." "You can't fight City Hall." "You may as well go rent a video and drink a beer because you just can't change the world." But it's not true. I have found hundreds and hundreds of references that prove that transgendered people were not hounded and harassed in communal societies — that we have not always been gender outlaws.

Many of you are very familiar with the countless references to the word, berdache, on this continent. We have only to go back several hundred years. That was the word that very shocked colonialists used to describe the prevalence and acceptance of transgendered people among native nations on this continent. But what shook them up was not just the prevalence but the acceptance. Here were societies that accepted three and four and even seven sexes and genders. Many, many other cultures around the world on every continent also revered transgender, but there was something that they all shared in common. They were all communal societies. And by that I mean they were cooperative societies in which everyone ate or everyone starved. And in a group whose survival is based on team work, everyone is considered valuable. No one can be turned overboard. Everyone's labor contributes to the good of all.

And the family then didn't look anything like the nuclear family that Jesse Helms today considers to have been eternal. The bloodline was traced through mothers, not fathers. Because the land was not privately owned, there was nothing with which to wield power by one group over another. There's enormous evidence of the equality of women. There were no official prisons, no cops, no conquering army. The Ten Commandments', "Thou shall not steal or covet thy neighbor's wife," would have been incomprehensible in these societies. What is today considered human nature has in fact evolved with the changing organization of human society.

There's an enormous body of evidence that points to Goddess worship in preclass societies and that male-to-

female transgendered people served as Shamans or medicine people. This is true from India to Africa, Europe to Asia, the tip of South America to the North Pole. So what changed and why?

Well, very briefly in the fertile river valleys of Eurasia and Northeast Africa, during the period of about 4500 BC to 1200 BC, human labor became more productive and abundance began to accumulate as well. Who owned and controlled this new wealth? Ownership and its inheritance, sanctioned by law, became of vital importance to society for the first time. The old communal systems were gradually and unconsciously replaced over thousands of years and transformed. Society was being cleaved for the first time in human history into haves and have nots.

Enslaving a vast laboring class under chattel slavery meant the necessity for creating armies, police, courts, and prisons to enforce the ownership of private property and to guarantee the rule of the new elite. Everywhere that the level of production developed — whether it was in China, India, Africa, the Middle East, Mediterranean societies or throughout the Americas, wherever this surplus wealth developed



Leslie Feinburg, Author, Transgender Liberation

— private property and patriarchal society became the enforced social relationship of a society of masters and slaves.

How was this wealth an ownership to be passed on? For the first time again, inheritance, paternity. Legitimacy and titles took on a special significance for the new exploiting classes. The sexes were legally partitioned into man and woman. Hermaphrodites were intersexed people and were assigned or shoehorned into one of two sexes or murdered for falling in between. Women and same-sex love were denigrated. The heterosexual nuclear family became the state dictate.

Transgender became increasingly under attack from this New World Order. The transgendered shamans who had carried on the communal religions became targets. Laws barring transgender expression became part of the new ruling classes attempt to extend their rule to privatize communal lands. One of the earliest prohibitions, for example, was codified in the Mosaic laws of the Hebrews which was one of the earliest patriarchal class societies. This biblical law seems to have been a struggle to condemn rival belief systems. It formed part of a campaign against people who worshipped the Syrian Goddess, Atargatis. Followers of Atargatis crossdressed and assumed roles of another sex. The biblical dictate that “a man must not quote cut off his pretty member” was probably the first law against sex change and was inspired by the sex change that was often

part of many fertility cults of that period.

In Greece, patriarchal Gods like Dionysus arose to overpower the preclass Goddesses. But Greek painters and writers portrayed Dionysus as feminine and dressed in women's apparel. Transvestism amongst women and men persisted in all the rituals of Dionysus which endured even after Christianity became a state religion of the ruling elite.

The new attitude towards women, in part, accounts for the growing hostility of the ruling classes towards who they considered to be a feminine men — the followers of Dionysus. But the campaigns against this god's followers, in particular, may well have been meant to create a "Rambo" kind of mentality — like the extreme manhood that was stressed by the Nazi party or today's Pentagon with its anti-gay bans. These were expand or die militaristic societies, and Dionysus was a make love, not war, god. War was becoming a profitable business venture. It wasn't a big surprise when Dionysus was overthrown by the god Ares and replaced. Ares was the God of War.

Ruling class repression began to demand increasing conformity along lines of gender and sex and love even among their own class. What had once been considered natural was now declared to be its opposite and began to be increasingly criminalized. This was true wherever surplus and classes developed. But the culpability for the genocidal campaigns against transgendered people, which set the tone for modern western law and for colonial ideology, rests squarely on the European classes, their values and codes.

As the Roman slave base system of production disintegrated, it was gradually replaced by land and feudalism. Even after the rise of feudalism, remnants of these old pagan preclass religions remained, and they were joyously prosexual, lesbian, gay, bisexual, and heterosexual practices. Many women were among its followers. Many shamans were still transgendered. And transgender was universally a part of all rural festivals and rituals.

Now, the Catholic Church, at that time, was not the only political party of feudalism. When I say that the Catholic Church was a landlord, I don't mean like, my landlord who owns one building. The Catholic Church owned one third of the land of Europe. It had to outlaw and crush the old beliefs that persisted from the communal societies because they challenged the privatization of the land and the inheritance of the land by individual families. Remember that church law, divine law, was the law of the land. Church law determined inheritance, blessed marriages and even defined dress codes and sexual conduct, all the relationships and responsibilities of the family. So, it was not surprising that, by the 11th century when the church had gained the organizational and military strength to wage war against the communal holdouts and the followers of the old beliefs, the transgendered became one of its popular targets. The campaign was carried out under a religious banner, but it was a class war.

But even with all the terror of the Inquisition, even with the millions of lives that were eventually lost over centuries, gender variance was not eradicated from human expression by fiat or by terror campaign. Peasants continued to resist privatization and its theology, and the transgendered played an important role. There were transgendered leaders of peasant rebellions, of labor battles, and of anti-colonial resurrections from Wales to Italy for centuries; from Joan of Arc to Mother Folly, from the Porteous Riots to the Rebecca Riots.

This brings us to the modern ethic. The rise of bourgeois law was a great relative advance in history. Under feudalism the state structure had included the feudal nobility and the clergy divine law. it was touted to be the word of God, who could dispute it? The bourgeois revolution brought with it a general separation of church and state. Law was secularly based and admittedly the edicts of human beings not of some God on high.

Which human beings dictated the law? Bourgeois law, like feudal and chattel slave codes before it, was created to benefit the slave owners, the feudal landlords and the new industrial and banking class. Formal equality meant that everyone was supposed to be equal in the eyes of the law, but there can't be genuine

equality in a society with built-in inequality. Everyone has a right to get rich in the society, but only a few can. Everyone has a right to life, liberty, and the pursuit of happiness, except that some people create all the wealth through their labor and other people inherit it.

The class essence of this body of law is the right of private ownership. The state, which enforces these laws, is not an intermediary between conflicting parties that enforces sort of an overall morality. It overall serves one class. A factory owner, for example, can pick up the phone during the strike and call the police to come arrest these strikers who try to keep the scabs out of the plant. There's not one instance in U.S. labor history in which workers have been able to call the police and say to arrest the owner of the factory and the scab, "They're stealing our jobs." This is not equality.

When the rising capitalist class was the underdog under feudalism, they waxed eloquent about liberty and fraternity and equality. But once in power, they wielded all the old prejudices that well suited their own dividing strategies. The point I want to stress is that the bigotry and legal harassment against transgender people today is not the result of an immutable current of human nature, but of a divide and conquer system that is hell bent on keeping us fighting each other instead of fighting for real change.

Once bigotry is set in motion, it just rolls on along with its own momentum long after people forget why it was initiated. For example, look at the way racism was honed as an ideological weapon in an attempt to quote "justify" unquote the slave trade. Now, the slave trade is gone, but bigots mouth the worst kind of race hatred and claim that people have always been racists, "It's always been this way. It's just part of human nature."

I'm glad that I followed the talk that I did because I grew up hearing the explanation for fascism in Germany, as a young kid growing up, that anti-Semitism was just a part of human nature and that at any predictable moment fascism could gather like a storm cloud, and then it's just too late to fight it. So, every time I saw a swastika carved in the wooden desks in school I thought, "Here it comes." You know, fascism could be here by the lunch period and there's nothing I can do about it. It scared me to death as a kid. So, I studied a great deal about fascism as I grew up, and I discovered that the Krupps and other German industrialists made big bucks off the war. They funded the rise of Naziism. And why? Because the worker's movement in Germany was powerful. It had a socialist leadership and it brought together the lesbian and the gay and women's movement and, yes, the transgender movement.

Transgender was a part of the first wave of lesbian and gay organizing in the century. Herschfeld was himself reported to be transvestite. He coined the word transvestite in 1910 and did some of the earliest and most comprehensive works on transvestism or transgender. Much of it was destroyed, when the Nazis marched with a bust of his head in a candlelight parade and burned the institute to the ground, but much of it remains with us today, and it's been reprinted.

It's important that the Weimar Republic was on the threshold of change. There was a deep economic crisis, and a worker's movement was challenging it. So racism and anti-Semitism and anticommunism and bigotry against transgender people and lesbians and gays, which was raised to a murderous genocidal pitch, was used as clubs to beat down and destroy the progressive movements. It reinforced the power of the German industrialists and who emerged virtually untouched and on top after the war. So, yes, we need to struggle for equal rights and for protective legislation. There's so much damn oppression and prejudice. It's necessary to enforce progressive laws, but we can have no illusions that these laws can be swept away in a period of reaction. We need to struggle against the root causes, in this society, of this bigotry.

We need to struggle against capitalism at the same time. This is a chaotic market system that breeds competition and war and unemployment and homelessness and hunger. It pits us against each other. We can never be free of the dangers of reactionary back sliding that can wipe out decades of all our hard work and of enlightened people that we have so carefully nurtured. The fight to end the class division of society is the battle to remove the biggest source of antagonism and litigation and bigotry and oppression.

And I am part of a movement that is working to bring a new society to birth, based on producing to meet human needs not for the coffins of a hundred families, a society in which laws governing gender and sex and love would be unimaginable. But at the present time, we have almost no rights in this society. We have very little recourse against discrimination which is why we're here. And we're fighting to be included in the broad human rights that are just laid out in the Constitution. And our contemporary transgender community is formulating its own demands as a movement and that's part of the exciting work that's taken place at this conference.

My transsexual sisters and brothers have won victories in job discrimination that have an impact for all of us. But much, much more needs to be done from the rights of transsexual prisoners to have access to hormone treatment, to the rights of transvestites and transsexual parents to have custody and child visitation. What about basic identification papers for transgendered people like myself who are not pursuing a sex change? My drivers license is illegal because I checked off the box that says "M." I don't feel safe driving in the middle of the night on the freeway with a broken taillight and having to show some state trooper a piece of identification that has "F" for female and my photograph on it. I feel that that would be the beginning of a nightmare so I checked off that "M" because I interpret it to mean masculine. But that's against the law. I could be in deep trouble for having done that.

Now, I am about to go do the same thing with my passport. I feel that it curtails my freedom to travel, to not have a document in which my gender expression and my photograph match. Will I get in trouble for it? Will you come to my aid if I do? One of the things we discussed this weekend is why do you need an "M" or an "F" box if you have a photograph? There aren't many state troopers or immigration officials who would think that they need an "M" or an "F" to tell if someone is man or a woman. The only people it really affects are those of us who are differently gendered.

The reason I raised this is because those of you who are gathered here have legal expertise that is an invaluable asset to this and other progressive movements for change. We need your skill and your knowledge of the laws, and you know much better than I do what can be done within the legal framework to complement and parallel the movements for social justice that will take place in the streets or in the work place. I urge you to use that knowledge creatively to defend the rights of the most downtrodden of transsexual prisoners, of youth, of military service people, of transgender parents, of victims of police brutality, and of harassment on the job. And come to the aid of those of us who are battling state or medical bureaucracies or bathrooms or dress code violations.

Whether law has been cloaked as the word of an entity on high or springing from precepts of human morality, it is presented as fixed and unchangeable and we know it is not. Law arises from struggles in society. It codifies the economic inequality that were built into chattel slavery and feudalism and modern capitalism.

Law changes, but advances in production or changes in human consciousness don't automatically change the laws. It takes a struggle. As I said when I began, I grew up with Jim Crow segregation ordinances being the law of the land. It was the mighty social upheaval of the civil rights and Black liberation movements that removed some of the most reactionary laws. We want some progressive anti-discrimination and affirmative legislation. For the first time since the reconstruction period following the Civil War, the movement won some Black elected officials. Such a simple demand and yet conditions for African-Americans in inner cities is worse now due to the deep and protracted economic depression.

The development of high technology rendered many of the occupational divisions between what was considered men's work and women's work obsolete, but it took the women's movement to fight and still fight to scrap the categories of women's work and to demand equal pay for comparable work. And rigidly enforced gender boundaries could have been scrapped by high tech too. But the motor force of this social system still promotes prejudice and pitting people against each other as a vehicle for division. It took monumental struggles, still greater ones remain on the horizon to right these wrongs.

In conclusion, this is a period of deep economic crisis. I'm unemployed, I know. And many of the progressive laws that were won in the sixties and seventies, when I was out on the streets, are being eroded. This deepening crisis means that scapegoating is more and more on the agenda. And lurking in this capitalist system, just like in the Weimar Republic, is the potential that a big economic crash could be utilized by demagogues to scapegoat any oppressed group to blame them for the crisis and to whip up a right wing frenzy against them. The battles of gay and lesbian and transgendered people, as I said, helped to give birth to the modern lesbian/gay liberation movement. They ran the front lines of the Stonewall rebellion in 1969 which blew millions of closet doors off their hinges. And the struggles of all transgendered people are an integral part of the worldwide class struggle and have always been since the beginning of time.

And today at this conference we are drafting, for the first time, what I consider to be the most important document to come out of this conference. That's the International Bill of Gender Rights. It is brilliant in its simple eloquence. Documents such as these in history have proved their power. Martin Luther nailed his demands to a church door. French and American revolutionaries proclaimed and fought for a Bill of Rights. A Bill of Rights is a powerful weapon. It will win us allies as it widens understanding of what we're fighting for. And it's a rallying cry in our fights for our rights and ultimately our liberation. Together, all of us were on the front lines of battles against injustices are giving shape to that new society that we are struggling with our very lives to bring into birth. Thank you.

By Phyllis Frye:

That was really fine, Leslie. Thank you very much. It's time for us to adjourn. Tomorrow morning and all day tomorrow, we will be in this room. We will start promptly at 9:00 AM. We have in store for us the reports from all of our work for the past two days. I've watched. I've listened. I've been terribly excited about the energy that's been generated during the past two days. So, be here at 9:00 o'clock tomorrow morning, and we're going to hear the reports, ten of them, from our various legal projects. I bid you "Good night."