

# EMPLOYMENT LAW LUNCHEON

DEDICATED TO THE MEMORY OF KAREN ULANE, 742 F.2d 1081

Saturday, August 28, 1993

## Second Annual International Conference on Transgender Law and Employment Policy

### Speakers include:

- *Hon. Joe Kegans, Judge, 230<sup>th</sup> District Court, Harris County, Texas*
- *Laura Elizabeth Skaer, Employment Law Director, ICTLEP*

## YOU CAN DO IT!

By Phyllis Frye:

Before we begin the Employment Law and Policy Report, I'm going to introduce a friend of mine, the Honorable Joe Kegans, who is judge of the 230<sup>th</sup> District Court. Now, if you remember many years ago, there was a song by Johnny Cash, I think it was Johnny Cash, about a boy named Sue. Well, Judge Kegans grew up as a girl named Joe, J-o-e, Joe, not J-o, Jo. Needless to say when she and I met, we hit it off really well and to use her term we "empathized" greatly. I asked her to come and say some things. She informed me that she was not going to say what I asked her to say but that she was going to tell the truth.

I've asked her to come and speak at this Employment Law portion of our conference significantly because it deals with Employment Law. She is, I hope but again I don't know what she's going to say, she's going to relate to what she has observed of me entering my employment and how I was received. Many people who fear coming out have real fears, but they have more fears than actually exist. They don't really know what they're



Honorable Joe Kegans, Judge, 230<sup>th</sup> State District Court, Texas

going to run into, and they don't know what is going to happen, and they don't know what people are going to say. More often about 90 percent of what they fear never happens. So it's important for you to hear a case study by an observer of what she has observed as I entered my profession, my employment.

I've asked Joe to tell you stories that I've never heard. I'm not asking her to come and praise me. I'm just telling her to come and relate to you and to give you courage. What I want her to tell you is that "you can do it". Yes, you can. You can do it! So, please welcome my friend, the Honorable Joe Kegans.

By Joe Kegans:

Thank you Phyllis. I'll have to watch myself with these microphones. I normally don't use a mike and you can usually hear me some place over in the next block. So if I start talking too loud somebody let me know.

I've always said that the reason that I never felt quite accepted in society was not because I was a girl who grew up named Joe, but because I was a non-Baptist who grew up in Waco. If you don't think that will make you feel not quite accepted in society then you don't know Waco and you don't know Baptists. I'm a "whiskey-palian" and I grew up in Waco.

A number of years ago, a gal walked in my office one day and said she wanted to introduce herself. She was a lawyer, and Gene Jones, who's a mutual friend of ours, had asked her to come up and introduce herself. And it was Phyllis. We sat there and talked for, oh, I don't know, 45 minutes, maybe an hour — wasn't it Phyllis, a good long while — and got to be friends right off. We are still friends. My personal opinions of Phyllis are quite high, but they're also beside the point. The point is how Phyllis is perceived and thought of and accepted by her fellow lawyers and by the people whom she represents in the courtroom.

I frequently ask her to help me out in the 230<sup>th</sup> District Court. For those of you who might not be familiar with how they're broken down, the 230<sup>th</sup> is a criminal district court. If it ain't a felony, I don't mess with it. We handle the burglars, and the robbers, and the murderers, and the dope dealers, and the other not too pleasant people as a general rule. Frequently, I ask Phyllis to help me out with those people.

Her first acquaintance with the people she represents, generally speaking around there, is back in a pleasant little visiting parlor they called the holdover tank. Anybody who's never seen the holdover tank back over there, it's a real educational experience. It stinks. It's hot. It has a bunch of people who are less than glad to see you and less than courteous to you. But that's where lawyers have to talk to their clients when they're appointed someone to represent someone who is in custody.

I don't know how many people Phyllis has represented out of my particular court, fifty maybe, seventy-five, maybe more than that. We don't keep count of it in that sort of way. She does a bang up good job for a client, but that's because she's a good lawyer. She doesn't have any trouble with them and remember that frequently these are hard tough guys.

I don't generally put Phyllis onto the young kids who are charged with burglary of a motor vehicle. I let the younger, more inexperienced lawyers handle that sort of thing, because they're the automatic probations any idiot can handle it. True fact, true fact. All you have to know is how to walk up there and say, "I've got a license to practice law in the State of Texas." That's all you've got to do with a whole bunch of those kids. But the bad guys, the tough guys, the three or four time losers, the five or six time losers, if you will, the people with serious offenses, the aggravated robbers, the habitual criminals, the burglars of habitations, that sort of thing, they've got a great deal of trouble. I think that any defendant who has a great deal of trouble needs a great deal of lawyer. And so I put somebody with whom I have a great deal of confidence, and for whom I have a great deal of respect. Phyllis fits that category. So, she deals with those people relatively universally.

And that's what happens to lawyers that have reputations being able to take care of whatever you give them. They get the bad cases and the tough guys. I have never had one word of objection out of a single one of those defendants, whatever their gender is, whatever their color is, whatever their previous condition of servitude. Lots of them are ex-cons, and that's a condition of servitude if ever there was one. Am I right about that Ray? *[Ray Hill, in the audience, a former felon, affirmed.]*

They respect Phyllis, and they get along with Phyllis. They don't give her any lip. I understand that perhaps a little bit more of some of my fellow judges, because I spent 20 years as a criminal defense lawyer. I know what it is to handle a tough guy. I can do it, too, believe me, I can. I always have been able to, not just from on the bench. That's something that I guess in a way it's kind of born in you.

How is Phyllis perceived and treated by her peers? Quite well. They like her; they respect her. I, right at the moment, have three women who are assigned in my court as prosecutors. Each criminal court in the county has three prosecutors who are on a semi-permanent basis assigned in there. The chiefs are usually in there sometimes for three or four or five years. The Number 2's for a year or so, and the Number 3's only get to stay there oh, maybe three or four, maybe five months. Right at this minute I have three women in there. They respect Phyllis, they work well with her, they like her, and they trust her.

That's about as much as you can say about somebody as to how you are perceived, not just by your peers, but by the person who's going to be sitting on the other side of the counsel table from you. That's the way you get to know people, better than any other way in this world, is working against them in the courtroom. I like to say that mostly some of the best friends I have in this world are guys that I tried lawsuits against. I say guys because back in the days that I was trying lawsuits, women didn't try lawsuits in this county. I did, over in the criminal courts, but nobody else did and so all of the lawyers on the other side were men. Most of those men, the overwhelming majority of them, are to this day my good friends.

There's one in particular, I won't mention his name, that I can't stand. It's one of those things. We looked at each other one morning thirty-six years ago, hated each other and have never seen any reason to change our minds. I never feel bad about bad mouthing him, which I do to some degree or regularity, because he will do the same for me at any given opportunity.

It's how you appear to the people there that have to deal with you and deal with you on an adversary basis. Now, I know that people think, what more narrow-minded bunch of people could you think of to crop up with than a bunch of prosecutors, as a general rule, as a race, if you will. But I don't think that there's ever been a prosecutor that I have dealt with, that has not respected and liked Phyllis, and dealt with her on a pleasant, friendly and professional basis.

The law profession is a strange bunch. In lots of ways, some of us have our feet in the 19<sup>th</sup> Century. On the other hand, some of us are the most progressive people that you can find. Maybe over in the criminal courts more so than anywhere else. We're more interested in accepting you for what you are inside, what you can do, what you stand for, and what you mean than any place else.

I think that you will find that Phyllis is perceived by her peers as a lawyer, as a one of them, and as absolutely nothing else. Try it. We're not as bad as we're held out to be. Thank you.

By Phyllis Frye:

Thank you. You didn't hurt me too bad. I appreciate that. She'll take care of me on Monday when I'm in her courtroom.

You can do it.

You can do it. And you can reach a point to where you're non-issue. I've got to tell you a little story about the courtroom. I've become such a non-issue that when new lawyers come in now, a lot of times they don't even know who I am or what I am.

The other day I was in the holdover cell in another court and waiting to talk to my client. This lawyer that I've never laid eyes on before, obviously quite young and fresh from law school turned around and was just furious. He looked at me and he says, "Doesn't that really just tick you off?" And I said, "What?" And he says, "My client makes me so mad. I never know from time to time when I come to meet my client in a holdover cell, one court appearance to another court appearance, my client's going to look like a guy or my client's going to look like a gal. I never know. Doesn't it just tick you off when they do that?"

Usually, I would have just kind of set him down right there, but I was busy trying to get anybody I could to write a check to come to this law conference. So, I said, "Wow, that's interesting you should bring that up. We got a law conference on that very thing." He says, "What are you talking about?" And I said, "Come on down to my briefcase in the other room." I whipped out a brochure. I said, "Look, see here I am as the Executive Director, Transgender Law Conference. We've got a deal on Imprisonment Law. It'll answer all your questions." I haven't seen him since.

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## REPORT FROM THE EMPLOYMENT LAW PROJECT

By Phyllis Frye:

Serious business. Employment Law and Policy. Laura, come on up. You've met her many, many times so far. She's got a few other words to share with us later on tonight. So I'm not going to waste a lot of time introducing her. She is our Employment Law Director. Her name is Laura Elizabeth Skaer. She is a lawyer. She is out of the closet practicing as a businesswoman in Denver, Colorado. Laura, Just educate the hell out of them.

By Laura E. Skaer:

Thank you Phyllis, and thank you, Your Honor. That was wonderful. I got out of law school and practiced law before I got in the Oil and Gas business. The one thing I dreaded — and I went to work at what I affectionately call the three-piece suit, silk stocking law firm in downtown Kansas City, Missouri; Phyllis, I know it ends in an "I" but it's Missouri [missuuraa] — I dreaded a criminal appointment. I just dreaded it. I think had I realized that where judges on the criminal



Laura Elizabeth Skaer, Attorney,  
Employment Law Director, ICTLEP

bench like you, I think I would have thirsted for those appointments. Just proves that everyday you have something new to learn.

Employment Law and Policy. Recently, I wrote a letter to a lot of Colorado's congressional delegates and the state legislature on an issue. I began the letter, "Dear Senator" or whatever, Dear Congressperson, "I am an openly transgendered attorney and businesswoman." I have a copy of that letter just kind of tacked up on my wall because I like to look at that. It reminds me of a long journey and the pride that I have. This banner above me, you know, really says it all. "Transgendered and Proud and We Vote." "And We Vote" is not a cute little phrase or a colloquial saying. We put it in the banner because the message it says is, "We're transgendered; we're proud. America, the World, wake up! We are part of the mainstream! We are part of the real world! Deal with us!" That's where I think we're going with Employment Law and Policy.

But first, I want to thank the committee for their input and their insight and their direction. This is really the committee's report. I am merely the voice. I had such wonderful, wonderful help. Janet who helped take notes and loaned me notes. Carol who reviewed a couple of the documents and provided me with her input and doing just the input from the whole committee.

This report will cover information that is available and is directed to both employers and co-workers. It is designed to increase awareness, to educate, to promote understanding, to promote acceptance, and to assist on a successful on-the-job transition. We will discuss the first competent research study on gender change employability issues. We will discuss the current status of employment law as it relates to transgendered persons with an emphasis on the recent Jane Doe v. Boeing case from Washington State. Finally we will conclude with the discussion of employment law strategy for the transgendered including some suggestive statutory language for both federal and state civil rights laws.

Last year I was not able to be here to lead this portion. I understand Phyllis ably substituted for me because of a medical emergency in my family. But out of last year's conference came a very important publication, an employer's guide to gender transition. I know from my work in Denver, that a number of people have used this to their benefit to successfully transition on the job. If you don't have a copy, you need to get a copy. It's \$10. It is very, very good. It was not prepared just by transgendered people. Most of the input came from Chief Executive Officers and Personnel Managers plus the input of this conference.

This year we reviewed it and discussed it. Our comments will go back to the author for the final revision and for an information manual for co-workers. This is also really very, very good. The people that read it handed out several copies. Some of you did not get back to me with your comments, but you have them. If you have them, I'll get them to the author. The whole idea is to let your fellow workers know what's going on so you remove the fear of the unknown. Give them some idea about what's happening in your life and why.

It does a very good job of explaining what being transgendered is all about and why they are seeing the changes that they are seeing. It is written toward understanding and acceptance and to help establish a co-worker support system. I cannot over emphasize the importance of a co-worker support system in making a gender transition on the job successful. If your co-workers support you, your supervisors are going to be left with very little alternative but to also support you. This hopefully will be published in the next three to six months and will also be available. If you don't want to wait three to six months, and none of you should, it will be in the "Proceedings." That may be the only way you can get it for a while, so buy the "Proceedings."

In my research I looked and looked and looked for competent research on these kinds of issues, for experience with gender transition on the job, for experience data to support transgendered people seeking employment whether on the job or in a change of career. I had difficulty finding anything. Then in the mail one day I get a package from Phyllis. I opened it up and in this package was a booklet called "Gender Change Employability Issues, including transsexual employment survey results" by Christine Burnham from the Gender Dysphoria Clinic in Vancouver, British Columbia, Canada.

It was "Wow." To my knowledge, this is the only thing published — of any kind to attempt at any kind of research data — that's available right now. As Phyllis mentioned the other day, if you have a case involving a transgendered person in an employment discrimination case or if you are trying to work with them to get their employer to understand that it's really in their best interest to help this person transition on the job, you now have some empirical data to support your hypothesis and your arguments.

This is outstanding research. When I read the preface, it was like my heart started beating a little bit faster. When I read the first page of the preface, they had referenced the First International Conference on Transgender Law and Employment Policy. And it was "Wow." I do some lobbying: you scratch my back, I'll scratch yours. That's kind of how the system works as Keith told us earlier. I read a little bit on and they quoted extensively from the "Employer's Guide to a Gender Transition." And she has given us one time copyright release for this conference. This will be also in the "Proceedings."

It's really, really good stuff, excellent stuff. Ms. Burnham surveyed male-to-females and female-to-males. She surveyed pretransitional, transitioning, and posttransitional, as well as employers and social workers. Among its findings and recommendations are that she found that many transitioning individuals don't have the resources to pay for the medical and other expenses resulting in potentially higher unemployment in these situations. Just a lack of funds — to take care of necessary things like electrolysis, hormones, breast reduction surgery — that the results of the survey indicate that has a major impact on the issues and a person's ability to succeed in a transition.

From the transsexual group that was surveyed were many of the perceived problems to a successful gender transition. Rated first was poor self esteem. Transsexuals realized that if their self esteem was poor, it resulted and correlated directly to a lack of success in an on-the-job transition or in finding employment if they chose to start over and change careers. Poor self esteem included a fear of being read, of being outed, and of being discriminated against.

For male-to-females, facial hair during the transition period was definitely a problem that affected their employer and their co-worker's ability to accept the transition.

Another was vocal presentation. What's interesting to note is that between the three groups — the transgendered people being surveyed, the social workers and the employers — the voice was perceived by the social workers as being the greatest barrier. To the transgendered people, it was second; but with the employers, it was way down the list. It just didn't seem to be a big thing to the employers. The social workers thought it was a key issue and the transgendered people placed voice somewhere down the line.

There were some essential characteristics of a successful transition according to the TS respondents. They included a good attitude, a positive self esteem, just the opposite of before. On having SRS, the transsexual people reported that having SRS, for many of them, resulted in increased self confidence and self esteem. The affordability of medical and other support services like electrolysis was very important. Obviously, there was a correlation that the higher the income level and the higher the education, the more the opportunity for success.

Employer and social worker objections that were cited were that people feel uncomfortable. The transgendered people tended to have poor self esteem, or they look strange, or to some degree have an inappropriate voice. But on a positive note, eighty-seven percent of the employers interviewed, believed that transsexual or transgendered people make reasonably good employees. None of the employers had a moral objection, although eight social workers did.

Personal contact with someone in the transgendered community definitely helped make employers more favorable to an on-the-job transition. So whether they knew you, if they just had contact with someone in this community that increased their acceptance. That goes to what Keith told us about the discrimination against

gays and lesbians; when they knew a gay and lesbian person, their acceptance rose to seventy-nine percent. So there's definitely a correlation there.

One of the other things that came out of it was that it is important to establish your value as a human being and as an employee before you establish your true identity and begin transition. And there was universal agreement that obtaining electrolysis, hormones, breast reduction, voice therapy, obtaining as much of that as possible before beginning your transition contributed to your success. It also talked about the importance of establishing a support system among co-workers and among non-transgendered community friends.

There's about four pages of recommendations in the work. I'll just summarize a couple of them. Some of these are very much common sense. Being employed: they found that transitioning on the job gave you a greater chance of success than trying to find a job after transitioning. Being able to maintain as close to a standard of living or a minimum income level helped. One recommendation was that the transgendered person must know what their goal is. Is their goal to be accepted in the transitional role or is it to be accepted in the new role and to govern their course of action accordingly?

It was emphasized the need to have a plan of action and to pay attention to the timing of your changes. People that have heard me talk before know that I like to make reference to what I call the Fram oil filter analogy. The guy stands on TV in his auto repair overalls and he says, "You know you can pay me now or you can pay me later." On one hand is a \$5 oil filter and over here is a \$1500 engine overhaul. I think in going through transition that analogy is appropriate. There are certain steps that have to be taken, and if you take them in a logical order, the price paid for a successful transition is much less than if you helter skelter, hob nob, or put some of the steps off.

Support services must be available. There must be a support network. There must be an electrologist, a hormone treating physician and therapy services available. They recommend that we establish a TS consumer lobbying group, that we look at establish housing programs, perhaps halfway house for TS's involved in a transition.

An employer-referral service should build a data base of employers who have experienced with an on-the-job gender transition. That's something I'd like to see this conference work on. Not so much that because American Airlines has twenty-something postoperative transsexuals so I'll go apply at American Airlines. Yeah, that's part of it, but the real key here is, as Jessica Sterns found out, when American Airlines management went to Continental Airlines management and said, "You're full of bull. This transsexual is not a less competent pilot because she's had SRS. It will not affect her ability in the cockpit, and it will not affect the way passengers relate to her. It's a myth." So I think the real importance of an employer database is to get employers who will go to bat and let other employers know this is not a problem.

A couple of other recommendations was to be sure to establish and to build up your self esteem and establish your strong role identity. One of the things we talked a lot about was philosophy and things of that nature. But as Keith Stewart told us, there is a system out there and we have to work within the system. One of the important things that came out of this survey was how important gender acceptability of your presentation is. Right or wrong, like it or not, in the employment world, employers kind of expect in most situations that men look somewhat like men and women look somewhat like women. And the more you meet that expectation the more chances of your success.

Now, I want to talk about the law, yesterday, today and tomorrow, a historical perspective. You need to understand that even as I speak here today with one or two minor exceptions, there has never been favorable case law to transgendered or transsexual people in the area of Employment Law or employment discrimination. They have tried Title VII of the Civil Rights Act. They've tried other civil rights sections and equal protection arguments. The courts seemingly, historically, went out of their way to construe these statutes not to apply to us.

On the Title VII cases, through court after court, they went through and said Congress obviously meant for sections to have its "plain meaning," whatever that is. The word sex is not defined in Title VII of the Civil Act Rights of '64, and there's no legislative history on what meaning that word was supposed to have. Yet, the legislative history is replete with page after page indicating the primary purpose of that act was to protect women as women. And so courts kind of went out of their way.

I think part of the problem is that most of these cases came up in the seventies and early eighties. I really wonder, if they came up today, if we might not have different results if we have the right preparation for the case. So that's at the federal level.

At the state level, basically there are two cases dealing with state disability laws and the transgendered person lost in both of them. One of them we're going to discuss in a little more detail because when you heard of it, at first blush, the Jane Doe v. Boeing case would really hurt us. Well, it doesn't. I'll tell you why although you have to really emphasize the facts.

State non-discriminations: There are eight states now that have laws that prohibit discrimination on the basis of sexual orientation. Nine governors have issued executive orders prohibiting the discrimination and state employment on that basis. There's tons and tons of municipal ordinances that do the same thing. And there are a few, Santa Cruz, California, for one, that defines gender to specifically include transgendered individuals. I did not do an exhaustive research, but there is some hope there as I will discuss in a little more detail later. During the last legislative session, Minnesota became the first state to amend their civil rights law to specifically include transgendered people within its coverage. And they did it by defining us within the term "sexual orientation."

I want to talk about the Jane Doe v. Boeing case. Jane Doe was a transsexual to wanted to transition on the job, and Boeing decided they were going to work with her. They had eight transsexuals transitioning at the same time within the Boeing Company. They went through and gave her some guidelines and some directives. One of the directives was that until she had surgery she couldn't use the women's restroom or wear excessively feminine clothing. They also permitted her to wear unisex clothing and unisex clothing included blouses, flats, nylons, foundation, lipstick. So, it was more than my definition of unisex.

This is why, when you have a test case, you have to have good facts if you're going to make a test case. Jane Doe v. Boeing is the classic case of bad facts make bad law. Jane Doe was fired not because she was transsexual, but because she ignored and deliberately violated Boeing's directives which the court found reasonable, based on the evidence.

The breakdown occurred in Jane Doe's attitude. She became her own worst enemy. During the probationary period, her supervisor was supposed to gauge how she responded to these directives and these guidelines. One day the supervisor told her that she was really pleased that Jane was working with the company and found her attire acceptable. Jane responded, "I'm really disappointed that you find this acceptable, and I intend to push it until you don't." Well, she did, and they fired her.

Unfortunately the real breakdown here is that Jane Doe refused to recognize that employment is a two-way street. There are legitimate needs and interests of an employer that have to be balanced against our legitimate needs and interests in gender expression. But most importantly, she had a bad support team. She did not have good therapists. She did not have good treating physicians. By good, I mean they didn't know what they were talking about. Her own experts testified that Boeing's directives and limitations on unisex clothing were sufficient to allow her to meet the Harry Benjamin Standards. In my personal opinion, Boeing's directives and guidelines were unreasonable. But how can you fight that when the plaintiff's own experts come into court and say, "These are perfectly reasonable, and she can meet these guidelines and fulfill her socialization in a female role." I don't think there was any chance but we had bad facts, and bad experts; thus, bad law.



The law is basically that Boeing did accommodate her, or tried to accommodate her, and intended to keep her all the way through; had she balanced things out with them. One of the things we talked about was the importance of maintaining value on the job. In this case they said, "Well, all the evidence was that Jane's work product was just as good if not better therefore, obviously Boeing had accommodated her handicap because it didn't interfere with her ability to work." There was this Catch-22. But when I read the case, I guess my question was, what was Jane Doe's goal? Was it to have a successful on-the-job transition or was it to try to make a point in a situation with an unloaded gun?

If you read the case, the case isn't as bad as I first thought when I saw it. It gets us right back to the fact where we still have no favorable case on the issue of employment discrimination. The Minnesota statute is pretty neat because it talks about having or being perceived to have an identity that is different from one's biological femaleness or maleness. We discussed that in committee and everyone agreed that there was a broad enough definition to include every person on the gender continuum whether you are an occasional crossdresser to a postop TS. The "perceived to be" language is important because it doesn't matter whether you are or not, if somebody thinks you are then you're protected. It's good language.

Some people are concerned about being defined within sexual orientation because we grow up obsessed with explaining to society the difference between gender and sex. But the fact of the matter is, my experience has told me, society doesn't get it yet. I think we concluded in our committee that it was better to get to the finish line on the horse that would get you there and worry about changing horses or educating people on the difference between sex and gender after you've crossed the finish line rather than before.

There is one thing that's come up in the last couple of years in our fight. I think it's very fitting that we are having this part of our conference on the 30<sup>th</sup> anniversary of the civil rights march in Washington, D.C. and Martin Luther King's "I Have a Dream" speech. I reread it in the paper this morning and started crying before I got half way through it. We are in much the same place that they were thirty years ago. We do have a dream, and I think that we, hopefully, can learn and build on that and build on the gay and lesbian community fight where it won't take us thirty years to see some results.

Unfortunately while all of this great progress is being made, we have a group in our society that is moving in the other direction. And it is the "religious right" as I call it, which is another name for the "bigots of the world." Last year we saw attempts to put legislation into two states that would permit and even promote discrimination against gays, lesbians and bi-sexuals. I think maybe one of the reasons transgender wasn't in there was that the "religious right" hasn't quite figured out who we are yet. Or they think that all of us are all within what they call the gay-drag queen. So, they either think they've got us or they really don't understand what we're all about.

Fortunately Oregon's was defeated. It was a very heinous law. It even declared homosexuality to be abnormal. And that was defeated. Unfortunately Colorado's passed, not because Colorado is a hate state, but it passed because they are very astute politically. They waged a very good campaign. They confused the heck out of the electorate and unfortunately the gay and lesbian power structure in Colorado spent all their time, effort and money preaching to the choir instead of taking the message to the western slope and to rural Colorado where it really needed to be.

We have a very courageous judge who issued an injunction against the enforcement of the amendment, and, very importantly, changed the burden of proof from a rational basis to a compelling state interest. So the burden of proof is switched to the state. That was appealed by the Attorney General McCullough. Colorado's Supreme Court just recently ruled on a 6 of 10 vote to uphold the injunction. And if you read their opinion, they're basically telling the world that, when the merits of the case gets to us, it's unconstitutional. One of the things that I think may take this case to the U.S. Supreme Court is because — I don't know and I'm not constitutional law expert but — I've never seen this expressed quite this way before. Colorado Supreme Court declared that it was unconstitutional to put the civil rights of any person, of any human being, to a vote of the

people. That was the holding in this case affirming the injunction. On that issue there may be enough to get that case to the U.S. Supreme Court.

Now, let's talk strategies for the future. Last night, Leslie Feinberg talked about our gender bill of rights and later today Sharon Ann Stuart will lead a session on that. And I agree with Leslie. It's a wonderful, wonderful document. And I really think the guiding principles for our employment law strategies has to be this international gender bill of rights with the right of every human to define their gender or non-gender with the right of every human being to express their gender or their non-gender and however they choose. To me those seem to be knowing the guiding concepts and principal for employment law strategy but for our insurance law strategy, for our health law strategy. I think Martine's principles and standards encompass that view very well.

Our committee agreed that we needed to have two focuses. We need to have a transgender rights focus, and we need to have a network with a focus on networking with other minority and oppressed groups. Under a transgendered rights strategy for employment, I think we need to understand, and we need to counsel transgendered people, that under the system, under current U.S. law, employment is a two-way street. The employer does have legitimate interests and those interests have to be balanced against the individual employee's interest. I think that we should urge every transgendered person to establish their value to their employer, to their industry, and to their society, before they go out trying to establish their identity.

A friend of mine who works at the Colorado Oil and Gas Commission also happens to be a black woman. We were having lunch. We were talking about my transition and about the acceptance that she knew the industry had from her contacts with the industry. It was that good positive feedback that all of us need to know, that we're not just perceiving or blocking in our mind the reality. It's nice to have that kind of feedback. But she told me, "Laura, you really did it right. You established your value to this industry before you established your identity." She said, "Hon, if you'd tried it the other way, you'd have had more trouble than a black woman making it in this society." And there's a lot of truth to that. There really is. There shouldn't be, but there is.

You must have a plan of action and stay focused on the goal of a successful transition or successfully acquiring good employment. Sometimes that's going to mean ebbing and flowing, giving and taking, pulling back and pushing, pushing the envelope and knowing when to pull back. If the goal is success, you've got to know when you've pushed too far and you need to pull back. Give other people, as Judge Alice Oliver-Parrot said, your patience. You must have patience.

You must establish a support system both within our community, outside of our community and with your co-workers. And our focus, while we're focusing on transgendered rights, must be on civil rights for all, not just our narrow segment. If you are narrow issue-focused, you're not going to get people's attention. Legislators and policy makers, they have tremendous demand on their time. The larger you can make your focus, the more all encompassing it is, the greater your chance of success. So when we draft language to protect our community, we need to make sure that it is in broad, all encompassing language that protects civil rights for all humans.

Education is the key. We must educate our friends. We must educate our employers. We must educate our co-workers, our politicians, our legislators, our judges, and our policy makers. For it is education that empowers. It is education that eliminates the fear of the unknown which is probably the greatest obstacle we have in transitioning, this fear of the unknown. You must be willing to risk. No risk; no reward. That's an axiom in business. That's an axiom in life. It's kind of the no pain, no gain, that if you ever played sports, you heard growing up.

One point that was brought out that I had not thought of before, but I think was maybe one of the most important things that I learned at this conference, was to argue that your transgenderism is a distraction to you doing your best. It's a distraction to your productivity and to your being the best employee you can be. If your transgenderism is hidden in the closet, if you are having to use creative energy to hide who you really are, there is no way you can be the best employee you're capable of being. There's no way your employer's going to get

the top value for his investment or her investment in you. I think that's an excellent argument for us to make. In support of an on-the-job gender transition is the argument that, right now, hiding is a distraction for this person and is limiting their ability and their potential for your company.

Network with other minority and oppressed groups. We have to share the work. We have to build on each other's successes and learn from each other's failures. We must be inclusive not exclusive. All groups who have ever been oppressed by society must come to understand that we're all in the same boat. We're all natural allies. We have to be because if we aren't none of us will succeed. The gay and lesbian community are starting to realize that we are their natural allies. The Women's Movement is starting to realize that we are their natural allies. We may be, more than any other segment in society, the strongest supporters of what they're trying to do. Networking. Never stop.

We must make sure we are included in broad federal civil rights legislation soon to be introduced. Under the Clinton Administration, there will be a civil rights bill. It will include language to protect against discrimination on the basis of sexual orientation. If passed, it will eliminate the "Amendment 2"s and the "Proposition 9"s of the world. But we must make sure for this is a once in a lifetime opportunity for this community, for all oppressed people, for all minority groups. Make sure we're included in that legislation. We must do more. While it is important that we lobby, we must write letters to our legislators and we must constantly ask that our language must be in there.

The real key is we have to be at the drafting table. We have to have a representative at the drafting table. When these groups get together to draft the language with the staff people, there will be gay and lesbian groups that will have a representative there. We have got to figure out how we are going to get to that table. We must identify who from our community. We want to get them involved and then help them build the resume necessary to be included. In other words, this person must be able to say that they represent as many as possible if not all of the legitimate organizations within our community. IFGE, AEGIS, Renaissance, GIC, GCTC, TRI-ESS, ICTLEP. We've got to find the right person or persons and put the organizational support behind them. And our language must be in the bill.

The Minnesota language is an excellent place to start. It is very, very all inclusive. On any type of sexual or gender minority, that language is inclusive enough to include it. And yes maybe it can be fine tuned, maybe it can be improved upon, but I think our committee concluded that that's where we ought to start, right there. As I said, we must lobby and write letters. We must get our friends to lobby and write letters. We must tell them why we must be included. Unfortunately, "that it is morally right" is not enough of a reason with most legislators. The people that agree with that, you've already got in your corner.

We must talk about the benefits to society of including us and removing that fear of discrimination, about the increased productivity, and about the release of creative energy to help make this world a better place because of our lives than without our lives. We must itemize the benefits and we must talk about the benefits. We need to find pecuniary benefits too because I mean this is a society that goes around on money. We can emphasize removing this yoke from the transgendered people. We'll not only increase our productivity, it's going to keep us off of government assistance. We will become an asset, not a liability.

That was pretty much what our committee came up with as to the strategy. But I added one more this morning when I woke up about 5:00 AM and finished my outline. I think it may be the most important strategy of all to a successful transition, and it's the most important strategy to gaining the civil rights protection that every one of us is entitled to us by virtue of being alive as humans. That strategy, my brothers and sisters, is get out of the closet.

How are you going to obtain basic civil rights as a transgendered person as long as you remain in the closet?

I have explored that question. I have asked people, and I'm here to tell you that no one has given me an

answer yet to that question. I don't believe the answer exists because I believe as long as you stay in the closet, it is impossible to obtain basic civil rights. People don't know who you are and what you're all about.

Remaining in the closet implies that you are embarrassed. It implies that you believe you are not worthy of basic civil rights protection. It implies that you believe there is something wrong with you and you must keep this part of your personhood hidden from the rest of us.

How could you educate policy makers, politicians, friends, society in general as long as you remain in the closet? How are they going to know that you're their next door neighbor? That they've known and liked and partied with you and had you over for dinner and gone to concerns and ball games with you for twenty years if you stay in the closet?

Staying in the closet helps promote and perpetuate discrimination.

Fact: The world needs to know who we are, that we come from all walks of life, that we come in all sizes, shapes and colors. The world needs to know that we really might be their next door neighbor.

The gay and lesbian community has discovered that. In Colorado, there were a lot of people who never wanted to discriminate or vote in favor of discrimination but voted in favor of Amendment 2 because they bought the garbage about special rights. A lot of those people felt ashamed and embarrassed when they found out about people they knew who had previously been in the closet. The gay and lesbian community said, "Hey, the only way we're going to reverse this is we have to come out of the closet." There was a full-page ad the day after the election results in both Denver newspapers from the gay and lesbian power structure in Colorado saying we must come out of the closet. They must know who we are, and if they know who we are, they will not discriminate against us as people. They only discriminate when we are an abstract.

The best way to educate society is to let them know who you really are.

I submit to you that you cannot be all that you were meant to be as a human, that you cannot reach your true potential as a human, that you cannot find inner peace and happiness, that you cannot be honest with yourself — and if you can't be honest with yourself, how can you be honest with your friends, with your employer and with your associates and with society? — and that you cannot be the best person and the best employee you're capable of being, as long as you are in the closet.

We cannot win this battle for basic human dignity in civil rights as long as you, and your neighbor, and your friend, no matter where they are, are in the closet. So get out of the closet. Join the battle and help make this a win, win, win situation for all of human kind. Thank you.

By Phyllis Frye:

Thank you very much. It was terrific. I was listening to your report, especially about the strategy about making sure that we have input in the legislation. I charge you now as our Employment Law Director to form a team, and I'm going to tell you who I want on the team. After we're finished this afternoon, I want you to take them up to the Acapulco Room on the second floor, which is one of our free rooms, and get together and come up with a preliminary plan to be presented in about ten minutes tonight on how you're going to do this and what people are going to be involved.

I definitely want you involved because you are our Employment Law spearhead. I believe that this activist movement is only important if we get more people involved. I want Martine on it because of her location and her energy. I want Melinda on it because she's coming out. You are coming out, Melinda. Aaron, I want you on it, because I want some female-to-males involved and I know that you're out. If you choose not to, that's

fine, but I want you on it. Anyone else on your committee that you feel should be on that strategy session this afternoon is fine. *[Laura asked for Pat Grace.]*

Anybody else who wants on that committee and wants to be involved, the meeting will not take place while we're still giving our reports. But after we give our reports — we're finished at 5:30 and we don't eat until 7:30 — you should be able to go immediately up there, do your preliminary plan in about an hour and then you can come down and have cocktails and change clothes and all that stuff. You're just too good a fighter to not put you back on the front line. That's a compliment.

At 2:15, Jim Kuhn is going to present the Insurance Law report followed by Raymond Hill giving the Imprisonment Law report followed by Connie Moore with Family Law, and it will all be put together with the International Gender Bill of Rights. I'll see you in about 13 minutes.