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# REPORT FROM EMPLOYMENT LAW AND POLICY PROJECT

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

### *Moderator:*

◦ Laura Elizabeth Skaer, Attorney, Employment Law and Policy Director, ICTLEP

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by Laura Elizabeth Skaer:

We're going to do this a little differently this year than last year. I cannot express as well as you can what you got out of the jobs and employment law and policy seminar and the workshops that we have had. So we're going to, as part of this report, let some of you come up here and express some of what those workshops meant to you, what you got out of it, and kind of share things that you think are important to share with those that were in the other workshops and didn't get it participate with us.

Let's give everybody a little review beginning on Thursday. My pet peeve is when someone walks in to talk to their lawyer about a discrimination lawsuit, in many respects, it's too late. You've already lost, maybe not the war, but enough battles to make winning the war very difficult. The law for transgendered people is not favorable for the most part. So we spent the first day talking about strategies on how we can go about avoiding the lawsuit and how can you increase your potential to save your job and how can you find new employment.

First, Melissa Foster talked to us about saving your job, making yourself more valuable to your employer, and most importantly communicating your value to your employer. She had worked for a rather large company, McDonald-Douglas, for twenty-eight and a half years and was feeling very confident that she had a job until retirement. One day her boss walked in and said "Just heard from upper management" in so many words "and your job is being eliminated and you're going to be laid off." She said after she got over the shock of that, she set out putting together a forty-page document that described all of the things that she had done for McDonald-Douglas. She also assembled a list of the jobs that other people didn't seem to want to do. She went after those and added those to her job description. She laid all of this on her supervisor who sent it to corporate VP who, after he read it, sent the word back down that they had decided not to eliminate her position.

She basically had showed them that she was responsible for about \$14 million of revenue to her company and that there was wasn't anyone else in the company who had been trained or had the experience to do what she was doing. So from a practical standpoint she went about to communicate her value to her employer. A lot of times that's what we need to. We need to establish our value. You got to do it to yourself first before you can establish value to someone else.

Next was Dianna Cicotello who talked to us about some of the things involved in a successful on-the-job transition. Dianna has written a couple of books, one for the employer, and one for the

co-worker. I'm going to let Dianna talk a little bit about this later. But just to kind of summarize, I think what I got out of that was that you can't cookbook a successful transition. You can't say, a year before you do this, six month before you do this, three months before you do this. It doesn't work that way.

We've talked throughout this conference about this bipolarization of gender. There are two different cultures, a male and female culture. The fact is that we did not have the advantage of growing up in the culture that we now live in. The keys to a good, to a successful, transition are understanding that there are two different cultures, understanding how to communicate between those cultures, and understanding the attitude of the culture that you're aspiring to be in, whether that's male to female or female to male. It's learning what that attitude is all about. A successful transition is not about how you walk, how you sit, how you talk, how you put on makeup, what you wear, it's attitude. It's attitude is what I got out of that.

Then we talked about the Boulton & Park survey [see Appendix D]. That's available for \$5. Nine hundred and thirty-four responses over about a three-year period. Fifty-four were TG [full-time transgenderists, also called non-surgical transsexuals] responses, two hundred TS [transsexuals, both pre-and post-surgical] responses, the rest were TV [transvestites and crossdressers] responses. Very, very interesting results. The Phillips' can answer questions about that. Maybe Linda, before this report is over, will just kind of highlight that.

[Another Boulton & Park Survey entitled "Women in Relationships with Cross-Dressing Men: A Descriptive Study from a Nonclinical Setting" by George R. Brown, MD, appears in the "Archives of Sexual Behavior," Vol 23, No 5, 1994. Of significance is the large N=106 and that these were done by Boulton & Park in a non-clinical setting. The first page of the article is at the end of Appendix D.]

Then we briefly reviewed the Vancouver, British Columbia, "Gender Change Employability Factors" [reprinted in Proceedings II]. This survey interviewed pre-op and post-op transsexuals on the job and some without jobs. They interviewed employers, and they interviewed social workers. The one thing that we pointed out of that survey was that the stereotypes, the stereotypical attitudes, lay not particularly with the co-employees, and for the most part not with the employers either, but mostly with the social workers and with the therapists. They, the social workers and the therapists, were the ones who thought that voice was one of the most important things you had to work on and change in order to have a successful transition. Eighty-five percent of the employers said voice wasn't important.

There were several more of those in there, those of the therapist and the social worker with their misconceptions of what employers thought important. It comes from our reading the stuff that has been written about us by other therapists and social workers and the theories about us. The social workers and therapists get these preconceived notions that what things are important. For the most part they don't come and ask us about what's going on inside here [pointing to her heart], which is really what's important. And for the record, I'm pointing to my soul.

Yesterday, Friday, we began with the review of the law which, with a couple of exceptions, is clearly not favorable. Historically, Title VII of the Civil Rights Act of 1964 has never included transsexuality within its protection. It's interesting to note that the word "sex" is not defined in that statute, and for the most part "sex" is not defined in any nondiscrimination statute. Check legislative history, and there's virtually no legislative history. The legislative history in the Civil Rights Act of 1964, which is about six volumes, contains two sentences on sex. [For an in-depth presentation about the near-

vacuum of the legal definition of "sex", refer to the Health Law Reports contained in Proceedings I and Proceedings II.] So when courts look at that and there's no history, they say, "Well gosh, it's given its plain meaning: plain meaning is male, female." Checking, that has perpetuated through these cases.

It was interesting to note in one case, the Summer's Budget Marketing case, that in the late 1970's, Summer's lawyer was arguing that she was born a woman with the anatomical body of a male. That's the same kinds of theories that we're talking about today. That gets right to the heart of the non-op and the whole thing that gender is not between our legs. Back in 1979 and 1980 was when this case was being developed. Someday I'd like to find this attorney if they're still alive because that's a pretty advanced argument to have been made twelve or thirteen years ago. One of the reasons why I think it wasn't successful is there was no support: there was no support in the medical community or in the therapeutical community. It was such a novel theory that it took everybody by surprise. But I think today, with some of the work of Gordene MacKenzie and Randy Etner and some others, that we probably have some evidence and some theories to support that argument today. You might be much more successful in making it.

You think maybe we're beyond these cases, beyond this old view of sex, until you realize that there's a July 1994 case in Washington D.C. The judge allowed, is going to allow, a case to go forward by a transsexual on a discrimination claim, but the only part of the D.C. statute that she's being permitted to proceed under is the personal appearance. You can't discriminate on the basis of personal appearance. They threw out the sexual orientation claims. They threw out the sex discrimination claims citing the Karen Ulane case, the Holloway case, the Summers case, all of these late 1970, early 1980 cases that held that Title VII didn't apply. Those cases still raise their heads to slap us just when we think we're making progress.

This, all of this really, points to the great need for what a number of people in this room met on last night, which is political action and legislative change. These kinds of cases and ideas are coming back, and they're still haunting us.

The one case we talked a lot about Doe vs. Boeing, a State of Washington Supreme Court case which ruled against the transsexual. It was a clear case of bad facts make bad law. You know, we talk about transition being a two-way street and being sensitive. If you want people to be sensitive to your needs, you've got to be sensitive to their needs. You find in this case the transsexual's attitude was "My way or the highway." It was, "I'm going to push this company to the limit."

Not only did she have that attitude, but can you imagine in the late 1980s and early 1990s having a team of therapists who testified that pursuant wrong? I mean, I've got a set of the Benjamin standards, and the Benjamin standards make it pretty clear to me what a one year full life test is and what it requires in the role of a woman. But her own experts testified at court that the Benjamin standards did not require one to dress in the clothing or in the role of the gender they aspired to live in. On the record, that was her best evidence.

Boeing had a policy of a accommodation. I don't think it was very reasonable but the evidence on the record was that if she wears unisex clothing and doesn't get too carried away with her jewelry, then because she's a good employee, we want to keep her. She can't use the female rest room, but there's a unisex one down the hall, a one-holer so to speak, that she can use. After she has surgery, she can come to work and so on. What was really amazing is that, in her job as an engineer, most of the

women wore jeans and stuff like that to work anyway. Very few of them ever wore skirts or dresses or suits in her line of work at the company. You know what—none of that was good enough for her. She pushed the wall, but then her own testimony said "Boeing's policy is reasonable."

You look at that case and you say, "God, here is a court ruling that we don't have any protection." But when you really look at the facts, it's hard for me to say the Court did anything but make the decision that was justified by the record. They can't go beyond the record. So it's real important to put the right team of experts together, to get your act together ahead of time because if you don't make the best record, you don't have the best chance.

There are a couple of cases where there has been success under state disability laws. One last case I want to talk about is an administrative appeal, from Jacksonville, Florida [see Appendix 9 in Proceedings II]. A correctional officer of 14 years, one with an exemplary record who had a promotion track that was equal to or greater than anyone ever hired by the Jacksonville Correctional Institute. Belinda Smith was seen, she was out crossdressed, in a period of pre-transition. She had a flat tire and the state patrol came by to help her. One officer just did a cursory check, ran the license plates through, and saw it belonged to a man. And one thing lead to another, and pretty soon word got back to the City of Jacksonville. The sheriff terminated her because his perception was that she couldn't function as a transsexual going through transition and therapy and treatment because none of her fellow correctional officers would accept her, and none of the inmates would accept her, and it would be chaos.

The State's Civil Service Review Board affirmed that, and then it was appealed to a hearing division. Belinda Smith had an attorney in Jacksonville named Cheryl Peak. Between Belinda and Cheryl, they made a heck of a record. A couple of things I want to read to you because I think it's real important the kind of record that it takes to win some of these cases. These are some of the findings of fact:

"The majority of people in this world are the opinion that human kind is divided into male and female. That viewpoint is incorrect. Put simply, there is a certain percentage of human kind that are a mixture of male and female characteristics. Sometimes the mixture consists of physical characteristics and sometimes the mixture consists of opposing physical, i.e. sexual characteristics and mental, i.e. gender characteristics. Transsexuality is the term of common parlance for the condition known to medical health professionals as gender dysphoria. Transsexuals essentially believe themselves to be opposite in general to their anatomic characteristics and to have been born in the wrong body. Gender dysphoria is a persistent sense of discomfort, inappropriate about one's anatomic sex accompanied by a persistent wish to be rid of one genitals and to live as a member of the other sex."

It goes on like that for about nineteen or twenty pages of facts. It was quite clear that Belinda Smith had good experts, had a good attorney and put together a good report. The decision of the hearing officer was to order reinstatement and back pay and ordered the City to pay her attorneys fees. They held that under Florida human rights law, transsexuality was a handicap, but much more than an actual handicap. The hearing officer said that it's not an actual handicap. It's a perceived handicap. The hearing officer held that it was clearly a perceived handicap because her boss, the sheriff, and the other people involved in the correctional institute and the City, they perceived it so. It was their perception that her transsexuality was going to interfere with her job and her ability to perform her job that became a handicap to her performing her job.

The icing on the cake here is that the City called three of her fellow correctional officers to testify, and all three of them testified that this wasn't a problem for them. They didn't see any way that this was going to interfere in her ability to perform her job. The record also was clear that she went into it from the very beginning with an attitude of being sensitive to her fellow workers, being sensitive in the needs of the inmates and thinking that she could be a more effective officer in that way. It's that same attitude that Dianna talked about on Thursday that led Belinda Smith to not only build that record but to have the support from her fellow employees that led to a good positive result.

After that we talked a little bit about strategies and theories for the future. We got into talking about, we went away from legal protection to talking about employment protection in the realization that the job is all important. We are a market based, capitalistic economy, and the job is all important. Without the job it's pretty hard to put everything else together. It's pretty tough to pay for surgery and pay for therapy. It's pretty hard to put food on the table for those who have no interests in those other things. It's hard to put food on the table, clothing on your back, and a roof over your head without a job.

And we talked about other things that were important such as working with transgenders in homeless shelters. Make sure that everyone has an address and a telephone number they can put on their resume.

It is important to network within our own community and to find support within that community.

We talked about the importance of giving back. For those who have been involved in AA, that's the 12th step. It's being there. It's not being takers; it's being givers. When you first walk through the door, you're very needy. I know when I first walked through that door and met other transgendered people, I was incredibly needy. They fed me; they filled my cup. They filled my cup to the point of where it ran over, and I realized in this process that I had an absolute obligation to give back. Because if I didn't give back, then who was going to be there to fill the cup for the next needy person to walk through the door. And we talked about the need for all of us to preach that in our local groups and everywhere we go about the need to be there and to give back, and to establish a network and to help establish employment opportunities, you know, to talk about jobs.

We talked about utilizing job service centers in vocational rehab and bringing all of those resources together.

That's a summary of what went on in the employment law section. I really want to thank the people that were there because you really made my job of moderating the thing very easy because you jumped in. The feedback was incredible. The participation was incredible. I don't know if you learned anything from me, but I know I learned a great deal from your input and your participation. I would like for some of you who feel moved and inclined to come up here and kind of share, you know, one or two things that you got out of the employment law workshop because you can do a much better job of that than I can. So Lisa why don't you start.

by Lisa Middleton:

I think the most important lessons that I got out of this conference on employment law was the reconfirmation of the responsibility that each and every one of us has to prepare the way for our transition within our own workplace. To identify, not simply from a legal standpoint but from an

interpersonal standpoint and very much from an internal and attitude standpoint, how do we want to go about being seen in our workplace? How do we want to go about making the transition from one gender to another among our co-workers.

The other thing I can tell you that I got out of the employment law workshop is I found myself sitting there and trying to compose the letter that I need to write to my boss that will follow up the conversation that we will have telling him, "Well surprise, boss!" I think it's going to be a much, much better letter for what I learned. Without getting maudlin about it all, I simply want to thank everyone in this room for the opportunity to have met you and to have been a part of this conference.

by Jane Fee:

Speaking to the employment issue, I think that one of the things that each of us has to remember is, that when we start wanting the sympathy and support of other people in whatever activity we're involved in, for instance, transitioning on the job, that we also have to be very thoughtful of the concerns and the interests of the other people that are involved in it. When you're talking about a case like Boeing where obviously they were accommodating the person and yet the person wasn't satisfied with that and felt that somehow or other they could push their rights beyond the limits, it isn't going to work. I think that if you give other people the same sort of opportunity to learn and to accommodate to the changes that you have to go through yourself, that it will stand you very well.

Another thing that I would suggest is, that before you get into this transition, that you go through an assessment of what your real value to the company is. Have you been a good employee? Can you sit down and document that? Write out a list like Laura was suggesting that one person did, and find out just what your value is to the company. If you can't prove to yourself that you have been a valuable employee, then most likely they won't be able to prove it to them either. If you find you're in that kind of shape and you'd like to stay with the company, perhaps you would defer your transition for a while, then revise your work habits and build up something which is beneficial.

So it might be important for you to sit down and, in effect, make a little diary as to what you've been involved in, what the results of it have been, what your activities are. This could stand you very well in court later on too if you were ever faced with that. Agreeably, we should all try and avoid court. We should try and work out things before that. It's very debilitating, it's very expensive, and I'm not sure that even if you win it leaves you much better off. Those are the comments that I have. And I would like to thank everybody in the conference too. I've enjoyed being here. It's been a pleasure and a privilege.

by Laura Elizabeth Skaer:

While we focus on employment protection and on gaining our legal rights that we are guaranteed as human beings by the Constitution of this great land, we must be careful not to shut the eyes in the back of our head. We talked about initiatives and laws that promote discrimination or that prevent equal rights for all. Briefly we talked about the Oregon and the Colorado initiatives, but we focused on the State of Washington initiatives. Because of the effort of the gay, lesbian, bisexual and transgender communities in Washington State, Initiatives 608 and 610 failed to gather enough support to get on the ballot. As I said in the workshop, that has a real impact. I'm not that familiar with Washington's petition and initiative law, but I know in Colorado, a state of a little over three million people, it takes 49,000 signatures of registered voters to get an initiative on the ballot. A lot of it has

to do with the number of people that voted in the last general election and that kind of thing. But that was a real work effort to keep those initiatives off of the ballot.

The real importance of the Washington State initiatives for us is the fact that besides the traditional attack of these types of initiatives, this was the first one to declare, the people of the State of Washington were declaring that within in the State of Washington, that the law would recognize only the gender assigned at birth as the true and legal gender for life, and that neither hormones nor surgical reassignment would change your legal status in the State of Washington. What was interesting, it was called "The Child and Minority Protection Act, and it did nothing to protect anyone. The initiative further provided that those who may have had legal recognition outside the State of Washington, if they move to the State of Washington, they would not have a legal recognized status in their gender. This raises a lot of equal protection issues and other such things.

Equality Colorado found out, you know, about \$2 million later, no, it's about \$1.8 million is what they spent, that it's very expensive to take one of these initiatives after they have passed and get it set aside. Equality Colorado was the pac that funded and paid the lawyers to do the work and the lawyers have only been paid for about twenty percent of their time. It was the immediate filing of a temporary restraining order, and seeking a permanent one against the enforcement of that act pending a trial on the merits on the constitutionality. There was a hearing on the granting of a preliminary injunction and a hearing on a permanent injunction with a victory on the permanent injunction.

The most important thing the judge did was say that the standard [or judicial review] is not a rational basis, but the standard is a compelling state interest. That [permanent injunction] then went on appeal to the Supreme Court of the State of Colorado which affirmed, which then sent it back to the trial court, to the district court, for now a trial on the constitutionality. The idea was we won at the injunction because the standard [set and affirmed] is a compelling state interest [standard]. That's a much, much more difficult standard to reach than a rational basis. And the most important thing about that standard is it shifts the burden of proof. Instead of Equality Colorado having to prove that there's no compelling state interest or prove that this is unconstitutional, the presumption is that it's unconstitutional unless they [the initiative organizers] can prove a compelling state interest or compelling state need for this law. Very, very important is who has the burden of proof here.

So now we're back and we have this long trial on the merits with much of the same evidence that we had in the hearing on the injunction. It's before the same judge. The judge ruled on the merits that the law was unconstitutional on its face, and now that's on appeal to the Supreme Court of Colorado. The feeling is that Colorado for Family Values is depending on our Attorney General, and we have a chance to throw our Attorney General out in November. Maybe that will happen. If we do that, the state may decide that enough money has been spent on this. After the Supreme Court, which voted 6 to 1 before, I think that most everybody, even Colorado for Family Values, believes that the Supreme Court is going to rule this unconstitutional.

There's some who wanted to go to the Supreme Court of the United States to get definitive decision on this to stop all this crap everywhere else. With Ginsburg up there now, it's probably a pretty friendly court for that. But Supreme Court justices, they do strange and unusual things, and you can never trust them. Eisenhower put Earl Warren on the court because he thinks he's a conservative strict constructionist and finds out that the Warren court is one the most progressive courts for the advancement of civil rights in the history of our country. So you never know. Sometimes you don't, and you're not sure you want to take those chances.

The point I want to make is that like the commercial with the guy with the Fram oil filter wanting to you change your oil and change your filter. He talks about that he also does complete engine overhauls. It's kind of like "You can pay me now or you can pay me later, but it's going to cost you a lot more later." The fight for civil rights is the same way. If we can get organized up front, for employment protection up front, and defeat initiatives that would deny us employment protection, deny us legal rights, then the cost is much less dear than the cost afterwards in not only money but in destroyed lives. Most important! So we talked about those things. We talked about the need to keep our back side protected as well as our front side.

by Jessica M. Xavier:

Clearly what we've been talking about in the employment workshop here are stopgap measures in lieu of any real hard and fast protection from employment discrimination anywhere. Basically, what we've been doing is trying to get tactics together, making ourselves invaluable to our employer, et cetera, along the lines of depending on the kindness of strangers for your continued livelihood. That's not a very strong argument.

I remember the arguments behind the Supreme Court's decisions and in talking about Amendment II in Colorado, a lot of them focused on the creation of a suspect classification. That is to say, should gay and lesbians be afforded special consideration because they are a class that are vulnerable to discrimination they're a suspect class. This is a rather tenacious legal argument. It's rather difficult to prove, and it's fairly difficult to create.

I did not get a chance to introduce this idea in my talk yesterday, but from the "Washington Blade", August 5th, Arlene Zarimca wrote an article about a new ordinance in Asheville, North Carolina that prohibits discrimination, employment discrimination, in the city government from any and all people based on for any reason. Discrimination for any reason that is not related to bona fide occupation qualifications for the job would be prohibited. This takes the focus off of the argument that the right wing uses against us of the special rights for sexual minorities. That's a rather difficult argument to get across to middle America. Instead, this ordinance focuses on the employment qualifications themselves. It takes the special rights argument away completely and just focuses right back on the millions with jobs. This is a new way.

I'm going to try and get the language of this Asheville ordinance from the Phoenix group down there. We should see if this is something that we can use as a model to suggest to our legislators locally and in the state levels for whether or not this might work for them. It has the argument that it does reduces the tactics, the outside tactics that the radical right could use against such a prominent issue. We would be promoting fair employment and protection from discrimination for everyone, not just for gays, lesbians, and bisexuals. Arlene Zarimca made the excellent point that this ordinance eliminates divisions between the gay community and other even more marginalized groups. She even went on to mention that this would provide protection for transsexuals. So this is a very important idea and I'm sorry I did not make an opportunity to raise it in the employment workshop.

by Laura Elizabeth Skaer:

We've heard throughout this conference about the Minnesota language. There's a consensus among the people participating in the employment workshop that, with respect to language that would serve well as a model for other states, the Minnesota definition of having or being perceived to have

basically an identity, a self identity that is not normally associated with one's biological maleness or femaleness is a very aggressive definition, while at the same time being a benign definition. It doesn't use any of the red-flag words. A lot of times they'll look. If they don't see the words, you know, gay, lesbian, bisexual, transgender, transsexual, transvestite, a lot of times you could just kind of blow right past it. It was good language, and I think it's a good place to move forward from.

I would love for you to hear from Karen and Randall. These are two people who both transitioned on the job in San Diego with the Department of Defense. I think both of them ought to come up and share just a moment or two.

by Karen Larimore:

What I got out of the workshop the other day was that I wasn't aware of just what the body of case law was out there concerning this. I knew there had been a few cases here and there—Continental Airlines and a few people like that. But I didn't really know what there was, what the decisions had been, what the precedents had been. I'm a layperson. I'm not a lawyer. I buy stuff for the government. That's what I do. So I found it very useful for me in that regard. Plus coming here and meeting all of you great people and just knowing who's out there. I mean, that's like super for us.

by Randall Larimore:

I'll say a little bit about transitioning on the job. That's something to really consider and think about very seriously before you sit down with your employer and tell them what your intentions and plans are. Once you reach that point and you're real sure that that's exactly what you want to do, then I wholeheartedly recommend that you do in fact do that. Sit down with your top level management first and explain to them what the situation is.

Both in Karen's and my cases, we opted to bring in our M.D. and help explain the situation to our upper level managers. Then we broke out into our immediate branch—we work in separate branches. In my branch we also had the M.D. meet with the psychiatric area and upper level managers. We had all the people that we immediately work with which is our peers. It was explained to our peers on that sort of a level exactly what was going to be going on with one of their co-workers. Then there was questions and answers time, and that took probably about an hour and a half or so. It was pretty extensive. [See "Employer's Manual in Proceedings I and the Co-Worker's Manual in Proceedings II.]

All the coworkers had a general idea. It's just that it wasn't explained to them from that level ever before. They did get a lot of education out of it, and they came to a better understanding. However, you're always going to have that small percentage. When I say small percentage, out of a one hundred and ten co-workers, we had maybe two or three people that just didn't quite grasp it. They don't grasp things on that sort of level because maybe their religious belief or whatever the case may be. But as in everything in life you can't expect everybody to beat to the same beat that you're going on. So, you kind of have to expect that and being sensitive of those people too because you're asking them to be sensitive of you. So I guess it's kind of a two-way street. Even though you don't see eye to eye, you do have to respect their opinions and feelings.

by Karen Larimore:

Our transition went pretty well. We met at work. That's how we got together. I transitioned [into

a woman]. I went full-time two years ago. After I had gone full-time [but still pre-surgical], Randall [while still a woman] and I started dating, and one thing led to another. We were married. What's a little unusual about our situation is we were married as male and female and then again as female and male. Both ways. I had surgery last November 30th in Colorado and Randall went with me.

So we really tied it up, and we did that on the advice of our counsel in San Diego, Irene Cockroft. She indicated to us this strategy, the rationale being that if someone attempts to invalidate one marriage, it would automatically validate the other. So that's the thinking here behind that. We're happily married and glad to be here.

by Laura Elizabeth Skaer:

One of the things I found out in my transition was that people wanted information. I happen to be transitioning at an area where most of the people I was dealing with had colleagues and they wanted information. A week after I had gone full-time, I found that even the people, who I think were open-minded and wanted to be accepting, didn't know what to do. They weren't quite sure how to approach me.

I had not given them any information on how I expected to be dealt with, so I put together a two-page letter kind of which I entitled "Information concerning my gender shift from Larry to Laura Skaer. It was a little summary about gender dysphoria and about gender within different cultures and how gender in one culture is different than gender in another culture. As much as I could, I summarized a forty year struggle. I had incredible success with that approach. It gave people information, and within this letter, I tried to be sensitive and empathetic to their needs.

I talked about sex being a very rigid barrier for most of us and to see one crossing that barrier can be quite disconcerting. I said that I did not expect anyone to comprehend within the reading of this two-page letter what had taken me forty years of struggle to come to grips with. The feedback I got from that was they we really appreciated that paragraph because it gave them permission, it was okay, if they didn't understand. If they didn't fully comprehend, okay. But on the same hand this is serious stuff, this is my life, this is my heart, this is my sole. It's worked being honest and forthright.

by Nancy Sharp:

What I'd like to do is to second what most of the people, who've had successful transitions on the job, have said. And that is the point about diplomacy and preparation. It's absolutely about diplomacy, diplomacy, diplomacy. Discussion, discussion, discussion. Have your resources to back you up before you go in. Have your doctors' and any legal help that you think you may need. Be ready for that. Possibly everybody here are the ones that have had successful transitions because they're the ones that could afford to come here.

But some of us haven't had the successful transition, and they're not able to be here. Sometimes it fails: diplomacy doesn't work and you're out. So you need to be prepared in case that fails too. When diplomacy fails, then I think it's war time. You need to be prepared to go to court. If that happens, that means you need documentation. So, keep your work record, keep documentation of everything you've done, even all your yearly appraisals. Make sure you have copies of that. If you've gotten bonuses in the past, keep that. You're going to need it. You're going to need everything that shows that you are a worthwhile employee. Then it's time, and don't be afraid if that happens, to get

into the legal system with them. It's the last thing you want to do, but once it happens, go forward with it. Even if we lose with the legal system, on a case by case basis at least, we're getting more and more information out there into the courts. Eventually one case will come along, and we'll win.

That's what I'd like to say, but I still stress diplomacy, diplomacy, diplomacy and preparation. But if it fails, fight it! I don't see we have any other choice. Thank you.

by an audience speaker:

One of things that I think is really terrific that we see in a group like this is that in our community there are a lot of success stories of people who have successfully transitioned. I think what we need to do, as a group, is to spread the word of these successes for a couple of reasons. One is there are a lot of people out there who don't think you can do this. There's a lot of people who are scared to death that they can't transition. The more success stories we have, the more these people can be encouraged by doing the right things—by the preparation and all these things—to go ahead and do something that they really want to do but have a tremendous fear of.

Two is it helps us build up a track record with a variety of employers. We can hang our hat on those, and we can say, "Hey, transgendered people make terrific employees. They do one hell of a job." The more of these especially large, highly visible companies that we can say we have had successful transitions for transgendered people in, this can be very influential.

It was influential in my case when I was fired one day and rehired the next. One of the arguments that I presented to my company when I was fighting for my job was the names of several large companies, AT&T, Caterpillar, the City of Chicago, where I personally knew people who had transitioned on the job there. The people that I persuaded then went to their higher ups and reiterated these same company names. It was very influential in them changing their mind about keeping me.

If we get this kind of information out to people, then it's incredible. I wrote an article for our newsletter about my experience. I write articles all the time for our newsletters, but I never had any article generate as many comments. People walked up to me who said, "I loved your story. It was such an inspiration. I can't believe what you went through." Nothing I ever wrote before got that kind of response. So we have to let people now. Every time there's a success, spread the word. I think that will continue to help further our cause and make it simpler and easier for those behind us to transition. Thanks.

by Laura Elizabeth Skaer:

One of the things that the lesbian and gay community figured they needed was coming out stories. Success stories. They started putting those together in a book, in a book of coming out stories, of success stories. I would like to see that and maybe this conference is a place for that idea to germinate. We need our people who have succeeded in an on-the-job transition to tell their stories. [Multiple success stories appear in each Proceedings.] I would be willing to coordinate that through the employment law and policy part of this law conference. So, send me your coming-out stories, and we will publish them or we will make them available.

I have a dear friend in New Jersey who works for a major medical supply company who is one of

their top salespersons. Jane Fee knows who I'm talking about. She's ready to transition, yet she's talking about walking away from that career in which she has been highly successful. She said to me, "I just can't transition in this job." Then I asked, "have you talked to them?" "No, they just won't." I said, "Jennifer, as long as you have that idea, they won't. As long as that is ingrained in your mind and in your heart—that it will not work, that they will not accept you—then you're going to be one hundred percent right. They won't! What they're going to do is they're going to look at you. They're going to see that you don't accept yourself and you don't believe that you can be just as good a salesperson as Jennifer as you were before." I continued, "I'm willing to bet that if you free yourself then you'll be even better."

What I found in my case was the amount of creative energy that it took to hide myself, my true self, ninety percent of my personality, was large. As Dr. Randy Etner said, "that amount of energy, creative energy, that could have been put into much a more productive means and put into allowing yourself to grow was instead concentrated on hiding, on denying, on trying to live up to somebody's expectations of who I should be and what I should be." I really believe that, during the last two years before I transitioned, I was an underachiever because I needed to focus my energy away. I wouldn't think about this contaminating issue. If I allowed it to contaminate my life, it would. Then I found and I really believe that I'm more productive and more creative now than I've before been in my life. It freed that up.

It's really important. If people will bring those success stories in, we'll start publishing those out of this conference because people need to know that it works. [Laura's address is on inside back cover of this book.]

by another audience speaker:

Is there any kind of lobbying or other initiatives planned to look at the language of the federal bill that's about to be sponsored by Barney Frank and Ted Kennedy on employment protection?

by Laura Elizabeth Skaer:

Yes, there is. Karen Kerin is chairing it. We are about to form, and by "we" I mean the community and not ICTLEP—it's totally separate and apart from ICTLEP, it has nothing to do with ICTLEP—a political action committee. It just happens that a group of people who happen to be here want to do this. I would suggest you talk to Karen Kerin or Jessica Xavier. They already have a mission statement and a list of goals to make sure we, the transgender community, are included along with gays and lesbians and bisexuals. I think the intent is to get together again tonight after dinner. At about midnight last night we had three hours of work left to do in the organizing stage and people were kind of burned. So be there tonight after dinner, and I know that you're input would be welcomed.

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## THE GOOD SAMARITAN—A TRANSGENDERED PERSON

Introduction by Laura Elizabeth Skaer:

I want to finish up with and let Diane Cicotello tell about a woman in Denver, a transgendered person, who has quite a success story of her own. What's really neat about this success story is that

the media knew from the very beginning, almost the very beginning, of this person's transgendered condition as a pre-op, living as a woman, and working as a woman, and they never said a thing. I'll let her tell you why, so you realize that even the media can be sensitive. It's just a matter of letting them know who we are.

by Dianna Cicotello:

I want to talk to you about a very special friend in the community. Her name is Jacquie. Jacquie came out into the community about four years ago. A typical coming out, she came to the gender identity center of Colorado and she had a struggle with how to deal with a spouse and a struggle with how to deal with children. She dealt with them in the way that, traditionally, people in this community dealt with. She reached a resolution that said that there would be a divorce, that the children would stay with the spouse. Then Jacquie lost her job. The usual things that go on in the community.

The community took care of Jacquie. Other people in the community took Jacquie in, gave Jacquie a place to stay, a roof over her head, and gave her food. Jacquie got back on her feet relatively quickly. Jacquie's a fighter. Jacquie got a job as a process server—not a real wonderful job for somebody in transition to be going up to people's front doors and irritating with them lawsuit papers. I told Jacquie she better be careful or she was going to end up with a bullet in her back. Jacquie worked the process server job for a couple of years.

In December of 1993 Jacquie finally got a good job, a safe job, a job with a major financial corporation in the Technological Center in the south side of Denver. That company is real good to us. It is one of the companies that provided an impetus for the "Employers' Guide to Gender Transition" [in Proceedings I]. It is the company that I did consulting with earlier for another transgendered person going through transition there. Jacquie settled into her new job very, very quickly, and Jacquie started paying back the people that had been good to her when she didn't have anything. Jacquie's life was turning around very, very quickly.

One Saturday morning in the middle of February of 1994, about six o'clock in the morning, Jacquie was traveling from where she was living in south Denver to have breakfast with her father in Thornton in north Denver. As Jacquie drove her car through the intersection of IH-25 and IH-76, out of the shadows on the side of the road came a woman who was running, screaming and crying. Jacquie, as Jacquie would do, stopped the car to help the woman on the side of the road. Rhonda Maloney jumped into Jacquie's car and in hysterics described how she been run off the road, two hours earlier had been savagely attacked, had been raped had been beaten by a man with a gun.

Jacquie and Rhonda headed up Interstate 25, four miles up the road heading for a police station right on the interstate. Jacquie headed as fast as Jacquie could go in the sort of icy conditions that morning. Quickly she realized that Rhonda's assailant was following them and was trying to catch them on the highway. As Jacquie got to the top of the ramp where the police station was, the assailant managed to get alongside and open fire with a gun on Jacquie's car. Jacquie's car jumped the median and went up the front lawn almost to the front door of the police station. But she couldn't drive the rest of the way because Jacquie had taken three bullets—one in her cheek, one in her knee and one in her spine. The assailant stopped on the lawn behind Jacquie's car, reabducted Rhonda, looked Jacquie straight in the eye, assumed Jacquie was dead and drove away with Rhonda back in his car.

The police found Jacquie a few minutes later. Jacquie died once as the ambulance crew removed

her from the car, but they revived her. In the emergency room, Jacquie died again and they revived her again. Jacquie tells the story of having gone to the light and having people stop her and ask her if she really wanted to come the rest of the way or if she wanted to go back. She chose to come back. It was three days before Jacquie woke up in the hospital. She was paralyzed, a bullet in her spine.

She signaled for a piece of paper and a pen, and just to show you the depth of Jacquie's character, the first question she asked with a paper and her pen, "How is the girl? She wanted to know how Rhonda was. The whole city wanted to know how Rhonda was. It took a week to find Rhonda's body—under a bridge, naked—out on the plains east of Colorado. Because of Jacquie's ability to communicate with the police despite her pain and her paralysis, a sketch was made, and a man was arrested a couple of days later. It was the son of a Denver policeman, and it turns out the man is probably a serial killer. He's been linked now to five other similar rape and murders in the Denver area for the past several years. There's enough evidence that the man won't escape, but the bullet is still in Jacquie's spine. Jacquie is numb and paralyzed from just below her breast down. She probably will be for the rest of her life. She's a fighter. If anybody can recover from what's happened, Jacquie will recover from what's happened.

The emergency room obviously knew of Jacquie's transgendered status right away. The Denver police were aware of Jacquie's transgender status right away. The media became aware of Jacquie's transgender status right away. Because of the work that I've done in colleges and universities, most of the people in the media have seen me at one point there. I am the one transsexual that they know, and they called me over the next two days. "We know about Jacquie. What do we do with this story?" I begged with them to let Jacquie be the hero that she was. I begged with them to let Jacquie be the good Samaritan that she was. I begged with them if they had to tell the rest of the story to please put it in the biblical terms of the good Samaritan who was chosen in a time of peril. The good Samaritan story was appropriate because a Samaritans at the time of that biblical story were highly misunderstood and highly suspect. Yet, that is the one person who stopped to help the injured traveler on the side of the road. If you don't know the story, go find it whether you like reading the Bible or not. Jacquie truly became the good Samaritan.

The media has left Jacquie's transgendered status alone in spite of knowing. In fact, as Jacquie recovered, as Jacquie started receiving awards from various groups around town, the media continued to cover the thirty-one year old woman who helped Rhonda Maloney—who tried to help Rhonda Maloney. The media in April of this year, all three major television stations ran a three-night interview of Jacquie. They showed Jacquie, they showed Jacquie's house, they showed Jacquie's children. They interviewed Jacquie's children. They interviewed some of Jacquie's co-workers and, still with that much media attention, left Jacquie's transgender status alone.

The State of Colorado Legislature in May, in a special joint session presented Jacquie with a special award for heroism in a wheelchair in front of a joint session of the Colorado Legislature and read the award into the record of the state. And the television covered her again. And again they've left Jacquie's transgendered status alone.

What I think you need to understand out of this—two things. If you're a reasonable rational human being, nobody cares if you're transgendered. You don't have to be in their face to win their hearts. The second thing that I would ask of you with this story is that Jacquie has obviously accumulated a hell of a lot of medical expenses. There is a fund that was established a day after the accident, the Jacquie Creosa fund. It's a Northvalley Bank in Thornton, Colorado. If you have the ability to make

donations to that fund, please do. For the people that read this in the record, they contact me through the Gender Identity Center of Denver, Colorado.

I want to thank you for listening to the story of a true hero from our community, somebody who has a genuine success story, and someone who is willing to give their life. When asked on the air by a television reporter, "If you had to do it all over again, knowing the outcome, knowing that you would be numb and paralyzed from your breast down for the rest of your life, if you had to do it all over again, would you?" Jacquie, without hesitation said, "Yes, I would."

By Laura Elizabeth Skaer:

Thanks for sharing that with us Dianna. It's stories like that. We need all kinds of success stories and inspirations because we have been down trodden, and we have been beaten by our families, and beaten down by the medical professionals, and beaten down by the health, mental health professionals, and beaten down by legislators, and beaten down by the religious right. We need to share our success stories to give us the strength and the energy to move forward.

Somebody asked me "Why do you come to this?" And I said, "I come because of you." You enrich my life and you strengthen me. I have met so many wonderful people here, and I love you all. I appreciate you giving me the time to be with you and to moderate this session. It is very meaningful to me and an important part of my life, and I thank you.