
CLOSING REMARKS DINNER

Saturday, August 28, 1993

Second Annual International Conference on Transgender Law and Employment Policy

Speakers include:

- *Laura Elizabeth Skaer, Attorney, Employment Law Director, ICTLEP*
- *Yvonne Cook-Riley, Operations Director, International Foundation for Gender Education (IFGE)*
- *Cynthia Phillips, Texas 'T' Party*
- *Phyllis Randolph Frye, Executive Director, ICTLEP*
- *Jim Sacher, Attorney, Equal Employment Opportunity Commission*
- *Ron Garet, Professor, University of Southern California Law Center*



Saturday night dinner

By Phyllis Frye:

We have done most of our work. The second conference is almost at a close, and I need to know if you think it has been worthwhile. *[Audience applauds.]* I also want to thank the hotel staff and the chef and the banquet people. This was really a good meal, especially the fish. But it was an exceptional meal and the dessert was the best cheese cake I've had in years. So, we need a round of applause for the hotel also. *[Audience applauds.]*

We've been blessed with some significant speakers and project moderators. They did their thing this afternoon and were warmly embraced and applauded. But the real people who really put on the conference are all the people that were not getting the credits, the people behind the scenes, the people that made this happen. I've already introduced the Board. You know who the Board is, and you know who are non-Board significant people are as far as, Karen, and Tere, and Cynthia and Linda.

Our support staff needs to be included: Jackie and Sydney running our video along with Maxine, and Dee McKellar running our audio, Leticia doing our court reporting, and Delma Corder as a "go-fer". Is there anybody I forgot to mention who was a volunteer or a helper? Well, those are the people that really made this conference work, and they really deserve a round of applause.

IFGE: STRATEGIC, VISION-2000

By Phyllis Frye:

Yvonne Cook, why don't you start coming up here, please. Yvonne Cook, I've known her for several years now. She is a tireless — I think actually, no I'm sure, she's really worn out most of the time from all the work that she does — but she keeps on pitching in for us. It was an honor to march with her in Washington, and it's an honor every time I bump in to her because she is such a hard worker. Her heart is in such a good place for us and for our community. Yvonne is the Operations Director of the International Foundation for Gender Education headquartered in Massachusetts. She would like to say a few words from IFGE to the ICTLEP conference.

By Yvonne Cook-Riley:

Thank you Phyllis. Actually I can't believe that she didn't put any music on. Here I was anticipating that music as I was way in the back of the room and was going to have all this music to get around. What can I say? Always surprises from Phyllis.

Anyway, thank you Board of Directors from the International Law Conference. Laura, Sharon, Martine, and Jackie. With all the guest speakers that you have, I wanted to know is it true that Bull from "Night Court" is going to come over here and testify how he met you when you were coming out too? No? Well, I just thought I'd ask. You had everybody else in the world here. I was very amazed.



Yvonne Cook-Riley, Operations Director of the International Foundation for Gender Education

I didn't know you had so many friends. Of course we were in Washington, D.C., and I will tell you the story. Here we are, we're in the middle of a gay ghetto, if you want, the square, and we're standing by a fountain like this (indicating). Millions of men around. Here's Phyllis and me just kind of shopping, and we see a couple other females and by God, they know her. "Hi, Phyllis." And I said, "Can't I go anywhere in the world without somebody knowing you here?" Here we are in the middle of — what was that part of Washington — Dupont Circle. Right in the middle of the gay ghetto.

Let me get back to more serious things, and I only have a couple of minutes. IFGE, the International Foundation for Gender Education, is the central processing unit of information for the world today. Tomorrow it's going to be something else, and I'm going to share that. I would also like to share with you, and have them to stand, the Board of Directors from IFGE that are here and present, starting with Sharon Ann Stuart, who is our Vice Chair; Sheila Kirk, who is our Secretary; Laura Skaer, who is our fund-raising Director; both the Phillips, Cynthia and Linda; and — is Taylor still here? — Taylor Montgomery. This is the Board of Directors, including myself, that are here with you at our law conference, and I think that you should recognize them. Thank you very much for being here.

Why is IFGE here, except for the fact that two of our Board members are on Phyllis'? They're quite obvious. But why are the rest of us here? It wasn't by accident that we're here. You might not have seen us all the time because although we were here, we were working on an agenda. All of us have taken the role somewhat of caretaker and we realize how important it is for us to be caretakers. We are involved at IFGE in a project called "IFGE, Vision-2000". That is, where IFGE wants to be at the year 2000 and how they see their role in the community by that time. This is an exciting change in the way that the community is starting to look and judge itself, because we are taking ourselves very, very seriously. Thanks to the example of Phyllis and many other leaders who have said, "It is time that this community does take itself very seriously."

We started this process through the capable hands of Jheri Lee Summers, who happens to be here in Houston along with Laura Caldwell and Abbey Sapien, who are over there. Would you two please stand so people can see you because these are wonderful tireless workers. Would you give them a little applause, please. *[Audience complies.]* This process, started off at our meeting in Philadelphia, has taken us so far this year to San Francisco, Chicago, now to Houston, next to Atlanta, Georgia, and then on to Los Angeles and to many other places in the country as we get into what is called focus groups. Focus groups is going to get the community to participate in helping IFGE continue on with its strategic intent. As of this meeting, the strategic intent has been defined. I would like to share it with you.

IFGE is striving to see if it can also become, first, an academic partner, an activist — I know some people will smile immediately when they hear that — a medical partner and a media producer. If you think about those four things, you will say that if any foundation can do it, we probably can. But it's only because the community is going to back us and give us that support for Pete's sake. We hope that you will feel comfortable, as we do our focus groups this fall, and participate with us and share your concepts and your ideas in how we can reach these four objectives of this strategic intent.

Until we meet in Portland, Oregon, in 1994 in March, which I hope and invite each and every one of you to come and participate with us, this work will be ongoing. So, please consider, in your calendar in the middle of March to come and join us in Portland, Oregon. It's going to be a beautiful city, something similar to the wonderful, wonderful time that we had here when we were here a year and a half ago in this very hotel. We know that we had a delightful time. We made many friends. This hotel had — gee, I remember you *[looking at the Banquet Captain]* from a year and a half ago. Again, we will be using the Hilton property in Portland.

So, put it on your calendar. I don't think you're going to be disappointed by what you hear, what you feel, or what you sense, because it's going to be as dynamic as what you have done these last three days. I'm surely proud — we are, as people that work in this community, are so, so proud — of your work. I hope that you can find it in your heart to be proud of our work, and we can work together. Thank you very much.

By Phyllis Frye:

Absolutely no problem. We can work together very easily. You're very easy to work with. Thank you for your words.

A SUMMARY OF CONFERENCE'S ACHIEVEMENTS

By Phyllis Frye:

I'm going to give you a report of the conference. I think that I've been very blessed because so many of you have been running off in the many different directions that I've been sending you. I've been volunteering a lot of you to go off in a lot of various directions. You haven't been able to capture the full thrust of what has happened.

For one thing, this conference is thirty-three percent larger than last conference. So we've already increased, by another third, with our second conference. Even more significant is that the Thursday and Friday participation — the actual guts of what this makes this work, all we did today was report, Thursday and Friday were the work days — we had twice what we had last year.

Last year, as this year, we had what I would call a tier-one committee project paired up against two tier-three projects. The one would go for two hours while I would have the two, one-hour three's, in series. Last year attending some of the tier-three project committees, I would often find a project moderator and a sympathetic person or two. This year at the tier-three committee workshops, I found six and seven people. During the conference we elevated a tier-three up to a tier-two because it took a life of its own, and just fooled us all. That was the International Bill of Gender Rights which just exploded on us.

Last year we were so excited when this conference was over by the fact we had it; that we had finished it; that it was complete. We had only two continuations to go after the first conference. The first one was to push and push and push the "Proceedings", and the second one was our Military Law Project. That was really the only significant continuation, if you will, life after, of the first conference.

Now, let me tell what's happened with the



Executive Director listing the accomplishments of the conference

second conference. Ongoing, after tonight, is a Personal Identification [*renamed Documentation*] Project with Sister Mary and Marian Beddill. They are going to be working on bringing up to date for the third law conference all of the significant work that Sister Mary did several years ago concerning the status of the law dealing with birth certificates, name changes, etcetera, in the various states. I have also charged them to also include countries outside of the United States because we are an international conference.

The Health Care Principles, the five principles, and the Health Care Standards, the five standards, that were put together. Martine's committee is going to be presenting these standards and principles, either presenting them nicely or not so nicely, to the Harry Benjamin Society which is going to be meeting in New York in October. That's significant because it will be done in the name of this law conference because that's where the document came from. Essentially we're saying, "As lawyers, we're going to be making the rules for this community, not the doctors. As the people in this community, we're going to be saying what we need."

Employment, you're going to hear some more about later; Laura Skaer is going to give us a short report in a little while. But essentially, it was noted in the Employment Law and Policy report that there was some very significant work that had to be done with respect to the federal civil rights statutes and committee work. And it really had to be done now. Laura was so compelling that I said, "Yeah, you're right Laura," so I made her stay up there at the podium while I appointed her a committee. They worked all afternoon coming up with what they're going to be doing to give it life instead of just talking about it. She's going to be up here in a little while. In fact Laura, you might as well start drifting up here because you're on after I finish with this.

The International Bill of Gender Rights, that was interesting. Sharon Stuart got so much input from her committee that after she read her report, she realized she'd left out one of them. And so she asked me to read it to you and afterwards I'm going to take a vote of the board so that we can officially adopt it and she can run with it. [*This was included, for continuity, in the report, infra. What is deleted here is the procedure to insure the Board adopted it.*]

Also, the International Bill of Gender Rights Project is going to be seeking feedback from you, so that at next year's conference it will expand, if expansion is needed. It will make any corrections that need to be made. It will begin assembling evidence to back it up. I have charged Sharon, and Sharon, correct me if I'm wrong, but I believe I charged you with, sometime between now and the third conference, that this International Bill of Gender Rights adopted by this law conference will be making its way through some committee with the United Nations, am I correct? [*Correct.*]

Next, is IFGE, another organization is constantly getting letters from transgendered prisoners. Those are very important letters. Unfortunately most people haven't know what to do with them or haven't been able to deal with them — I'm not putting down their work — as significantly as they would like to. We now have in the person of Ray Hill, who was the Imprisonment Law Moderator and who is extremely active in prison reform, one who is not making prison into a vacation but is at least making it into a human experience. He has agreed to accept all letters sent to IFGE, and any other organization that gets them. He will respond to them. It's Raymond Hill, phone number (713) 523-6969 — don't ask me how he got that phone number — and FAX (713) 523-6968. He has an answering, and he has a FAX machine. He will get back to you.

After this conference is over and we publish the stated "Policy for the Imprisoned Transgendered" that he and his committee put together, he has invited me on his national radio show. He wants to get feedback from inmates. When you get home and you get your "Proceedings" and you find the "Policy for the Imprisoned Transgendered" from the Imprisonment Law Project, you need to take it upon yourselves — in the closet or out — but you need to take it upon yourselves to somehow get the attention of your local jailers and your statewide prison officials for them to adopt this into their standards, so that transgendered people who are in prison will not be treated any more brutally — for lack of a better term — than anyone else.

The national driver's license was another thing that has sprung up and it has now taken on a life of its own.

We are not advocating that there be a national driver's license. What we are doing is we are taking care to ensure that if there is a national driver's license, that our concerns and our fears are taken care of. Just handed to me a few minutes ago, are the goals and objectives of that project, and I wish to read them into the record. *[This was placed into an Appendix, supra.]*

I just think it's so significant that this conference is not only just going to be peddling "Proceedings" and, of course, our Military Law Project will continue, but we now have six new ongoing projects. This keeps ICTLEP from just being a bunch of words. I'm really having a tough time keeping my composure because I feel like we were crawling last year, and now we're already breaking out into a trot. I don't know about y'all, but you should be excited. I'm excited.

I'm going to charge each one of you, when you go home this week you have to write this down. You have to write down what this meant to you. You have to put together an article for your local or area or regional or even national, but especially the local, transgendered organization monthly newsletters. You have to tell them why they, as lay people, should have been here; and why they, as lay people, have to get the "Proceedings", written, audio or video; and why they have to be here next August when we break out into a gallop.

EMPLOYMENT LAW AND POLICY ADDENDUM

By Phyllis Frye:

Laura Skaer had asked for some time to give some additional reflections from her. Then I charged her with putting together an employment addendum, and I told her I was going to give her some time. Of course, she says, "Which time am I going to get, my time or the committee's time?" I told her that I would stack the time. I'm going to give you Laura and let her tell you what she feels, in her heart, that she needs to tell you before we break tonight, and also tell you what they did with respect to employment and civil rights legislation.

By Laura Skaer:

Thank you Phyllis. Actually we're going to do these in the reverse order. But speaking of time, I have a question. I need to know how to spell mosey. *[Phyllis informed her that it was a Texas word.]* Well I need to look it up. Because "to mosey" around here, I honestly don't know how long that is. I thought, "Gosh, what is a mosey?"

On the Federal Gay Rights Bill, do you-all realize the kind of outstanding talent that we have in this community? Do you realize? Something this conference has really done for me is to realize — I see things accomplished in my professional business world, and I think there's talent there — that talent can't hold a candle to the talent that's in this community. I mean it is absolutely incredible. Why do we believe we can't get it done? We've got better talent than anybody else; the Phyllis Frye's, the Pat Grace's, the Leslie Feinberg's. I don't want to leave anybody out. I don't. It's every one of you that's sitting here and a lot more that ought to be. We started out, and we had a general discussion. It was myself and Melinda Whiteway and Sister Mary Elizabeth and Aaron Davis, Keith Rogers, Pat Grace, and Carol Erickson.

We talked about what do we need to do about picking a person to represent us at "the table" and how do we get to "the table". What's the political strength of our group? We've got to draft a letter. We talked. We came up with a plan and we asked ourselves a lot of questions. This committee should be, must be, forever grateful to Pat Grace who brought such insight and experience from her work in Washington, D.C. It's the real world. Here is someone who may not always be able to be on the band wagon with us, but who is sharing, with a commitment from her heart, her abilities and her talents, and her experiences.

In her own way, she came out of the closet at this conference. So you see, coming out of the closet doesn't always mean you have to burst out and show up in a dress the next day at work. There are a lot of ways to come out of the closet. Coming out of the closet is taking your talent and your abilities and putting them to work for this community and the kind of a gender we're talking about at this conference.

With her guiding us, we came up with the idea that we have to put together, we have to draft, a letter. We have to draft a letter to — and she's going to tell us who — the appropriate person to get us a place at “the table.” It won't be because of who that one person is. It'll be because that person can say they represent something that appears to be a significant power, a political power base, on this issue.

We've got 200 or 300 support groups. We've got the Congress of Transgendered Organizations, even if they don't know what it is, you can say it sounds like a really impressive authoritative body. You add to that all of these 501(c)(3) organizations like AEGIS and IFGE. Pretty soon you've got a list of organizations and you can have several people sign as representing those organizations. You've established yourself as a political power base, and the 501(c)(3) organizations give it credibility because at least the IRS has looked at them. We talked about the need to act fast, and we talked about the fact that we need a name, like the legislative project of _____ *[Insert name of organization or the name for this community]*.

We have to realize that where we're going is to a “table” of advocacy groups. We want to get there. So no matter where the legislation is going to end up, what matters is where it's going to start. If you aren't in at the start, you won't get amended into it. We found out. If you're in it at the start, you might get amended out, but you got to be in there at the start. So what we decided was that timing was critical. Time of the essence. We could have up to January 1st. We might need to act in September, but more likely the idea is by January 1st.

We talked about organizing a lobbying effort. Maybe this works with the planning session of the conference in Washington, D.C. We talked about, during the first week of November, a small four or five person lobbying group going to see key staff people about arranging that. We made a list. These are the things we are going to do and we're going to get this done within the next thirty days. We're going to organize the group. We're going to establish the name, and it needs to be somebody in Washington, D.C. Martine Rothblatt comes up and Kit de Klink from TGA. Think about those of you in the Washington area. Tell us who the person who's actually going to sit down at “the table” ought to be. It needs to be somebody in Washington because the meetings are called at the spur of the moment. We've got to establish that name. Pick the person.

We put together an informal steering group that consists of several people that were at the meeting. It's a broad base constituency across the country, geographically diverse, as well as within the different permutations within our community. Sister Mary Elizabeth has offered space on her bulletin board for use to communicate with each other so that if a question comes up our representative can get to the steering group, get a consensus and be able to go back to “the table” and know that they're speaking with some authority and that they won't get stabbed in the back later on by one of the groups that said that wasn't exactly what I wanted. We've got a real pro telling us how to do this, gang.

Then we organize and pick a time to go to Washington, D.C. We're talking about the first week of November, and we're talking about having a law conference planning committee in Washington, D.C. I can't think of a better time for both of them to get together. I'm going to draft a letter that I'm going to send to Pat. It's going to be the first draft of a letter that's written to the key person to say we want a place at “the table” and this is why we deserve a place.

Anyway those are the six things we're going to do. They're going to all get done within the next thirty days. People have volunteered to take the responsibility to see that each of the six ones are done and you will get a report back. You'll know what we're doing thirty days from now. We'll tell you how we've been. That's what happened today in a forty minute period after the conference and before dinner by the people I mentioned. I think they all deserve a big hand for what they put together in a short period of time.

By Phyllis Frye:

This is what I wanted. I hope that this is an extension of the law conference because I think that's what the law conference is about. I think that if you can get other groups to join in as a co-sponsors that's fine. But, I think this should carry the law conference name. If it does, we have to ensure that we're not quote lobbying unquote, but instead educating. There is fine line of course, but I think that should be done. I really hope that you do choose Martine. She's extremely articulate, and you did good work. I look forward to your report.

ABOUT JOANN CONTI AND KAREN ULANE

By Laura Skaer:

Now I want to get to that part of the program that I had asked Phyllis for a few minutes. There are two things I want to share with you. I hope you agree with me that they are worth sharing and worth hearing and need to be a part of this conference.

I forgot to bring a copy of the letter to the editor that I've shared with some people, but it's from the Colorado Springs Gazette. That's where Amendment 2 started, in Colorado Springs. That's where "Focus on the Family" and "Colorado for Family Values" and all those kinds of groups like that are flocking to from Orange County, California. I guess, Sister Mary, you must have started to run them out.

They're down there, and this letter went on talking about, after a gay pride parade in Colorado Springs, that somebody had written a letter and it mentioned gay-lesbian, bi-sexual and transgendered rights. The guy goes on to say that the writer failed to mention what this new term, transgendered, means. Then he goes on to say that transgendered people are another name for transvestites or cross-dressers. They're men who wear women's clothes. This guy goes on to compare us with pedophile, talks about how some gay psychiatrist is going to come up with some scientific mumbo-jumbo that says we're born this way. It's that kind of a letter. The really sad thing about it is that there will be people that will read that and think that this guy knows what he's talking about. I mean he talks about how the psychiatric and psychology community are nearly unanimous in their belief that this could be treated with therapy. Whoa! Boy, do we have a job of educating to do.

Now just fifty-five miles north from there is a woman whom I now know, as twenty-three years post-op. She has become a friend in a very short period of time. She's one of the most wonderful human beings I've ever met, one of the most courageous. She's a city council woman in a suburb that, if you had to describe it you'd say, there are a lot of pick up trucks in the driveways. But then they annexed a bunch of land and there are a bunch of million dollar homes going up. But she lives closer to the pickup trucks in the driveways. She got elected and she's a real activist. Phyllis Frye would love her. She's a large woman, and she gets elected.

She uncovers some graft in City Hall, and the next thing you know the four-term mayor is getting recalled. Right before that some male employee filed a reverse sex harassment case against her. So there's a little article in the paper about it because it's kind of newsy and because this woman was just known as a fighter, as an activist.

One day she got a call from a newspaper writer who said, "JoAnn, you've got to come to my office. I got a file dumped on my desk, and I want you to see it." It was a file put together by a private detective who had gone back and researched her background and discovered through her high school yearbook that JoAnn Conti used to be a man. He put this thing together for the sole purpose of discrediting her and forcing her to resign from the City Council.

JoAnn read this material and decided to issue her own statement. She came totally out of the closet. She

told people about being transsexual and about having the operation and about why she did it. Came right out. First she issued a professional statement and then she told her story. The first time I had lunch with her she had a scrap book that thick. I'm showing, for the record, about four or five inches thick filled with cards and letters of support and love and caring from people, some people who knew her well, some people who didn't know her, some people who may have voted for her, some may not. Even most of her political enemies came to her defense in the newspaper.

The gist of the whole thing was in her very first letter and the one that means the most to her. It is from a ninety-three year old woman who brought it, hand-delivered it, to her that very morning. It said, "Dear Ms. Conti: I don't know whether you're a boy or a girl, and I don't really care. I'm ninety-three years old. I was born and raised in Arvatta. All I know is you're the best damn thing that ever happened to city government."

I gave JoAnn a copy of the "Proceedings". Two days later she called me up and she said, "I've got to go to the law conference. I've got to be there. This is the kind of thing I need to be at." Unfortunately, about three weeks ago, JoAnn fell and broke her ankle and was in the hospital for a while. Then she got the cast off and was moving around and it started swelling up again. Last Friday she called and canceled out. But she was going to come down here, and she was going to speak to you. I just thought that that's another story that needs to be in the record of this "Proceedings."

She has announced that she's running for the state legislature. She will be, to my knowledge, the first openly transsexual person to run for the legislature after she was out of the closet. She has the endorsement of the State Democratic Party and the Governor of Colorado. She won her city job by such a landslide and her state representative district is about eighty percent of her city council district. We've got a real chance to have someone. One of her big issues, besides wanting to help this community, is protecting your right to privacy. She felt raped by this private detective and wants to make sure that never happens to somebody else. There's just courageous heroes everywhere.

I want to tell you about another hero. Unfortunately this hero can't be here to hear this. But she was a true hero. This community is filled with so many heroes. This woman legally is very famous. About the very first federal Title VII case on the issue of whether or not transsexuals were protected under Title VII of the Civil Rights Act, was brought by a woman named Karen Ulane. She was fired by Eastern Airlines because she was a transsexual and was either going to have surgery or had surgery. She sued, and the trial court understood the issues. I think all of us would just marvel at the eloquence of the trial court opinion. I really enjoyed visiting with Ron Garet who teaches the case in a class.

But Karen lost on appeal. But in the course of her case, Karen saved it all. She saved the newspaper clippings and she saved some of the briefs. She saved letters and law review articles. There were letters that people wrote giving her ideas. "Try alleging this rather than that the act protects transsexuals. Let's present that these are really women." As Phyllis said, and I can't use those fancy words, those medical terms, that there were women who just happened where the clitoris is a little big. Our vagina didn't quite open and ovaries formed in the wrong place. People were suggesting that back in the late seventies and early eighties. It's all in this book.

Last year in Philadelphia, I met a woman named Laurie Killough. Laurie is an air transport pilot rating examiner for the FAA. It's really ironic. Continental Airlines fired her being transsexual, and now she's examining their pilots to see if they're fit to carry passengers. Sometimes justice has a strange twist of fate.

I would like to pause and think about Karen Ulane. I would like to — and I'll get back to Laurie Killough — I'd like for us to dedicate this year's Employment Law and Policy Project report to the honor and memory of Karen Ulane, who was our pioneer in the issue of transsexual employment law discrimination. As Justice Alice Oliver-Parrot said, "We are going to have our failures. What's important is whether or not we learn and we build from those failures to our successes."

This conference is evidence that we're doing that. Think of where you were in the late seventies and the early eighties when Karen Ulane brought her case. Think of the state of the medical community and the psychiatric community. Was there an IFGE? Was there an ICTLEP? What about all the regional and national events, dignity cruises, successful on-the-job transitions, or language in a state statute that specifically protects transsexuals from discrimination.

I believe Karen was from Minnesota. Today she would have protection. Isn't that incredible? Why are we surprised that Minnesota would be the state to insert this language if there are heroes from Minnesota such as Karen Ulane and Laurie Killough. I submit to you that we would not be here tonight without Karen Ulane. It is very appropriate to dedicate this report, the Employment Law and Policy Project report, to her.

Karen has something that she left for us. And a few weeks ago I got a package from Laurie Killough in the mail. I will send it to Phyllis to incorporate into the "Proceedings" and into our archives. It is the scrap book; it is the history of the Karen Ulane case from Day One, from her first notes of her first meeting with her lawyer through the cases, through the results, through the opinions, the articles, the letters, and planning the appeal. It's all there. With it is the letter from Laurie that says Karen died unfortunately in late 1989 in a plane crash of a DC-3.

Karen had hoped that Laurie could have used this work, this information in Laurie's fight with Continental. Laurie has held on to it waiting to find the right place for it. When she learned about the law conference in Philadelphia, she decided and she said, "I now know where this volume belongs." So she sent it to me to be a part of the permanent records of the International Conference for Transgender Law and Employment Policy. And we are really gifted by that gift. We are blessed by that gift. Karen Ulane's life has blessed all of us. So join with me as we dedicate this employment law report to Karen Ulane.

By Phyllis Frye:

She's moseying on back. Mosey is self-defined, you know. I remember when I was first putting this together. I put out the first brochure stating I was from Houston, Texas. I got a letter from a very nice person, who I hope some day comes to this conference, because she is a contributor, and in her nation she is working hard. But she said that it — and she was absolutely right — smacked of the ugly American arrogance that we felt that



Laura Elizabeth Skaer, Attorney,
Employment Law Director, ICTLEP,
dedicating conference to Karen Ulane of 742 F.2d. 1081

were the only country in the world that didn't have to put U.S.A. after the state whereas all the other countries did. Of course, which is true.

But everybody knows where Texas is, for goodness sakes. Texas is Texas, and mosey is mosey. Cynthia Phillips, would you mosey up here please. Would you please mosey up here. You're going to have to mosey fast.

Laura is absolutely right. As I was watching her, I was sitting right here beside Laura watching her mental wheels turn. She's a very brilliant person. I kept watching her stumble over the word, heroes. Heroes is a good word. Sheroes is another good word. And we, in our community, have our heroes and our sheroes.

LAW CONFERENCE IS FOR LAY PEOPLE, TOO!

By Phyllis Frye:

Come ahead Cynthia. I've asked the other half of the Texas "T" Party to come up and say a few words again, to those reading and listening and watching and those of you who are going to be writing articles, on why this addresses the need of the lay person. Please welcome Ms. Cynthia Phillips.



By Cynthia Phillips [joined at the podium by Linda Phillips]:

Cynthia Phillips and Linda Phillips, ICTLEP Publicity Coordinators, and Texas 'T' Party

One thing I want you to know is we want you to come to the law conference. We missed you. We have a wonderful group here but we need everyone. It's very, very important to participate in something of this nature.

I'm not a lawyer, so why am I here? Well it affects me. The policies that are made here affect me. They affect all of us. It's very important to participate in something like this. If we don't participate, we'll never have the chance again. We must participate. If I had my magic wand right now I would have this entire hotel full. This is something that we have to support.

I can't say enough for it. It's almost as important as the Texas "T" Party. We do hope you all do plan on

coming to the "T" Party. But as to the law conference, if I had to pick between the law conference or the "T" Party, I really do believe I would pick the law conference. I feel that it's that important.

I know what Linda wants to say. Linda's going to have a heart attack if I don't get to this. One thing I would like to have is that I would like to have a word about our sponsor, if I may. Many of us find that Phyllis is the best thing that has ever happened to the gender community. She's absolutely fantastic, and I really don't think we would be where we are today without here.

She's very big on getting people out of the closet. She got my husband out of the closet. I don't know if that's good or bad, but she's very persuasive. She's been introducing everyone else tonight and getting a hand of applause for everyone else, and I would like you to give a very big round of applause for Phyllis, please. *[Audience applauds Phyllis.]*

But please come to the law conference. We need you here.

TAPED SPEECH FROM MARCH ON WASHINGTON



Thousands and thousands on the Washington DC Mall prior to the March on Washington

By Phyllis Frye:

Thank you very much. I was told that mosey is half of a lope. I thank you for those words. I was told that this law conference would not be complete if some of you did not hear the presentation that I was very blessed and honored to make in Washington, D.C., last April. Many of you have read it, and it is in the current issue of "Tapestry," but very few of you have heard it. It is one of my better barn-burners, I will agree. So, I am going to play it right now. And when I do — it's eight minutes long, so you can take your time about getting up here — everyone that marched with me in Washington, I would like to come up and stand with me while we listen to this and kind of remember the magic of taking to the streets at our capital. Please come up.

[While tape of speech from March on Washington played, Phyllis was joined by Sharon Ann Stuart, Susan Stryker, Karen Ann Kerin, Yvonne Cook-Riley, Martine Aliana Rothblatt and Leslie Feinberg.]



Participants from March on Washington
L-R: Phyllis Frye, Sharon Ann Stuart, Susan Stryker, Yvonne Cook-Riley, Karen A. Kerin,
(ICTLEP Newsletter Editor), Martine Rothblatt, Leslie Feinberg

Listen up! I've got something to tell you! Why is it that the 1st March and the 2nd March and this the 3rd March does not have transgendered in the name of the March?

The transgendered community includes crossdressers and transvestites, passing women and female impersonators, drag queens and male impersonators, and pre-, non- and post-operative transsexuals. We definitely include females-to-males as in Joan of Arc, George Sand, Leslie Feinberg and the transgendered women who fought bravely as soldiers in our colonial and civil wars. Knowing this, why is it that with two rally stages, all day long, there are no female-to-male transgendered speakers? We embrace all races, sexual orientations, creeds, religions, ethnicities, nationalities, ages and physical impediment. Why is it then, that with two rally stages, all day long, there is only one transgendered political speaker?

This, my friends, is a very unforgiving society for transgendered persons and their loved ones. While we were reared in one gender identity, we have a definite, true-but-opposite gender identity which must express itself. The empirical data show that being transgendered is not a matter of mere choice. No, rational people do not take upon themselves such unrelenting and often hate-filled social pressures for a mere fling! Transphobia is at the heart of queerphobia.

We are here today in a grand effort to change law and social understanding. The 1st INTERNATIONAL CONFERENCE ON TRANSGENDER LAW AND EMPLOYMENT POLICY revealed that the transgendered have no legal protection and no employment protection. The transgendered require legal protection on the basis of "gender identification". Together, my sisters and brothers, we must seek legal protection from discrimination

on the basis of BOTH "sexual orientation AND gender identification".



Phyllis Randolph Frye giving speech at
March on Washington

Listen to me. One of the ten legal strategies that we will develop at the 2nd Transgender Law Conference this upcoming August in Houston will be to resist those surgeons who demand that heterosexual couples divorce as a condition to transgender surgery, even though both partners wish to remain married. Sex reassignment surgery on one half of an ongoing heterosexual marriage yields a same-sex marriage. Therefore, my lesbian, gay and bisexual sisters and brothers, it will be the transgendered community who leads you into the legalization of the same-sex marriage. Why then is transgendered not in the name of this march?

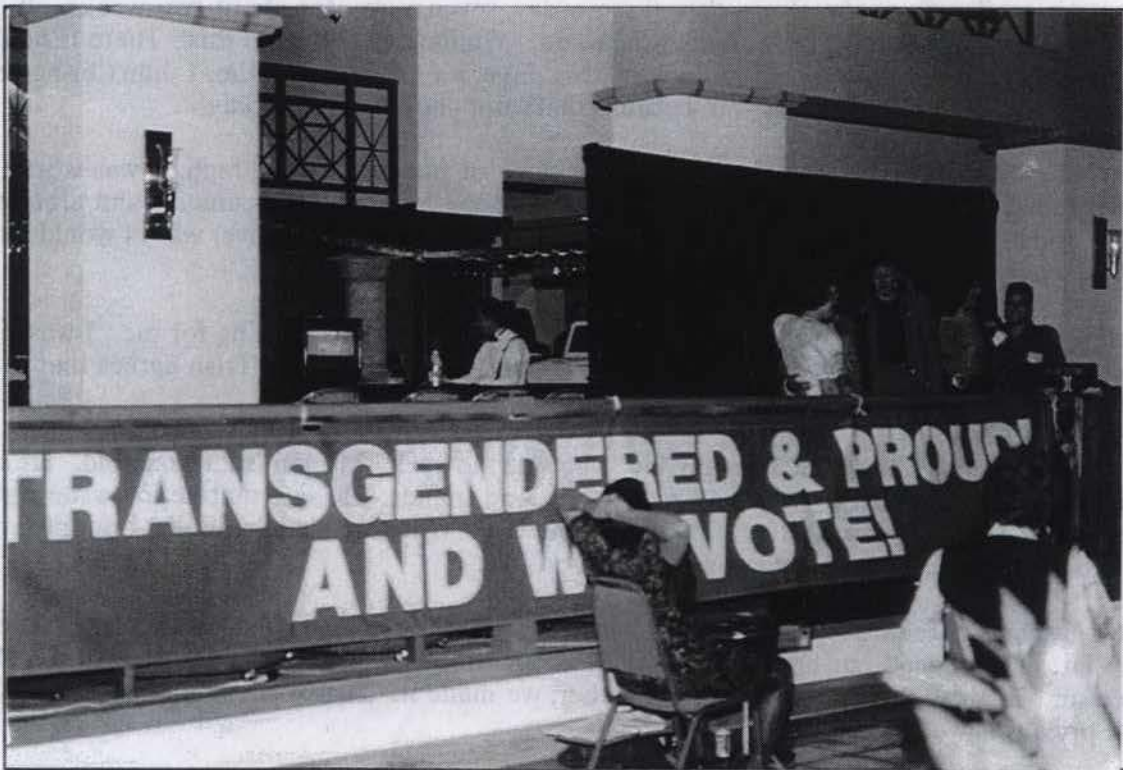
Our history reveals that the majority of those people who died at the beginning of the Nazi Holocaust while wearing pink triangles were the transgendered of all sexual orientations. Our history reveals that the real heroes in the Stonewall uprising were the transgendered, the leather cultists, and the street hustlers who stood up to the bully cops and presented in-your-face resistance to being pushed around further. Why then, are the transgendered being omitted and snubbed from the focus of the upcoming Stonewall 25? Sadly, the reward to the transgendered, the leather cultists and the street hustlers of Stonewall is condescension and stereotyping.

You see, pitting lesbians, gays and bisexuals against the transgendered is another of the bigots' ploys. It's called division. Many in the lesbian, gay and bisexual community resent being stereotyped as "crossdressing effeminates" simply because the bigots, the dividers, have successfully cast such with a pejorative label. Others

in the transgender community resent being stereotyped as "homosexual/bisexual" simply because the bigots, the dividers, have successfully cast such with another pejorative label. While we quarrel amongst ourselves over stereotypes and labels, the bigots, the dividers, that fire us, that resist our marriage, that refuse us our citizen's share, those bastards continue to win hands-down.

In order for us to resist this bigots' ploy, this division, we must today embrace each others stereotypes. We must embrace each other's labels with pride; we must unite. We must go into Congress and into the state houses speaking for lesbian and gay and bisexual AND TRANSGENDER — AND TRANSGENDER — say it — AND TRANSGENDER — and transgender rights. We must seek legal language that protects us on the basis of both "sexual orientation AND GENDER IDENTIFICATION." When you speak to your Member of Congress, tell them House Bill 431, needs to be amended to add "and gender identification" — "sexual orientation and gender identification".

And in conclusion, when you see Sam Nunn, tell him that Phyllis Frye is an honorably discharged army officer. [Here, was a military salute to the crowd.]



The banner that was carried at the March on Washington

[NOTE: Please feel free to duplicate both the written text and the audio copy of this speech; insure that your friends read and hear these words. For an audio copy of this speech, simply send a blank cassette tape along with sufficient return postage to Phyllis Randolph Frye, Atty; 5707 Firenza Street; Houston, Texas 77035-5515; 713 / 723-8368; FAX 723-1800.]

That was fun. That march was really something.

THE DOLLARS AND CENTS PRICE OF FREEDOM

By Phyllis Frye:

Jim Sacher, would you start moseying up here, please. We're about to have our speakers, one of our two honored — and we are honored that they are here — guest speakers. This one is Mr. Jim Sacher. He is an attorney for the Equal Employment Opportunity Commission.

I remember when I asked the Equal Employment Opportunity Commission to help me back in 1976. I was fired and I went to the EEOC and asked them to investigate. Back in 1976, when not that much was known about us, when there weren't very many Donahue shows, they always treated me with courtesy. They really didn't know what to do with me, but they treated me with courtesy and dignity, and I always remember that.

About a year later they contacted me. I was still unemployed. I was still fighting for unemployment checks because some bozo with the Texas Employment Commission decided to mess up my claim. Took me a year and a half to get that. Back then it was only \$42 a week. After it finally got corrected, Trish and I were getting \$42 checks in the mail, one a day, five a day, three a day, seven a day for about two weeks. It was really interesting. But EEOC wrote me a letter back which said, "We have investigated this. There is no doubt that you have been discriminated against, but we're sorry, Ms. Frye, it's not illegal." Jim, I didn't bring you here to fuss at you, and I'm not going to fuss at you, because that's not your role here tonight.

I do want all of you to know that even though the price of freedom can be high, it was worth the price. Trish and I figured, with inflation, and with all the routine but conservative advancements and promotions, that we probably, in today's dollars, see about \$400,000 to \$600,000 less in our wealth over what I would have earned during all those years that I was unemployed.

Understand that I was fighting for me. I wasn't fighting for you. I was fighting for me. I was fighting for my freedom, and I'm free now. And I've been free for a number of years. And Trish agrees that if all it took was between \$400,000 and \$600,000, then it was worth it.

They tried everything. They took away my kid, I got my kid back. My son is 23 years old. He's a college student. He chose to come back to me, and we are very good friends. He says that he loves me right straight into my eyes. I say that I love him and he says that he knows it. When we walk in public, I put my arm around him or we hold hands. He doesn't shy away, not even an iota.

They took away my career. Actually, they took away two careers, [*military and engineering*]. Of course you know about that. They egged our house. They slashed our tires. I was a very bitter person for a long time, but I survived and Trish survived. We bonded together; we made it. That was our price. I'm free, and she's free, and the price was well worth it.

This is 1993. You don't have to pay that kind of price any more. I remember somebody telling me about three months ago that they couldn't come out because they enjoyed driving their BMW, and they didn't want to go to driving Fords. That was the last word I ever said to that person. I don't have time for people like that.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

By Phyllis Frye:

Now, the reason why I brought Jim is because we have been excited. We've been optimistic, but I would be derelict if I did not remind you of the cold, harsh realities. We transgendered folks have very little legal protection. The decision then is for you to get active.

I want Jim to sober you up a little bit and represent our federal agency. Hopefully he has learned a lot from us and may be able to affect some policy changes. Even though we are not covered by law, maybe there's some policy ways that we might get some help.

By Jim Sacher:

I think that a mosey was half of a lope. I don't want to take too much time so I hope my half of a lope is almost as good as a full lope. I want to try to accomplish a few things in the short period of time. I want to tell you briefly about the services my federal agency provides, and I want to suggest a couple of things that your group might be able to do to advance the agenda so that transgendered folks get the full protection under the law that they're entitled to.

I'm the local regional attorney here. I'm like a second lieutenant in the field. The Generals, as you know, are in Washington. I don't set policy, but I have the benefit of playing a modest role in talking to them about what policy ought to be. I know that Phyllis will avail herself and your group will avail yourself of that and share with us what policy should be.

I know some of the other speakers have talked to you about the Americans with Disability Act, and it obviously provides mere-to-no protection for transgendered folks. There are a few little avenues of opportunity within it though that I want to suggest, and also ways of forging alliances with other groups that have similar concerns.

First of all, the very narrow group of transgendered folks that have protection under that act are people who have a physical impediment that leads to the transgendered status — some type of hermaphrodite condition or someone whose genitalia is affected by a physical problem, a war wound or something like that. This is admittedly a very, very narrow area. But we want to remind you that the federal government tries to actively prosecute all disabilities violations. We want to encourage anyone who thinks they're covered by the law to come in and file charges with us. If people don't file charges with us, we can't do our investigations. We can't go forward.

Secondly, one of the concerns that Phyllis and others have mentioned is the need-to-protect-privacy expectations. That goes to the heart of issues like driver's licenses and whatever. There are some very important privacy rights in the Disabilities Act that protect everyone. One of those is that employers are no longer allowed to give people physicals until they make a



Jim Sacher, Attorney,
Equal Employment Opportunity Commission

conditional job offer. So if you apply for work somewhere and the employer tries to force you to take a physical, that in itself is a violation of the law for anyone who's affected, unless they've already been made a conditional job offer. This obviously goes to the core of privacy rights and certain other rights. That's a matter that my office can handle, and we're trying to aggressively sue employers that break those laws.

Thirdly, it's probably not a surprise for anyone to know that government investigators are always complaining that they're overworked. Honest to God, my investigators are overworked.

If you ever have experience with our agency, in any of our offices around the country, and you feel that you're not given the courtesy that Phyllis remembers getting, then you complain about that. Part of making a movement serious is getting government to work for you. After all, you're taxpayers. If you ever have a bad experience with my agency or any other federal agency, then you find out the name of the supervisor, you find out the name of that supervisor's supervisor and use the same skills that are abundantly apparent here to insist on courteous and full treatment.

I only want to take a few more minutes to talk about issues that from my perspective are important here. One of the other speakers pointed out that grotesque letter from a letter writer in Colorado comparing transgendered individuals to pedophiles. It's not too comfortable for any individual to take a position like that; it's grotesque. But unfortunately, the federal statute abetted and supported that, because in the definition in the Disabilities Act of types of status that do not gain protection under the act, transgender as a status was adjacent to the definition to pedophilia.

Now, I'd like to say that the drafters did not do that as a conscious act. I don't think they were really conscious of what was happening, but yet it's still right there in the statute. If in the next year or two, even a modest effort was made to do something with the definitions, then that would represent progress. Perhaps I'm more generous to legislative drafters than I should be. But one of my close law-school friends is on one of the major committees that drafts labor legislation. And twice in the last two years he said to me, "God, we never thought that bill would pass." And then all of a sudden something happens, and the bill had to be put together in two weeks and we stayed up all night long and still we didn't get it right.

That's the way the Civil Rights Act of 1991 was passed. No one ever thought it would pass. It was during that fiasco with Justice [Clarence] Thomas, you know, status and the claims of sex harassment. All of a sudden a bill that no one thought could pass, got passed. If you're there pushing your



Jim Sacher, Attorney,
Equal Employment Opportunity Commission

justifiable agenda and that happens again, it might be better. It might come out right the next time. Those of us who are federal prosecutors, we don't write the laws, we only enforce them. We can only enforce what we're given. But I urge you to be active in that arena so that next time under some pressure of circumstances the bill gets passed, it gets passed the right way.

The last thing I want to remind folks about is that we've got lots of new judges being appointed. We've had a decade of a very, very aggressive judges where the only hope of any type of positive change in this area has been legislative. That didn't work out in the ADA the way it could have, but there is that opportunity to have judge made law that works to enforce the civil rights of every one.

After all, if we step back a little bit, even the concept that we now take for granted, that it violates the law to be sexually harassed at work, that wasn't in the statute. That was something that the commission said constituted a violation of the law and the Supreme Court chose to agree. There's a new generation of judges that are going to be appointed, at least now on the federal side.

Some of them are going to look to what's happening in the state courts. Recently this Spring there was a very big victory in Florida where the State Human Rights Commission, as I think many of you may well know, interpreted their state discrimination law to say that someone who had been fired because of transgender status had her rights violated. She not only got substantial damages, but she was reinstated. The newly minted federal judges may look with some interest in what's happening in the state court. And if they're pushed to do right, I'd like to believe that some of them will.

I pretty much said what I want to say. I'd like to respond to any questions that you may have, but not infringe on the time of the other speakers too much. *[The format of the conference did not lend itself to questions here as questions were for Thursday and Friday workshops.]*

By Phyllis Frye:

Thank you. How refreshing. I had expected a bunch of cold water about all the things that EEOC couldn't do, and we got bouquets of all the things that you should try. Thank you very, very much. We really do appreciate that.

SELF-TRANSFORMABILITY

By Phyllis Frye:

Ron Garett, you need to start your half of a lope. Martine, you do that, too. I've asked Martine to introduce our next guest because it was her idea to bring him. She knows him best and besides, you've heard from me and Laura all night. It's time to hear some more from Martine.

By Martine Aliana Rothblatt:

Thank you Phyllis. About a year and a half ago, Phyllis asked me to help identify some of the legal research in the field on what already existed about transsexualism, law review articles and published cases. So I did what any attorney would do nowadays. I dialed up Lexis and typed in transsexualism and got a listing of all different cases and law review articles that mentioned the word transsexualism. At that time I got something like about 200 or so listings.

I gradually poured through those listings until I came across one article in the Southern California Law Review. The word, transformability, was in the title. I began reading this article, and it totally, totally blew my mind. I would say without a doubt it was the most creative and intelligent article that I found out of all the 200 listings under Lexis. For those of you who aren't attorneys, Lexis is a computerized database of every published legal decision and most law review articles.

This article contained the exhaustive analysis of what sexual identity and gender identity was going back to Greek and Babylonian times and before. It had an analysis of people who had undertaken to change their identity, whether it was to change their religious identity, their sexual identity, or their national identity. It went back hundreds and thousands of years and talked about the philosophical and legal underpinnings of this.

The article had phrases such as transsexuals or concepts such as transsexualism. "Transsexuals are on a totally normal journey of self transformation. Just like someone taking a journey to New York, we take a journey from feminine to masculine or vice versa." The article pointed out that transsexuals developed quote "self transformation projects" unquote which they then implement over a period of years. I thought back on how I'd lined up in my mind for first electrolysis, then hormones, etcetera, etcetera. In fact, I was implementing a project.

The article concluded with a quotation that has been in both of our "Proceedings" which is, I'm just paraphrasing it, that transsexuals, Professor Dr. Gareth submitted, "are no more unusual than converts or immigrants. And transsexualism was no more unusual than the practice of celibacy or religious circumcision. It was just another type of self transformation that people go through." The article went on and on. I recommend all of you to it. Its citation is given in our second "Proceedings" and in our first "Proceedings" as well.

The author of this very insightful piece, Ronald Gareth, earned his Bachelor's degree at Harvard University, his PhD degree in religious studies at Yale University, and his Juris Doctorate degree at the University of Southern California. Professor Gareth is now professor of law and religion at the University of Southern California Law Center. He teaches constitutional law, religious ethics, jurisprudence, and — as was mentioned earlier by Laura — also teaches the case of Ulane vs Eastern Airlines. He has spoken and lectured at Oxford, Columbia, Princeton, University of Houston and now the International Conference on Transgender Law and Employment Policy. It's with great pleasure that I invite to the podium, Dr. Ronald Gareth.

By Ronald Gareth:

I want to thank Martine for those words and for her gracious agreement to send a transcript of them to my dean, very thoughtful of her. I also especially want to thank Phyllis for inviting me to attend your conference. It's been very valuable for me and a chance to learn things and especially to meet people.

A couple of years ago when I was writing "Self Transformability" something quite amazing happened to my little girl's stuffed animals. She was three years old at the time. Like many small children, she has a great many stuffed animals. Suddenly all of the stuffed animals became female. Charlie and George, they all became female, and they all became Sara. And my wife and I were just really struck by this, not just the coincidence that it was happening while I was writing my article, but just that this was happening at all.

I asked Winnie, "Why has George and why has Charlie become female? Why are they Sara?" And Winnie said, without batting an eyelash, that a good fairy had come along and the good fairy had seen that they would be much more happy, they'd be much happier, being female. She said that the fairy had waved her magic wand and they had become female.

I looked at the top of Winnie's shelf where she keeps all of her stuffed animals, and there, at the very top of the shelf, was an animal that Winnie couldn't really reach. It was Jimmy the Monkey. I realized that Winnie hadn't been playing with Jimmy; and therefore, Jimmy hadn't become Sara yet. I pointed to Jimmy. In fact I took him down from the top shelf and I said, "Well, what about Jimmy? He's a boy monkey." That really took Winnie back. It took her about ten seconds because she was really thinking and then she said, "Jimmy was a girl monkey. Jimmy was a girl monkey and another fairy came along and realized that Jimmy would be a lot happier as a boy monkey."

I was just amazed by that. It really filled me with a sense of wonder of how things can change. When a child says something like that it can't help fill anyone with a sense of wonder at the magic, the transformation, that life makes possible.

Tonight what I'd like to do is to just try to translate that sense of magic and wonder at the opportunities for change and renewal and transformation. I want to translate it into a religious language, and I want to do so because, as I've heard so often today, religion so often gets in the way. Religion is so often an enemy and an obstruction. I want to translate that language of renewal and change and transformation into a religious language. Then I want to translate it once again into a language of constitutional rights.

I think we stand at a crossroads in our thoughts about the rights of transgendered persons. One path pursues the idea of change and renewal and transformation. The moral idea that corresponds to that path is that people ought to be free to change in fundamental ways and to define for themselves the meaning and mystery of their own life. The legal idea that corresponds to that moral idea is the idea that part of the liberty that's protected by the due process clause is the liberty to define oneself, to be free to express in one's own way the mystery of one's existence. A description of transsexualism that corresponds to the legal and moral idea is the description of transsexuals which sees transgendered person as free to make their own choices about their nature and free to change in fundamental ways. That's one path.

Another path that opens up before us is the path of immutability, as I call it. For shorthand, I'm going to contrast immutability with self transformability. The path of immutability takes off from a very different moral starting point. The moral starting point is that it's really unfair to penalize people for things that they have no control over. It's an intuitive idea that we can all get in on. The legal idea that corresponds to that moral idea is that it's a violation of the equal protection of the laws. More than that, it's a violation of basic equal concern and respect for human beings to punish them or disadvantage them for things over which they have no basic



Ron E. Garet, Professor of Law,
University of Southern California Law Center,
author, "Self Transformability", 65 S. Cal. Law Review 121

control. The description of transsexualism that corresponds to that legal and moral idea is captured pretty nicely in the metaphor that's heard so often of being a man trapped in a woman's body or a woman trapped in a man's body. I think the word "trapped" says a great deal; it says that one's basic condition is, kind of, fated. It's a given and what one does is accommodate oneself as best one can to a condition that one has not oneself chosen.

Those are the two paths that I think open before us. Now, the diversity of human experience can't be captured in two paths or twelve or twenty-two. We're all too different from one another. Human life is too diverse to be categorized into self transformation and immutability. I think all the truths lie in the interesting in-between points. The one thing that I believe very strongly about law is that law is a great simplifier. Law is a great searcher for the least common denominators. Law just can't cope in its category with the complexity and diversity of human life. That is why law is, I think, going to make a choice, a simplifyingly simplistic choice, between basing legal rights for transsexuals on the notion, that transsexuals are stuck with a gender identity that they're trying to cope with, on the one hand and on the other hand, a vision of transsexuals as persons freely defining the basis for their own life.

If we are at that crossroads, then I'm going to argue tonight for self transformability over immutability. I do this because I think that despite the simplification which I have mentioned, I think there's a real truth in self transformability. It's not just the local truth about transsexuals, it's a human truth. The rights of transsexuals, I want to say, are not in any way exotic but they take their stand on the same basis as human rights generally.

I've got some other reasons for stressing self transformability tonight, and as I mentioned, one of them lies along the way of religious ideas. I remember this morning that Sister Mary Elizabeth was talking about a passport clerk who might have been educated in the Jerry Falwell School of Fundamentalism, who would for that reason look you in the face and deny your request for a passport change. Tonight, I want to represent a quite different school than the Jerry Falwell School of Fundamentalism.

With respect to law, I want to suggest that despite the attractions of immutability, the idea of self transformation sends deeper roots into our constitutional culture than the idea of immutability does. You can look at the Supreme Court reports. Read what the Supreme Court has said about the Constitution. It typically does not say that the Constitution protects us from being penalized for conditions that are beyond our control. It might be a better rule that the Constitution were interpreted to say that, but by and large the Supreme Court has not said that. But the Supreme Court has said, and it has recently said, that the Constitution does protect the right of the human person to define the basic mystery of his or her life.

We could talk, if we had more than we do tonight, about what it means to say that a person chooses gender. What does that mean? What might that mean? Clearly no one chooses gender in the way that one chooses something in a supermarket or in other contexts like that. Choice can mean many things. If gender is a choice, what kind of a choice is it? What's not the same, I would suggest, is a choice of one's beliefs and beliefs about oneself, one's desires that one might encourage or discourage. A choice of gender is not the same as the choice of conduct. What should I do? Should I come out or not? Should I have surgery or not? It's not quite the same as the choice of whether one is a man or a woman. Choosing one's gender is not, I would suggest, the same as choosing one's beliefs or one's desires or one's actions or even the expressions of one's identity. Because to have an identity is different from deciding how one's going to express that identity.

I want to say that the transsexual who is a self transformer is someone who chooses not only her beliefs and desires and her actions and her expressions, but she's choosing to be a woman. It's like choosing to be married, her choosing to be married. She is choosing more than just to act like a husband or a wife, or to believe the things that a husband or a wife might believe, or to act in certain ways to one's spouse or to one's children. Anyone in this room who is married, or has been married, can probably recognize that choosing to be married is all that and a lot more too. It's choosing to be married as opposed to, say, being tenured. I am fortunate to say that I am tenured. But it's not like being married. Being married goes to who I am, more than just my beliefs and desire and actions and expressions. It goes to who I am — not something like being tenured — and

I want to say that being a man or a woman is a lot more like being married than it is being tenured.

The literature that I have read typically doesn't mark the distinctions in just the way that I did. There's no need to. As I read the case studies that I've read and the biographies and the autobiographies, there's an inclination to stress that gender choice is the choice of a belief or a desire or an action or an expression rather than a choice of one's nature itself. A choice of one's gender is not of one's nature, why is that?

Why might someone not describe what he or she is up to in life as choosing one's nature? One answer to that comes from being in the culture where the culture's answer is that gender is nature. So a person in that culture who chooses her nature is, in a sense going, against nature as defined by the culture. "Your gender is your nature and if you're choosing your gender, you're choosing against your nature and that is definitively unnatural."

The case studies that I have read tend to stress reactions that people face. A person who is told that he or she must leave home. A father telling a child, "Get out of here, you're unnatural. You've got to leave." That's a terribly cruel thing, but it's a widespread belief that gender is nature. So it's hard for a person to say, "I'm choosing my gender," in a world in which gender means nature. Even a world that's gotten very skeptical about nature, that tends to believe that there's not much in human life that's natural, even in that world the idea that there is a moral nature stages its last defense on the field of gender.

But I think there's a different way of talking. A person might say, "Yes I'm responsible for my gender. I'm responsible for my nature because I make my nature. I'm a human being and what makes me different from the other things in this world is that I make my nature. I take responsibility for my nature. And in that, I'm just like everyone else because it's human to choose one's nature." If it's human nature to be self creative then the transsexual is humanly natural. Self creating in a self definitive human way. So in more than just the obvious sense, transsexuals hold the mirror to humanity.

I want to talk about the value of self creativity and refer, as I said, to the religious dimension of self transformation. Recently at church in my own home town, the worship service began with this Call To Worship, "Oh, God of creations and transformations, who constantly begets new beginnings, inspire me by your perpetual creativity." On this plea, God is the God of new creations and new transformations. God can make all things new. God presides over a natural order in which even gender, the symbol of nature, is not finally fixed. Now the idea of the creator God is quite common throughout western religion. Corresponding to the idea of the creator God is an image of the human being as reflecting and participating in the work of creation.

The image differs in many religions, but let me take as a starting point, the starting point of the Bible in the Book of Genesis. What I now propose to do is take back creation stories from the creationists. In the first three days, says Genesis, "God created light and darkness, the firmament, the waters, the dry land, and vegetation"; things that are all excellent in their own ways but things that cannot change their place. They're all stuck where they are.

On the fourth day God created the stars and the sun and the moon which move, but which cannot change their courses. They're in a fixed orbit. On the fifth day, God created birds that fly, fish that swarm in the waters, and then the creatures that creep upon the ground. All these flying, swarming, creeping things are excellent in their own way. Not only that, but they can change their courses unlike the planets that move in the fixed orbits.

Then on the sixth day humanity is created. Humankind is made in the image of God the Creator. God is the Creator. If human beings are made in the image and likeness of God, then human beings are also creators — creators, not just of artifacts, but of self. The heavenly bodies can change their places but not their courses. Animals can change their courses but not their ways. Only human beings can change their ways. Thus human beings made in the image and likeness of God share in God's transformations new beginnings and perpetual

creativity.

This self creativity is a kind of worth. I think that's what the Book of Genesis is telling us. There's a rabbinic commentary on Deuteronomy which pictures a procession of angels standing in advance of the human person. The heralds proclaim that the head of the procession make room for the image of God. I think that's a wonderful image of what Genesis has to tell us. Make room for the image of God. Make room for the being who is made in the image of a creator. Make room for the agent of change. Make room for the one creature whose nature it is to change himself or herself.

This endowment of the capacity to change is central to our dignity as human beings, but the capacity has its limits. I take my own stand with the ancient tradition. It says that the capacity to change ourselves doesn't reach to the extreme as being able to divest ourselves as being made in the image and likeness of God. There's not a thing that we can do that can strip ourselves of that status, of that endowment. We are less than Milton's Satan but we are more than psychological victims trying to attain an adequate comfort level.

Why am I talking about creation stories to you this evening, other than just presenting a fable perhaps that illustrates self creation? Because there is a modest document well known to every person in this room that lies at the foundation of our constitutional rights, and which itself speaks in terms of creation stories. Of course that document is the Declaration of Independence. "We hold these truths to be self evident. That all men are created equal but they are endowed by their creator with certain unalienable rights and among these are life, liberty, and the pursuit of happiness." Endowed by our creator with inalienable rights; why? Because we are made in the image and likeness of God; and therefore, we share in the capacity for creation.

We are co-partners in creation. The Declaration of Independence stands with the Book of Genesis and says, "Make room, fall back, make a space for the changer, make a space for the partner in creativity, and make a space for the fruit of self creation."

This message is heard. This message was heard most recently in Planned Parenthood vs. Casey, one of the most famous cases of recent constitutional law, the Pennsylvania abortion case. I think that many of you know the stories of how Justices O'Connor, Souter and Kennedy got together, somewhat secretly, and authored a joint opinion much to the chagrin of the Chief Justice Renquist so that Roe vs Wade would not be overturned but would live another day. Since Roe vs Wade, the right of a woman to choose whether or not to terminate a pregnancy was typically described as resting on a right of privacy. What Justices O'Connor and Souter and Kennedy did was they shifted the ground. Instead of talking about privacy, they talked about self determination.

I want you to listen to this quotation and think about whether you haven't heard this before in the last few minutes. Quote: "In matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." I think there's a path that goes straight from self creation, to the Declaration of Independence, to that language in Casey, and to everyone in this room tonight which lets me speak specifically about transsexual transformations.

Self creativity, as a theme, is central to the literature of transsexualism. As just one example, let me quote to you from Jan Morris' autobiography Conundrum. In this passage Morris describes what she experienced as she walked the streets of Casa Blanca on the eve of her sex reassignment surgery. This is Jan Morris. "It really was like a visit to a wizard. I saw myself, as I walked that evening through those garnished streets, as a figure of a fairy tale about to be transformed. Duck into swan, scullion into bird, scullion into bride — more magical than any such transformation, I said to myself, man into woman."

Let me see if I can take this self description and bring it into the orbit of the thoughts that I'd been sharing with you. Attend closely to Morris' language. What she says is that she's not making this change. The wizard

is. The wizard is transforming her. She doesn't use the active voice. She doesn't say, "I change myself." She says that she's about to be transformed. She deliberately, and she is a gifted writer, chooses the passive voice. I think I understand why she wants to do this. It is because she believes that she's always been a woman, that she has always been this puzzle. She's always been a woman, and now she's just accommodating herself to that reality.

But in so speaking she's undervaluing another possible interpretation of her own experience that brings out the choice in it, and it puts it more on the path toward the protection of constitutional rights and the language of Casey. Notice, just her choice in speaking about a wizard. You go to a wizard, I take it, to be disenchanting. You're under an enchantment. You're really a princess, or you're really a prince, but you've been enchanted, you've been turned into something else. You go to the wizard to be restored to who you always were. That's very different from the call to worship that I mentioned in which God is invoked to make each one free to change the conditions of each one's life.

Let me see if I can offer a modest revision of Morris' self description by appealing once again to her own autobiography. This passage, I think, has a very different ring to it than the passage I quoted just a few minutes ago. Morris says, "That my inchoate yearnings, born from wind and sunshine, music and imagination, that my Conundrum might simply be a matter of penis or vagina, testicle or womb, seems to be still a contradiction in terms, for it concerned not my apparatus but myself." Now what Morris calls her "Conundrum" is exactly what the authors of Casey called a mystery of her existence.

Morris is talking the language that's going to win Constitutional rights for her and for you. Because she's saying, "I have a mystery. I'm responsible for my mystery, and I should be free to come to terms with a mystery of my own life." So instead of saying, "let us not punish people for things over which they have no control," we could say, "let us give a person the space in which she can come to terms with her own conundrum, her puzzle, her mystery."

Always we face a choice. We face a choice at the crossroads of legal strategy that is more than just a crossroads and just legal strategy. Which way lies redemption from our sufferings? We know only that the God of redemption, who reveals himself when he brings the captives out of Egypt, says in the Book of Exodus, "I will be what I will be." God tells us in Isaiah, "Behold, I create new heavens and a new earth and the former things shall not be remembered or come to mind." God tells us in the Book of Revelation, "Behold, I make all things new."

With what sense of wonder do we share in the complete renewal of all things including



Ron E. Garet, Professor of Law,
University of Southern California Law Center,
author, "Self Transformability", 65 S. Cal. Law Review 121

ourselves? If the God who redeems is the God who creates, and if we owe to such a creator, our inalienable right to life and liberty and the pursuit of happiness, then we too are defined by the bottomless mystery of our own unconfined future. Thank you.

By Phyllis Frye:

Thank you Martine for introducing us to Ron Garet. When I talked to him on the phone those few times, and when I read his article, I was impressed by each encounter. I wasn't fully prepared for what we heard tonight. It was very significant. Thank you Ron.



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WELCOME, BACK IN THE HIGH LIFE AGAIN!

By Phyllis Frye:

We're almost to the close, I need to share with you, and I need to share with the record that, as exciting as this has been, quite honestly it looks like, if my preliminary numbers are right, we're going to run possibly as much as \$2,000 in the red. So we need some help.

So we're going to have a little auction, and after I explain the auction, I want to go off the record while we have the auction. There's no use to do the auction on the record. What we are going to auction is the last copy of the very first edition — because we're up to the fourth edition with various modifications — of the first

"Proceedings" of the law conference. It's been autographed by all five of the original board of directors. There is no other document like this. There were, I think, no more than thirty of the first edition printed, and there are certainly none that have all five signatures. So as our history goes and grows, you might, if you're a collector, have really something significant or this may just give you an excuse to support the law conference on its way. So, let's go off the record. *[The Auction was held off the record.]*

Back on the record. The second law conference is finished. Tomorrow morning starting at 9:00 a.m. they will open up an all you can eat, come back two or three times, breakfast buffet. We are selling that buffet for only \$10. I encourage you to come down at 9:00. Shortly after get your food, walk directly into Salon E where we met all day yesterday. Even though the program says 10:30 to start the planning meeting for the third conference, quite a few people have pleaded with me to start earlier because they have airplanes out. So the planning meeting for the third conference will start at 9:30. That doesn't mean that in the middle of the meeting you can't get up and go get seconds because you certainly can. But we're going to start that meeting at 9:30.

Several years ago — I don't know if y'all listen to Steve Wynwood or not — I heard a song on the radio that was very significant to me. It's kind of been a theme song of mine for the past several years. It's very exciting because it came at a time when I was really starting to finally come out of it. What I mean by that is, there was such a drastic nose dive that I explained earlier, and then for a long time it was bumping along on the bottom. Around 1986, towards the end of '86, I started coming out of it with respect to job and such. 1987 was an exceptionally good year. 1988 also not just the economics, but I had attended several college and high school reunions, and I was slowly reclaiming a lot of my childhood, our friends and our neighbors. Just this week, our neighborhood solution finally came. The neighbors that made our life miserable either got over themselves, died or moved. The last ones moved this past weekend.

But this song is called "Back in the High Life Again." I'm not going to start with the first verse, but I am going to say the words because sometimes singers are difficult to understand. I want these words on the record. Starting with the chorus and going through the second verse he sings:

"I'll be back in the high life again; all the doors that closed one time will open up again. I'll be back in the high life again; all the eyes that watched me once will smile and take me in. I'll drink and dance with one hand free, and let the world back in to me. And oh, I'll be a sight to see back in the high life again."

"You used to be the best to make life be life to me, and I hope that you're still out there and you're like you used to be. We'll have ourselves a time and we'll dance to the morning sun and we'll let the good times come in and we won't stop till they're done. We'll be back in the high life again."

"We'll be back in the high life again; all the doors that closed one time will open up again. We'll be back in the high life again; all the eyes that watched us once will smile and take us in. We'll drink and dance with one hand free, and let the world back in to me. And oh, we'll be a sight to see back in the high life again."

I'm going to close by turning on the tape and playing that song. I want you to celebrate with me. This is it. The conference is over with. No other words are going to be said.

We've got this whole room to ourselves. If you want to get up and dance do it. Or just get up and move or get up and feel good about yourself.

I welcome you, back to the high life again!

[Whereas the conference closed with the song, "Back in the High Life Again." By Steve Wynwood.]



...And the Executive Director takes a well-deserved break at home following a successful second International Conference on Transgender Law and Employment Policy — August, 1993