

DOCUMENTATION WORKSHOP REPORT

SATURDAY, 17 JUNE, 1995

Speakers:

- *Melinda Whiteway, Documentation Law Director, ICTLEP*
- *Phyllis Randolph Frye, Executive Director, ICTLEP*
- *Louis Schwartz, Professor, State University of New York, Buffalo*

By Melinda Whiteway:

This is the summary of the documents workshop. This is Documents Tape 5. It's the afternoon of Saturday, June 17th, 1995 at TRANSGEN '95. I'm Melinda Whiteway, the documentation law director for the International Conference of Transgender Law and Employment Policy. And we're here to do a couple of things this afternoon. The first is we're going to review what we covered in the documentation law workshops and then, because I don't think that's going to take the full allotted time, I'm going to take the liberty of presenting a paper in the second half regarding intersex. This paper was presented by Lynn Edward Harris who is an intersex person from Los Angeles, California. The paper itself will be part of the appendix to the proceedings this year so the audio portion will be read strictly for people who are listening to this while traveling down the freeways and so forth.

We're in a very intimate setting here this afternoon which is a lot nicer than speaking to a large auditorium. The dedicated few with no better place to go are here at the summary listening to these wonderful little gems that we're going to



Melinda Whiteway
Documentation Law Director, ICTLEP

give you this afternoon.

First of all, the summary of what we accomplished or we tried to accomplish, at least during the workshops. We started off with a review of what went on in years past . The first year of the law conference I believe in 1992. There was no law section.

The second year the program was run by Sister Mary Elizabeth who is now in San Juan Capistrano running an AIDS information network on the internet that has worldwide influence and impact, so she's not able to be here this year because of her duties. But during the first year the law conference under Sister Mary Elizabeth we tried to survey the general state of documentation issues in the country. Sister Mary Elizabeth was influential in that area by virtue of her having done the legal aspects of a transsexualism book which I believe is out of print now and probably a little bit outdated with the current changes in the law that have occurred all over the country.

But Sister Mary Elizabeth surveyed, informally and formally, the various departments and agencies throughout the country and the program participants to determine what the needs of the community were and what was generally being done. They found a great deal of inconsistency throughout the country, as is the case today. The needs are being addressed on a pretty much haphazard basis and that still is true today. However, there's been a lot of parole in the last few years in many areas including documentation. The third law conference was when I first was appointed to the board of directors and was given the task of taking over the documentation law section. And what we tried to do in 1994 was to start from the ground up and do, on a state-by-state basis, an analysis of the documentation law issues and try to determine what legal authority exists for documentation law, changes that need to be made by transgendered people. And we've pretty much followed that same format ; it has given us a sense of structure that we didn't have previously .

So I'm not going to go into detail through what we did in 1994. Those of you who were not at the TRANSGEN '94 conference can get the materials that we presented in the 1994 conference from the proceedings which are available from Phyllis Frye, I believe, for \$65 each if you buy one year and I think she'll give you a deal if you buy two or more copies of either of the same year or multiple years. There's a wealth of information in the proceedings for those of you who don't have them from prior years. Even though they may be a year or two old they still may be the only information available on certain subjects. In a particular case, the documentation law, all of the original work that we did in California for the 1994 law conference is contained in the appendix to the proceeding, as well as the summary that we did last year for the documentation law section.

This is what we did in 1994, just to summarize briefly, and to give us a framework for what we tried to do this year . First of all, we tried to address the general considerations that one might use to determine what documentation changes an individual person might need and how best to fulfill those needs through legal process.

So, we first started off with the general concept of what documents were even possible of modification, and we found that there was considerable debate in 1994 over the concept of trying

to establish a new identity as compared to making perhaps a more overt and opening change in accord with the change in gender. And that addressed the problem of whether it's even possible to secretly change one's identity as a process of the documentation. I think the consensus from our 1994 committee was echoed again by our 1995 workshops: that in most cases a complete new identity is virtually impossible to establish without major government assistance such as the federal witness protection program, something like that where they really want to help you change your identity; otherwise, the bureaucratic more as, you know, mires everybody down. And there are too many documents in existence that follow us all our lives, and there are too many things of a documentary nature that are necessary nowadays to live in modern society.

For example, a hundred years or so ago, many people did not even have birth certificates because so many people were born at home or in rural areas with the assistance of midwives or nobody. I have some friends even now that were born at home with the assistance of a midwife and there is no official record of their birth, at least not at the time. Sometimes later there are some other records that may have been created, such as baptismal records, but those are essentially from the legal standpoint, hearsay.

Only nowadays do we have contemporaneously generated documents in almost all aspects of our lives. And nowadays, there is just such an enormous amount of documentation that we generate throughout our lives that simply cannot either physically, legally, ethically, morally or practically be changed. And we try to make a distinction between historical documents which we defined as documents that are true at the time that they are made such as some of the documents in question, a certificate of birth. If, at the time of an individual's birth, the birth occurred at a given time and place, you can usually get the mother's identity pretty clearly, but the father's identity is sometimes not always that clear. Sometimes that is essentially a hearsay issue, but that document speaks for itself and is presumably true at the time it was created.

Many, many other documents, in fact, most documents are of that nature. They're historical documents. However, school records, medical records and so forth are other examples of documents that are presumably true as of the time that they were made. Then, other categories of documents, like driver's licenses, are probably one of the most important documentation issues for transgendered people. And a driver's license can be issued and reissued almost an infinite number of times to any given individual. And that document can be newly created at any time you walk into a Department of Motor Vehicles office. Those documents, the newly created documents obviously are much more easily to amend or to have reissued because of their very nature.

And, coincidentally or not, our survey found that newly created documents were relatively easy to change. Almost every state has some procedure for changing names, in particular, on driver's licenses, simply by going into the Department of Motor Vehicles' office and filling out a form stating the old name, the new name and whatever other changes you wish to make. And in most cases, it's a matter of administrative procedure that can be done very quickly, and it results in issuance of a new document that is generally undetectable from the prior document. And there are usually no indication of alterations or amendment or so forth.

Other other newly created documents that we found easy to change are things such as the Social Security card and the U.S. passport. The U.S. passport, of course, has some separate problems that we'll address later.

Now, to return to the issue of practical pointers and theoretical considerations for document changes. It is my belief that in most cases, a complete new identity will be virtually impossible to establish. I have known people who have done it. You can do certain things and I think that you can expect to get away with it for some period of time. From the psychological health standpoint and my own personal bias it is better not to do that for a lot of different reasons. From a practical standpoint, sooner or later somebody is going to find out. It's an incredibly small world despite all the people running around in it, and sooner or later, somebody is going to run across your path that will have known you from before.

And once they know that you are not open and that you are hiding, and that you are ashamed of your past or whatever other issues prompted you to try to hide your priority identity, they know that they've got you. And most people will sooner or later find some way of taking advantage of that, either just out of spite or for financial reasons, or whatever. I have heard about people and talked to them in disaster and I have learned the following: people have a much more difficult time in dealing with dishonesty. And most people tend to view our hiding our past as a dishonest act. It indicates that we're ashamed of ourselves. It indicates that we have been untruthful with the people that we deal with. And when they find out that we've been dishonest, they are normally very offended and I think rightfully so. When they're offended they get angry. When they get angry they are motivated in some cases to retaliate and do vindictive things such as exposing you, calling the newspaper and so forth.

This, for example, happened to many, many people I know, but most recently to JoAnna McNamara JoAnna is going to her third year at *Wylimet University of law and she has done a lot of the organ documentation for this workshop. When she first went to the university, she just was beginning her transition and she made the university administration aware of the fact that she was beginning her law school studies under a identity and that she asked them to keep that confidential. And word of that leaked out, as it always does somewhere, somehow. And very, very soon after she began her freshman year, a religious fundamentalist female student at the school, a second or third year, a student who, regrettably, is now practicing law in Oregon, decided to out her on national public radio. And she filed a court action against JoAnna to prohibit her from using the women's rest room and so forth.

Well, Jo Anna didn't intend for that to happen and had that not happened she might have been persuaded to try to continue the deception. The result was consistent with my experience: that that disaster turned out to be one of her greatest assets. She gained enormous publicity and notoriety in the school, the law school and in the local community. The student body rallied around her and found that the vindictiveness that was exhibited by the other law student was ill-advised and not justifiable and so forth. Jo Anna ultimately was elected vice president of her student body. She is a candidate for law review this year and she's been extremely active. She's gotten a legislative internship with the Oregon State Legislature and so forth.

So that's just an example of why not to try to hide your prior past. And now she's out and she's proud and she's able to participate in things like this; the only way you can do this is when you're out. And she's able to be a much more productive and contributing member of the gender community and of society as a whole.

So the net result of that , the consensus was: don't fool yourself into thinking you're going to get away forever with hiding your past. Just face the issue head-on, right from the beginning and be open; hold your head up and be proud of who you are and enjoy the opportunity of being free.

I think we all agreed that of the documentation priorities that we discussed, the most important document, by far, was the driver's license. Almost all of us who drive. For those of you who don't , there is the state sanction identity card, which is normally issued by the Department of Motor Vehicles in most states in the United States.

UPDATING YOUR SOCIAL SECURITY CARD

Probably next in order priority is the Social Security number change since that is essentially a national identification number. Then probably, banking and credit records. I think there are relatively few people that need a U.S. passport because you don't need it typically to travel to Canada or Mexico or most of the Caribbean countries. If you go on a vacation cruise or anything like that to Alaska, Canada, the Caribbean, Bahamas, etc., you generally don't need a passport. It's only if you're a businessperson and you need international travel or if you're foreign-born and you need to travel in and out of the country that you're going to need a U.S. passport.

Social Security records are very easy to change. The Social Security Administration has a form you fill out. They are very liberal with the kinds of documentation that they will accept as proof of your previous name and identity and your current name and identity. It's outlined right on the application. The application is a combination of an application and all the instructions that you need. They're very clear. I don't even believe there's a fee. My only caveat is that it's best to do it in person at your local Social Security office because they generally require original documents or certified copies. Certified copies are hard to get sometimes, and if you take the original documents I wouldn't want to trust those in the mail or seeing those get lost somewhere in the bureaucratic morass.

So if you go in person, you show them the documents. They can photocopy them until they are satisfied. I've never known of anyone that's had a problem getting a new Social Security card in their new name. My suggestion is to keep the same Social Security number. There is debate as to whether or not the Social Security Administration would even issue you a new number. And some people have reported difficulty trying to get that done.

Again, my experience has been that the people that want to try to get a different number are the same people that want to get a new identity. As we discussed earlier, this is not advisable, in

my opinion. However, if that's the person's desire, there is a space on the Social Security application form that asks "Have you ever had another Social Security number?" And space for you to put it in there. So that leads me to believe that they must anticipate in some cases getting new Social Security numbers.

I think that they certainly have the ability to do it. They have the power to do it. If you can demonstrate to them the need to do it for whatever reason, I don't see any reason why you could not get that done. As I said, I don't really know of anybody offhand who has actually done it. I don't advise it for a another reason, and that is because the Social Security system, of course, is set up as an entitlement program and to provide old age benefits. I guess they're now called retirement benefits and survivor's benefits, if you have a covered spouse that dies and you have underage children and disability benefits. And all of those things require that you have certain earnings credits within a certain period of time in order to qualify for benefits, and the amount of your earnings credits determines the amount of your benefits in most cases.

I think that the possibility of your prior earning records not being properly credited to a new number are vast. I want to make sure that I get whatever benefits that I'm entitled to. So my recommendation is: just get your name changed. There's also a space on there for a change of sex, I think they call it, on the form.

One person was successful, not wanting to be dishonest, because they were preoperative when they wanted a change of their gender designation. They just scratched out the word "sex" and wrote in "gender" and marked "F" for female. They got their card. You know, the card doesn't say what your gender is anyway, so whether it's male or female is really of significance only for the internal Social Security purposes.

You know, I was trying to think of an area of where the gender even made a difference and somebody came up with something Medicare. That's it, thank you, Linda. Yeah, Medicare – that a related issue. And I have had transgendered friends who have gotten a Medicare card in both, female and male. I suppose it's like a driver's license. If you think about it long enough you can figure out a way to do that. But the interesting thing is that the Medicare, of course, does have your gender designation on it. So, you know, what gender do you want to have on that, really? Do you want to have it match your birth sex? Do you want to have it match your new sex? And the reason why that becomes a problem is that even for those people who choose, you know, surgical alteration, there are always vestigial organs that require medical attention from time to time. For example, transgendered men typically have the uterus or ovaries; some chose to have those removed or have had them removed. But if you still have a vagina then you're going to need a pap smear, if you're going to monitor your health properly. And if your Medicare card says that you have a male name and it says you're male and you go in for a pap smear, it's really kind of comical in a way except when it happens to you. I have had reports that they have said, "I'm sorry, you know, your card says that your a male and we're not going to do that. We're not going to give you medication to treat your endometriosis. We are not going to do a mammogram for you" if they're totally preoperative.

You know, it's stupid for them to take that approach. You know, if you'd go in there and tell them, "Look it says male because I'm in the process of transition but these are my body parts. You can see that I have them and that they need to be examined and possibly treated. I need medication." A male-to-female friend of mine had some sort of a female problem and needed, you know, Premarin cream or something for vaginal dryness, but could not get it with the Medicare card for that same reason.

I'm not sure that there's an easy solution to that, but again, I think honesty will usually win the day. And if necessary, you can keep on complaining loudly enough, with dignity, and not make a spectacle of yourself, but, you know, go to whoever you need to go to to get the issue straightened out. The alternative of course is to keep it in your former name. Then it's not going to match your other identity documents and that's going to create problems too. And then if you are at some later stage of transition you have some parts of both sexes then you still have the same problem of getting examination and treatment for your new parts and your old parts but the same gender thing.

Hopefully they'll take the approach that the Veterans Administration and others have taken and just omit the gender designation altogether. And if there's enough of us to do this and get Medicare cards and so forth, maybe we'll create enough of a problem for them that they'll do that.

Credit records, banking records and so forth, in my experience, are most easily and inexpensively handled with a simple declaration of legal name change. It's a form, I would assume it can be obtained at a stationery store in some cases. I believe all of the states recognize as common-law, common-law name change because that's the way everybody used to change their names or get their names to begin with. We have the forms. If you need one of those forms, it's simply a declaration saying, "I was born so-and-so at such and such a date and this was the name on my birth certificate I hereby change my name to such and such and I want to forever after be known by such and such. And I declare I'm not trying to defraud anyone or escape any legal obligations and I'm over the legal age, et cetera, et cetera, et cetera." And you sign it under penalty of perjury or some states might require an affidavit, which is kind of a variation of an oath in front of a Notary Public and you swear to the truth of the statements of the document. And you have it notarized and then you photocopy it as many times as you need to and you just send that to your creditors, your bank. You take it into your bank and you tell them, "This is what I'm doing, and I want you to put this in your file. And I'll need to sign my name card again so that you'll recognize my signature on my checking account and so forth." Then you just order new checks with your new name on it and everything is usually fine.

You can do the same thing with your credit cards, any other bills that you get, your utility bills, the phone company, so forth. I found no problem in just sending them. When I was going through my transition, I just enclosed a photocopy of my declaration of legal name change and changed my name on the face of the bill and the next month it came with my new name on it. No problem.

Likewise, if you have credit problems, you can go down to your credit bureau or contact your

credit reporting agency. If you don't know what agencies are used in your area, talk to some of the merchants and say, "When you run a credit bureau file, where do you get your credit reports from?" Contact them. They can give you the number. Either send them something in writing with a declaration of legal name change, give them your Social Security number, driver's license number, et cetera, et cetera, and tell them this is what you're doing, so if anybody inquires, please cross index your file by your new name.

That's by far the most honest and above board and effective way of doing it, in my opinion. And that, I guess brings us down to the next most often needed document which is the judicial name change or the court-ordered name change.

Many states have a statutory procedure for doing a change of name. In California, for example, those documents are in the 1994 proceedings. But in California, you know, there are lots and lots of people who want to change their name legally for various reasons. Typically if it's a result of marriage, the marriage certificate is sufficient proof of the new name. In our country females commonly change their names with marriage. Then, they change their name back in many cases with the solution or divorce. And usually a copy of the divorce decree contains a specification for return of the wife's former name.

They said this in California. And typically anyone that questions that, you just show them a copy of the court order of divorce that includes the change of name and they're happy. However, if it's not due to marriage or divorce but for other reasons including our own, most states have some official procedure for doing that.

Jo Anna McNamara did the parallel work in Oregon for us this year on driver's license and legal changes of name. The Oregon procedure follows the California procedure fairly well and in a parallel manner. We have copies here on the table of the work that JoAnna did. If you didn't get those, please take a copy. And Jo Anna went above and beyond the call of duty by actually providing the copies of the forms that you would file with the court in most instances.

And it's pretty self-explanatory. The court-ordered name change, though, is a very important step to take for someone who's going through a gender transition, because it is, out of necessity, a very public proceeding, particularly in California. The law wants to know first of all whether there's good cause for changing the name or whether there is any reason why it shouldn't be changed. In California, luckily we have a presumption that the name change should be granted unless somebody can show cause why it shouldn't be granted. And, in essence, it just follows the common-law rule: if you want to change your name and there's no intent to defraud or escape your legal obligations or hide from your creditors or to be a fugitive from justice or whatever, then there's no reason why the court shouldn't allow you to do that.

But they want the world at large to be aware that you're changing your name so that if anybody does have any objections or if there are government agencies or creditors or, former spouses, or children or somebody that has some legal interest in the procedures, that they'll be aware of it and they can voice those objections at the hearing.

So California, for example, requires that the notice be published in a newspaper of general circulation at least once a week for four consecutive weeks. Well, that's another good example of how it is that you aren't going to be able to hide this process even if you were inclined to I mean, if you really and truly want to hide for whatever reason there are ways that you can kind of circumvent that. Not legally, but you can make it much, much less likely that your transition is going to be discovered. You can go to places where you are not known, particularly very large metropolitan areas. Los Angeles is a really good example. I mean, they must have thousands of those things going on at any one time. You publish something in some L.A. paper and unless you're in the L.A. area and many lived there for a long time, very few people are every going to know something like that.

But the Oregon procedure follows the California procedure pretty well, except that ,rather than publish it in a newspaper they require you to post it places where legal notices are posted for 14 days instead of for a month. But generally, if there are no objections, there's a hearing. The judge will inquire and make sure that you are the person who filed the petition.. You must be present, by the way.

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**(L-R) Phyllis Randolph Frye, Attorney, Executive Director, ICTLEP
and Melinda Whiteway, Documentation Director, ICTLEP**

and make sure you understand what you're doing and make sure you're of legal age and this kind of thing.

Now other states have little or no statutory procedure on the court ordered name changes.

Phyllis gave us the benefit of her experience this year from the Texas Procedure. In a minute, Lou Schwartz will tell you what he was able to discover in New York State.

But in both Texas and New York, the procedure is kind of – well, Phyllis has her own little euphemism for it, but I think the legal term would be an ad hoc procedure. Phyllis pulled it out of her hoc, I believe. Anyway, Phyllis, why don't you kind of fill us in on what was going on in Texas with legal name change.

TEXAS LEGAL NAME CHANGE UPDATE

By Phyllis Frye:

Well, a lot of it is creativity and recognizing who actually has the authority. Normally, the judges tend to say that they have all authority and, if you tick one of them off, you'll find out that they do, or challenge them and you'll find out. But in this case of documents, by in large, the judiciary defers to the medical opinion, to the medical authority, to the medical community, to a doctor's letter. And as in all things that I've discussed during the past several days, be it political change and everything else, it's been a long evolution. And the main reason why I've come to where I am in this evolution legally is because I get a lot of these clients but also because I am one and so I'm living it, I'm experiencing it, I'm doing a lot of political action within the community and I'm seeing where changes need to be made.

In Texas, there's just a flat name change law. You have got to do this and this and this and this, and as long as you don't change your name to a number or something embarrassing, or totally outlandish, they don't care what you change your name to as long as you have one name and only one legal name, and you go through the right procedure so it's documented. They really don't care. And similarly with birth certificates, although I've said many times, who cares about a birth certificate. You don't need a birth certificate to get a passport because you can get a birth certificate with other things than a passport, something that shows your citizenship. They will accept some things. But, I'm not going to get into that argument.

I find that most people who want to change their birth certificate are trying to bury their past. I mean, they're going into the ultimate closet. They're going from one closet to the ultimate closet. And whether or not that's a healthy thing to do, of course, is not the scope of this workshop. The states statute says that birth certificates may be amended but they don't say how. The Department of Health came up with a policy and essentially, they dump it on the judges. All the judges want it see is a notarized letter from a doctor. I haven't had a judge yet who's going to take somebody back to their chamber and do a physical or visual or anything like that. They're usually embarrassed by the whole process, it's like, "Oh, you got a letter, great, let's do it," you know, and they're quite happy.

So that's where we were. Back in the late 80s I was changing names and I was trying to save time. This was when I still had not yet come to terms with the fact that I was going to be a full and

complete woman without genital surgery and had come to view genital surgery as a cosmetic option not to be denigrated by any means, but as an option whether you have your genitals worked on or not. And as you know, I've chosen not to but I consider myself to be fully female. So as I start taking people through, I'd get their name changed and then somewhere down the road they'd that their surgery and they come up with a doctor's letter. We had to file another filing fee and they'd have to pay me some more money, and that's fine. I don't mind them paying more money but it's kind of silly and somebody had the good sense in one of the sessions to speak to the fact that almost everything I've done in the courts and legislatively has actually worked against my own self-interest because I'm trying to get the law changed so you don't have to have an attorney to do some of the stuff.

But anyway, I was taken through twice and so I said, "Why don't I just redraft the order so that the order says that this order coupled with the certified letter from a doctor is sufficient to have the Bureau of Vital Statistics to amend the birth certificate." And that went fine until there were some people who were either remaining nonsurgical as I have, or had not yet had surgery. One very clear example. A good friend of ours who got a wonderful job transfer overseas. She transitioned on the job. Luckiest person I ever met in my life, just amazed me. She got almost a year paid leave while they worked with her and figured out how to get everybody to come to terms and she was out playing golf. She had a great time and she got full pay for a year. It was just amazing. I had done her order and tried to save her some money and everything else and she had not had surgery and she discovered that she couldn't get a full passport. All she could get was a temporary passport, one year at a time because the order said, "Once you finish your surgery blah, blah, blah" It was a flag to the passport people.

I still don't know to this day whether this would have caused a nonsurgical transsexual to rush towards surgery before they had a chance to decide whether or not it was an option. But the fact is, it makes it impossible to get a passport. Again, I'm not saying that surgery is something you shouldn't have. I respect all choice as long as it's a choice and not put on by some outward pressure because you can't get a document done.

So I decided I would start taking that off and we started dealing with the I.D. change. You got this "M" on your driver's license. You got this "F".

Even though I got my license changed back in 1977 and I was practicing as a lawyer, taking people through the courts in late '80s and early '90s I still hadn't gotten mine changed and it was still a big pain when I went someplace where I had not yet cashed checks before or credit card before or whatever. I never knew what kind of reaction I was going to get and quite often it was embarrassing or ugly or could be nasty. And so I started coming up with language and this is when I started pulling it out of my ad hoc that was nowhere to be found in the law. And essentially, I created the gender identification change.

I have demonstrated to the judges and to the doctors; essentially, whenever someone hire me, I give them a letter to give to their doctor for their doctor to regurgitate on their stationery in front of a notary stating all the medical things that the judges like to hear to give me all the legal things

that I want. And it says, essentially, a change of name (which is a legal thing to do but for a transsexual person) without a corresponding change of gender identification is an incomplete change of name. And if this is not done in a presurgical situation during the real life test then it could bias or prejudice the test and cause a faulty diagnosis. And the doctors are comfortable with it. Most of the judges are comfortable with it. You have got to be really creative. And then we came up with some stuff dealing with the transgendered men because their surgery is so incomplete and so expensive.

That bunch with their hormones and facial hair that took me years to get rid of, their voices dropped just like that even though mine never will because my vocal cords were so thickened. And they bulk out with these muscles because they pump iron and take these hormones and, you know, they wear their wingtip shoes while we're teetering around with toes pnced in our high heels. In many ways they have it more difficult, but as far as their initial transition quite often it can be a lot quicker. But their surgery is so bad that a lot of them are opting against having genital surgery. So the question is, for the point of an evidentiary standpoint, what do they have between their legs? Well, they're men up here in the brains because our brain is our sex organ. So what is between their legs. If they have an enlarged clitoris due to hormone stimulation then evidentially, and through a deposition, it could be argued very easily by the opposing insurance company or the opposing wife in a divorce or opposing who-knows-what that they're still women.

But if they believe in their mind of minds that they are men, and the doctor's willing to back them up that they're men and they have an underdeveloped penis, you know, and hey it's worked. We've had depositions where our guys swore that in their brain and in their mind they had an underdeveloped penis and the other counsel could just shake him in any way, shape or form. You know, the doctors have backed him up and what other evidence is there? So, you know, you got to be real creative. And in my case I have a clitoral hypertrophy. As long as I will depose and swear that I have clitoral hypertrophy and I've got doctors who will diagnose me as having clitoral hypertrophy, there's nothing to say I'm not a female. If I say I've got atrophy of the penis then legally and evidentiary I could still be hung out to dry if I was going through a court proceeding or a deposition or divorce or insurance or whatever.

So, you know, you can develop your evidence and you can work with your doctors. And I've got a lot of doctors that have begun to see that if someone wants to have surgery, that's their option, but if they don't want to have surgery they shouldn't have to have surgery and they understand what clitoral hypertrophy is, and they understand what an underdeveloped penis is and they'll sign in front of a notary that that's what they have got and they'll swear on a deposition that that's what their client has. So, you know, you got to be creative.

One little footnote. You were talking about the problems about getting some coverage for pap smears and this and that. My doctor knows that I am a nonsurgical, but a couple of years ago he had a nurse who just hadn't been brought up to speed. It was no big deal. I only go in once a year and it was not my hormone and blood doctor, it was the regular doctor that I would go see for something and I hadn't been there in a while. And the nurse pulls out the record and after I called in she call me back, she goes, "Ms. Frye, we have got to schedule you for a pap smear."

And I said, "No. We're not going to schedule me for a pap smear."

And she says, "Well, have you ever had a pap smear?"

"You've never had a pap smear." She's start lecturing me about all this stuff. She says, "Ms. Frye, I'm just not going to schedule until you come in for a pap smear."

After that I said, "But you don't understand. I don't have pap to smear. And she didn't know what that meant. When I came in later, she understood of course. Another time I went to my doctor and, of course, nurses sometimes go through doctor's offices every couple of years and one thing that a male-to-female transsexual has is you can have a prostate problem and I have a recurring prostate problem. That thing is just as hard and as big as a bagel, and I want you to know it hurts. And of course my doctor diagnosed it as prostatitis, and the nurse comes in to help me with something. She says, "I tell you my doctor he's so damn looney I don't know what's wrong with him. I have to check him all this time."

"So what's wrong him?"

She says, "Oh, he wrote you down as prostatitis." And I started giggling. I says, "You need to have a talk with your doctor," you know. So anyway it gets comical sometimes, but that's okay. Be creative. Be creative and demand your dignity.

NEW YORK STATE UPDATE

By Melinda Whiteway:

Thanks, Phyllis. I think we found a similar state of confusion, so to speak, in New York State and here to explain it is Professor Louis Schwartz.

By Louis Schwartz:

Yes. I will include in the appendix to these proceedings some systematic citation and description of matters with respect to driver's licenses and name change and birth certificates in New York. But for the purpose of the tape, I want to address a few points less systematically and more briefly. For one thing I told the workshop about my experience in terms of investigating the situation with respect to driver's licenses which illustrated the reality as opposed to the theory.

The theory says that bureaucracies are operating in a uniform efficient manner according to known rules. When I attempted to find out what the procedures were in New York State with respect to driver's licenses, especially with regard to change of sex on the driver's license and also with respect

to change of name, I found that the bureaucracy, even though I identified myself in all places as a law professor working for the State University of New York at Buffalo, that the bureaucracy, in many cases, was not forthcoming and also provided me with incomplete information; in some cases, with wrong information or conflicting information.

So, one of the points that I emphasized in talking to the workshop was that there's a very important difference between the formal rules to the extent that you can ascertain what the formal rules are, and the formal procedures. But there's a very important distinction between those and what actually happens. And I think that members of this community and people who have been attending these workshops are already familiar with that. In specific state jurisdictions and even specific locals within the state, I think it's enormously important to increase the extent to which there is networking among the people in the community, whether you're a practicing lawyer seeking to find out from an attorney working in that area how that attorney has actually handled things in connection with name changes, perhaps birth certificates or conceivably even a driver's license that you would have somebody knowledge to be in touch with or citizens who have been through some of these procedures themselves and who may perhaps be willing to share information on a semi-private basis with somebody whether it's simply another lay person or whether it's an attorney in terms of how things are actually done.

I found, at least within the modest amount of time that I was devoting to finding out how things are actually done in practice, difficulty in locating such informants in New York City. I contacted the American Civil Liberties Union Gay and Lesbian Law Task Force and spoke to – or contacted a knowledgeable attorney there but I was not able to identify people within the transgender community who knew how things had been working in practice in New York City. So that's some further work to be done.

I found, with respect to the driver's license issue, that there was a conflict in the information that was provided to me by an associate counsel in the state capital Albany concerning what the rule is on sex – change of sex designation on the driver's license. There's a conflict between that information and what a very cooperative local office manager told me about the situation.

I'm hoping that what the office manager told me is correct. In any case, I was told by the associate counsel first of all, that there were no statewide regulations or procedures—that inquiries were forwarded to the counsel's office. How you would know throughout a large State of New York to forward inquiries for the counsel's office if there are no directives or memos telling you to do that is a matter of speculation. But in any case, she told me that when that was done, that people were asked to make a telephone call and then were in effect told that if they had gone through a surgical sex reassignment that then based on medical documentation from a surgeon or a physician that there would be a change of sex designation on the driver's license.

I said, "Well, what about someone who was presurgical or nonsurgical?" And I was told, "No, we don't make any such change or either one thing or the other", to quote the words that were used.

I was also told by other officials that I couldn't have any information and that I would have to seek this out by way of a New York State Freedom of Information Law inquiry.

I haven't yet pursued that inquiry but it will be interesting to find out what that turns up. Eventually I just went over to a local motor vehicle bureau office near our university in a suburban area of Buffalo and I talked with an office manager. This person told me that up until about two years ago, the procedure was as the Albany counsel had told me. But that for the last couple of years it was possible to have a presurgical change. We did not specifically discuss nonsurgical but that seemed, in my mind at least, to fit into the same category and that based on a letter, as she put it, from a psychiatrist I clarified that any M.D. a letter stating that in the opinion of the medical individual that it was proper and advisable for the applicant to present themselves to the public in the new gender presentation; that a change on the driver's license would be made and that this is not a big deal, that she herself locally could handle it and didn't regard it as a big issue.



Melinda Whiteway
Documentation Law Director, ICTLEP

Looking for the technical basis for this, I asked about the regulations and were the regulations and so on. I was told, first of all, concerning the old policy, she did find a written record of the old policy in a gigantic book of regulations that she had thumbed through. But she told me that since this was for motor vehicle officials it wasn't available to the public so I couldn't look at it.

And then with respect to the new policy, she said that that had come by way of a director, state director of motor vehicles bureau memorandum. Apparently the director writes numeral memoranda to members of the system to be passed on to police departments and so on concerning a whole manner of things. And she looked around for a copy of this memo but could not find it. She suggested, on further inquiry, that I might be able to find it at a county law library.

I really did not want to press the issue because I was afraid that it might turn out either that

there was no such memorandum or that it had been rescinded by a more recent one. But part of the point there is that this official remembered having seen a memorandum and was operating in accord with it in terms of preoperative or non-operative request for sex designation change on the driver's license. Other officials at other district offices or branch offices might never have recalled seeing such a memo and might proceed in a different way. So the net of it is that the picture that was presented to me in actual practice with respect to driver's licenses concerning change of sex designation in the great State of New York was very far from uniform, public and open in the manner that one might expect based on the notion or classic picture of bureaucracy.

With respect to photo I.D., she told me that could be changed as many times as any person for whatever reason wanted to pay the fee for a new picture. And if you didn't like your old one, you could have your new one at any time.

Concerning name, the situation in New York with respect to common-law name change is similar to that in most other jurisdictions and what we've already heard at these conferences. Nevertheless, there is a statutory change and it turns out that the statutory change is under the New York Civil Rights Law Article VI, change of name.

I won't go into the rather routine technicalities here. They will be set forth in an appendix. But we have had an early case in New York where there was a post transsexual request for change of name from the previous, obviously male-sounding name to a female-sounding name. And based on medical documentation, that request was granted. But since then we have had several cases which have made their way into the case reports, as opposed to whatever number of cases have been decided one way or another that have never been reported. We've had a number of cases make their way into the case reports which were not involving persons with a surgical sex reassignment procedure where the request for a statutory change of name has been turned down. The majority of these, perhaps all of these, have been cases handled pro se; that is to say without an attorney.

And as I mentioned to the workshop, it's unfortunate that these cases seem to have been poorly argued and poorly documented, at least as portrayed in the case reports. Perhaps this is simply a way of saying that the lay person involved did not know that they might be running into some hostile response, so far as the judges are concerned. The net of it is that there are a number of citations which a judge or the judge's clerk would find which are adverse to making a change in the absence of surgery. This is so for the judges in a number of cases that now appear in New York jurisprudence, which is compendium of cases concerning all manner of things having to do with legal matters in New York. So, it's unfortunate that that record makes it difficult for others.

I would like to call the people's attention to a very good case, but unfortunately, not a New York case, a New Jersey case that I think people can make good use of with respect to advocacy in the future. It is the case of Matter of Eck, E-C-K, and I'll give the Atlantic reporter citation here. It's 584 Atlantic 2nd 859. A New Jersey superior court appellate division case in 1991.

Reading in part from the opinion in the case, and this is an appellate case where the request for name change in New Jersey was denied at the trial level but granted at the appellate level. The

petitioner, John William's ex request for a name change to Tina Lindsey was denied by the trial court judge because quote, "It is inherently fraudulent for a person who is physically a male to assume an obviously," quote "female name for the sole purpose of representing himself to future employers and society as a female."

The opinion goes on... "we reverse..." the opinion talks about the fact that in this particular case, there was medical documentation with respect to the presurgical status of the applicant. Hormone therapy had been commenced and was in process and there was other medical psychological documentation. The issue of this name change from a male-sounding name to a female-sounding name being important to the petitioner because of employment was emphasized by the petitioner and also is emphasized in the opinion in this particular case to the effect that once the male-sounding name is announced to prospective employers that this diminishes the opportunity for being hired.

Financially, just quoting from the opinion, the opinion here which granted the name change says this. And I think it's valuable to advocates in whatever state. Absent fraud or other improper purpose a person has a right to a name change whether he or she has undergone or intends to undergo a sex change through surgery has received hormonal injections to induce physical change, is a transvestite or simply wants to change from a traditional quote, "male first name to one traditionally," quote "female" or vice versa. Many first names are gender interchangeable, for example, Adrien, Evelyn, Aaron, Leslie, Lynn, Marian, Robin. And judges should be chary about interfering with a person's choice of a first name.

Finally we perceive that the judge at the trial level was concerned about a male assuming a female identity in mannerism and dress. That is an accomplished fact in this case, a matter, note this, a matter which is of no concern to the judiciary and which has no bearing upon the outcome of a simple name change application. I end the quotation there. I think that it's useful for people to be aware of this case in the case reports at an appellate level. I think it will be useful for advocacy for the future. And I think I'll close at this particular point although I did go into just a bit of the history with respect to birth certificates in New York

By Melinda Whiteway:

Thank you, Lou. Phyllis, you had some comments on that?

By Phyllis Frye:

Yes. I can't wait to read that case. I wasn't aware of that. The appellate level is something that we need. And I know that I'm preaching to the choir right now, but I'm also preaching to the people that are going to read the proceedings that aren't going to hear these tapes; that some feel get tired of Phyllis Frye joining on and on and on about the need for money and income. But one of the several things that it ICTLEP definitely wants to do is to be able to reach out to the different law

schools and let them know what we have so that they will put our proceedings in their law libraries. And then when their local lawyers are looking for books or doing Lexus or West Search or whatever, they'll begin to find our strategies and they'll be able to hear Lou's words or my words and Melinda's words and they'll hear some of the cockeyed things that we're doing that, you know, hey that's what law is, is whatever works. I'm from the realist jurisprudence school of law. What works.



Melinda Whiteway
Documentation Law Director, ICTLEP

what I was trying to get on the record. And I had given the judge the doctor's notarized letter which said all the magic words that I've been trying to get in. And we had entered into the record the health law record – the health law standards from the law conference which defines sex and gender, and the judge admitted those. And we had another book that Martine and I had been contributing authors to; those are nurses' series that went into some of that. And I had my client testify and I had already pooped her up on all the right things to say. From the beginning I used

But the other thing that we need money for is we need to be able, not only to develop our database of attorneys in helping attorneys around the country but we need to be able, whenever a good case pops up, to be able to fund an appeal.

You will read or have read a fantastic case in Proceedings No. 3. It's in the appendix were last year we had in Texas. I had a judge in Dallas County who really wasn't sure and had booted it back to me just on first reading. And so I petitioned for a Motion for New Trial for our oral hearing, which he granted that motion. I went up there and I talked to the judge off the cuff before we started. Judge really said, "You know, I don't think I'm going to grant this."

And I said, "Well, I understand, Judge, you probably won't, but let me develop my record because we may take this up on appeal and if you don't mind." He said, "No, I don't mind." He said actually I'd like to see some definitive law on the matter."

So we had a hearing. And of course we were lucky. I'm not saying this to pat my back, but I was the attorney and I knew

the right pronouns, she, regardless of what her genitals were and she just happened still to be married and wanted to remain married. The spouse came up and said all the things that needed to be said and the 12-year-old child got up and said all the things that needed to be said and how much the child loved his father and that his father was a beautiful woman and he loved his father. It's kind of like Martine. Martine's daughter says "I love my daddy she's neat" or something like that. But we had that kind of testimony. And then dad got up and testified, the father of my client got and testified about, yeah, this is difficult, everything else but he had come to terms and all this other stuff and was supportive. We had a fantastic record.

The judge ended up denying us, but we had a beautiful record. And I told this person I do free work. I do lots and lots and lots of free work, but I'm just not going to do this for free. This community is going to have to support this. And this person beat the bushes and could not come up with the lousy \$2500 for an appeal. And I would have done it for that little, but I just decided if this community wasn't going to get behind it, that was just one free thing I wasn't going to do.

Well, if the law conference can come up with the money, if the people that are listening and reading feel moved enough to start pledging 15 or 20 or 25 or 50 or a hundred dollars a month on their credit card or buying the proceedings or donating a hundred dollars to get a mug or whatever it takes, we'll be able to start doing that stuff and we'll be able to start developing caselaws because people that like myself and like Connie Moore are in the courtroom and a lot of the lawyers around the state and other states that I'm tutoring on the approaches it takes, it's going to hit one of these days and the right lawyer's going to develop the right record and we're going to have the right judges on the appellate court. If this had come up in Houston, I've got appellate judges who have spoken here, and they understand the issues. So it's going to happen, but we need that money. We need the dough re-mi to make it work. So that's what I want to say.

My Melinda Whiteway:

And you said it so well, too.

Thank you both. Now, in the few minutes that we've got left, I just wanted to emphasize a couple of important points. There's enormous individual variation in what's going on in legal matters, particularly with respect to documentation.

One of our goals is to try to develop a compendium of instructions, rules, statutes, and references on a state-by-state basis. It's an enormous task but we've made a pretty good start and this is something that's going to be an ongoing project. Before too long we hope to have the entire United States covered. Before we leave the United States, though, I wanted to mention one more thing about U.S. passports. We haven't specifically covered them in the summary, but we do have in the appendix to the proceedings last year the internal memorandum from the U.S. State Department defining as of 1992, anyway, what their requirements were for a change of gender designation on the passport. Change of name is pretty easy. Just keep in mind that the passport is a dual purpose document. It's used to establish identity both in United States and internationally

and it's used to establish U.S. citizenship.

You do not have to have a court-order name change to get a passport change. You do not have to have your birth certificate changed. Either one or both of those makes it a lot easier. The passport is one of the more difficult documents to get changed and it's very difficult to get changed preoperatively for a lot of reasons. And again, as an identity document, (we debated this at great length,) one's physical characteristics are a very important means of identification. And in most cases, a person's genitals are something that is not changed. So, it is an important physical characteristic that they can use to verify, along with your eye color which can be changed in some cases with contact lenses at least. Your hair color obviously can be changed.

Your height typically doesn't change once you've completed your growth, but your weight frequently changes, and those are all things that are commonly used to identify people. Scars, marks, tattoos that are permanent are often identifying marks as well.

But the preoperative change of gender is a different matter, although it can be done if you follow the guidelines set forth in the appendix last year. We don't advise in many cases. Typically, you're going to be identified by your photograph. And if your photograph, which is required to be representative of your current appearance, if you have your photograph and your name and the fact that you are a U.S. citizen established with your passport, whether or not you're male or female designation on your passport matches your physical anatomy or not is something that the passport office is reluctant to contravene. And it's a questionable advisability for the individual traveling through the borders because of the high risk of international smuggling, terrorism, contraband movement and so forth that the border people have enormous powers of investigation and they don't need probable cause. They don't need to read you your rights. They don't need to do any of that stuff. They can do incredibly invasive searches of your person for absolutely no reason whatsoever other than you were the 31st person to walk through the gate or, you know, you are over a certain height or you look kind of funny or you look nervous or whatever. And a lot of us look nervous when we're traveling, particularly when we're in early transition.

So we are unusually vulnerable to being scrutinized by border security people. And it can be very embarrassing at the least, and it can be terribly time consuming. If you're on business travel and you spend eight hours going through interrogation at the border, you know, you might miss your connecting flights and you might not get on your cruise or make your business meeting or whatever. So, you know, people know about transgendered people more and more now thanks to the people who are here and people who are out and doing this. And if you explain to them, you can walk through with your identity matching what your parts are and in most case they're not going to pay any attention to what that says as long as the name matches, and the physical description matches, and your photograph matches.

However, I apparently was not current on the latest thing with going to Canada at least. One of our members just said that they just got back from a trip to Canada and they were told that it no longer is true that a driver's license will get you in and out of country. They now need either a birth certificate or a passport plus your driver's license. Well, I guess if you have your passport then you

wouldn't need a driver's license, of course. But typically going to Canada was very simple. You just showed your California driver's license or your U.S. driver's license somewhere and that was all that they needed to establish the fact that you had the right to go back into the United States or leave or whatever. But that's no longer true. I guess this is just in the last six months or so. So this creates a lot more potential problems with documentation for people that need to travel outside the U.S. borders. I don't know if that applies to Mexico yet, but to me I'm nervous going to Mexico under any circumstances. The political system in Mexico is too unstable for my taste and they do way too many things on the spur of the moment and a real ad hoc basis and I'm not comfortable doing that. I would want a passport if I were going to Mexico or the Caribbean countries, which are similar in many ways politically. So, that's just a caveat.

Yeah, Stephanie.

By Stephanie:

Usually if you have a voter's registration card and a photo I.D. that match, that's usually sufficient for Canada, if you don't have birth certificate or don't have a passport.

By Melinda Whiteway:

How recent is that information?

By Stephanie:

Fairly recent. I work for a Canadian company and a lot of our guys travel and some of them don't have passports. And when they are asked for something, basically what they want is proof of citizenship that they can confirm. A voter's card is obviously proof of citizenship if it's current and then you've got a photo I.D. so that they know that you are this person. That's generally sufficient.

By Speaker:

As recent as December of this year, that was enough to get to Mexico and back. Voter registration and photo I.D., Driver's license in lieu of a birth certificate.

By Melinda Whiteway:

True in the back of the room?

Okay. Back of the room shakes head no.

The comment from the back of the room was from Kathryn. In her experience, as recently as December of '94, the voter's registration card and driver's license were not being accepted because it was found not to be that reliable.

Again, it sounds to me like we're getting some of the mixed messages that we get from other bureaucracies and it's probably going to depend upon who is there at the time. You know, the obvious answer to that is to be prepared and particularly for us who are so vulnerable to being ridiculed, in some cases with impunity, to be prepared by having the passport. And you can get a passport. I mean, getting a passport is not difficult. The only difficult part really is either changing the gender designation. Both the passport and the birth certificate almost always require the applicant to be post-operative. There is a procedure for changing the passport preoperatively on a short-term basis, but as we discussed, it's not necessarily advisable, but if you have some reason that you want to do that, it can be done if you follow the procedures set forth in the appendix to the proceedings last year.

I know we're kind of out of time. One of the things that we haven't really covered yet is the wonderful presentation that we have from Stephen Whittle, who is a professor of law from England and is an author of a really fine book on legal issues in the transgendered community. What's the name of the book again? I can't remember. You can't remember either. Anyway, if you contact ICTLEP, we can get you the name of the publication. It's a marvelous ; it's called TV/TS and the Law by Stephen Whittle? Correct. Okay. And Stephen did a really nice survey for us of the documentation issues throughout England and the European community. The greater European community has become a fascinating political economic structure. And it presents enormous problems from the standpoint of legal issues and documentation issues in particular.

And Stephen did a very nice job of summarizing it. I can't begin to cover all the things that he covered in that period of time that we have remaining, but the general consensus that I think we came to is that the legal documentation issues in Europe are extremely confusing. And that's all the more reason to consult with a legal representative.

We're going to sign off now and I want to thank you all for attending and we're going to hopefully see most of you back here next year and go on with the work of the transgender legal documentation issues.