LEGAL ETHICS LUNCHEON

Saturday, August 20, 1994

Third Annual International Conference on Transgender Law and Employment Policy

Speakers:

- ***Dee S. McKellar, Secretary-Director, ICTLEP, Inc.***
- ***Felix Fraga, Houston City Council, representing the Mayor of Houston***
- ***Gordene Olga MacKenzie, Ph.D., Author, Transgender Nation***
- ***Ken Okorie, Attorney***
- ***Phyllis Randolph Frye, Attorney, Executive Director, ICTLEP, Inc.***

COMMENTS OF THE NON-ATTORNEY ICTLEP DIRECTOR

by Dee S. McKellar:

I'm the non-attorney on the ICTLEP Board of Directors. First, let me say what an honor it is to speak at this podium. I've been associated with this conference since the very early days. Then it was just a few people around a restaurant table trying to turn dreams into plans and eventually into reality. This meets all of those dreams. It's wonderful. Up until now, though, I've been pretty much behind the scenes. In fact, most of you probably recognize me from the back standing between you and the speakers [she then turned her back to audience and held up her camera to take a photo]. [Turning back to face audience] And the speakers recognize me like this [she then raises camera again and points towards audience]. [She pushed the button and the flash goes off] And there was light. Okay.

I'm up here as a Board member of ICTLEP so as a tradition I need to tell you a little bit about myself. Three years ago I transitioned. My employer closed the plant and laid me off, along with several hundred

Dee S. McKellar,
Secretary-Director, ICTLEP, Inc.

others. My family had already dissolved for other reasons. It quickly became obvious that I wasn't going to find a new job any time soon. Well, I figured, how much worse can it get? What do I have to lose? My answer was, if there are rough times ahead, for God's sake, let me be comfortable. I have had some rough times, but I have been comfortable.

What happened was that I saw the layoff coming several months in advance. Not definitely, but I had a pretty good idea what was going to happen. I started doing some real deep thinking about who I was, what I was, what I was going to do about it. I started taking some action. First thing I did was I found a fairly good lawyer and got some help there. When I first met this lawyer on February 17th, 1991, for a basic first client-attorney interview, I found out about my rights and since I'm a Republican I also find out about my responsibilities [laughs]. Also in that interview I got some help with my health. I got a referral to a gender clinic, to a local support group, and to a hairdresser—a darn good hairdresser.

A few months later, July 18th, I got through the document process and I was legally a woman named Dee. There were two things that contributed to that. One was, I had been thinking about it for fifty years, the other was I had a lawyer who knew the system. The only thing that lawyer couldn't help me with was my job. It was already gone, but that later got fixed too. Now, why was my lawyer able to do all this? It's simple. She had the knowledge, she knew the legal issues, and she had an understanding of the emotional issues that I was facing. All three were important. She was able to help in all those areas.

My dream for ICTLEP is that other lawyers throughout the country will be able to give similar assistance to other people in similar circumstance. To all of the lawyers here and to the lawyers who are getting this off the Proceedings, I have two requests: First—the first one is a two-parter—if you are transgendered, learn transgender law. You're already here or you already have the third Proceedings. Make sure you thoroughly read the Proceedings of the first two conferences. That will give you an understanding of where you are. If you are not transgendered but want to help transgendered clients, go through the same education process, plus learn and come to appreciate the emotional issues.

The second request is ADVERTISE. ADVERTISE. In your Yellow Pages listing where you say that you work Family Law, Wills, whatever you put in there to describe your areas of practice, put in there Transgender Law. That's extremely important because the people who need your help need to know who you are. They need to know how to find you. How did I find my lawyer? Not by any way she planned. She advertised in the queer media. I was too homophobic to even go to the right neighborhood and pick up any of that stuff. She was too cheap to get an ad in the Bell Yellow Pages. Let people know. If you want to help, if you want the business, you have to tell the people who have the problems. That's enough stump time. Time to move on with the rest of the meeting.

There are three local Houston people I would like to recognize this afternoon. Ruby Gonzales was like me at the start. She contributed mightily to getting the law conferences off the ground, and she was a very solid staff member during the first two conferences. The second person I want to recognize is Denise Copp. Denise is new to the Houston community, but let me tell you this lady has an attitude. She is going to be a prime activist here. The third person I want to recognize is somebody who, behind the scene, has given support to the transgender movement for two decades—incredible support without which none of this conference would have happened. I'm talking about Trish. We all know Trish. I would like all three of these people to stand up. They also have something else in common. All

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three are celebrating their birthdays today.

Now we need to get down to business. I'd like to introduce Cynthia Phillips who has a brief message for us. Cynthia is one of the driving forces behind the Texas T-Party. She is a director of IFGE, and she serves as an off-board advisor for ICTLEP.

by Cynthia Phillips:

A brief announcement. Linda is going to be handing out questionnaires. Remember last year we had questionnaires? "What did you like most about the conference?" What did you like least about the conference?" And what changes would you like to see?" Those are the first three questions. The fourth question will be other comments. "What would you like to do?" Would you like to volunteer?" "What is your checking account number?" You're laughing. But we need as much money as we can possibly get to keep this law conference going. It's so important. This is very important. You don't get to eat tonight if you don't fill out your questionnaire. Now, you don't have to put your bank account number down, but we'd really appreciate it if you did. Be careful what you're signing. We'll pick them up before dinner.

A MAYORAL PROCLAMATION: TRANSGENDER LAW CONFERENCE WEEK IN THE CITY OF HOUSTON

Introduction by Dee S. McKellar:

I'd like to introduce one of Houston's most respected Civic leaders, the Honorable Felix Fraga. Mr. Fraga served for many years on the Board of the Houston Independent School District, which is one the largest in the country. Last year he was elected to the City Council representing District H. He's up here, and Phyllis is up here, so I'll turn

Felix Fraga, Houston City Council District H, presents Proclamation to Phyllis Randolph Frye, Attorney, Executive Director, ICTLEP, Inc.

it over to Mr. Fraga.

by Felix Fraga:

Thank you. The only way that we on City Council get this honor to present a Proclamation is when the Mayor can't come. So sometimes I say I'm glad the Mayor couldn't come [laughs]. I shouldn't say that to groups, because I know you would prefer the Mayor, of course. Let me quickly let you know, by reading the Proclamation, how the City feels about your conference and your group. The Proclamation reads as follows: [see full text in front of this book]. [Finishing, he read] "The City of Houston extends best wishes to the International Conference on Transgender Law and Policy conference for a successful TRANSGEN '94. Therefore, Robert C. Lanier, Mayor of the City of Houston hereby proclaims the week of August 17 to 21st as Transgender Law and Policy Conference week in Houston, Texas." I think the Mayor probably wishes he would have been here. It's great. Thank you.

THE AUTHOR OF TRANSGENDER NATION: GENDER BIPOLARITY KILLS, AND SEX IS NOT THE SAME AS GENDER

Introduction by Dee S. McKellar:

Now, I'd like to introduce our first luncheon speaker. Gordene MacKenzie is a professor at the University of New Mexico, teaching in the areas of women studies, American studies and anthropology. She eared a PhD in American studies with a minor in Clinical Psychology. Her research is focused on sex, gender and the media. She also looks at the religious right and fundamentalist movements. She is the author of an excellent book, Transgender Nation, which by the way may be purchased in our registration area.

by Gordene Olga MacKenzie:

I come here as an ally, and I come here as a comrade in arms. As I was thinking about coming as a comrade in arms, I was also thinking about the desperate state that we're in, and the war that we are involved in, in terms of gender rights. So I was thinking about coming as comrade with arms but decided against that. I come as a woman. I come as a long-time committed feminist. I come as a person who has an extreme contempt for a dual gender system—a gender system which I feel, basically, kills people. We've seen it. We've all seen it. There's a heavy metal song—I'm a real pop culture junkie, and I teach about media and about popular culture—and the song is, "I've been through the fires of hell, and I have the ashes to prove it." We all know about that.

The dual gender system at an early age made me feel like I was going to burst into spontaneous combustion. There's something that happens with women at about age thirteen. You're supposed to completely dumb-down. You're supposed to give up everything in your life. You're supposed to find your man. That's supposed to be your lifelong pursuit. You're not supposed to do anything else basically in your life. Most of my girlfriends started going through the socialization process. What that entailed was sitting at home waiting for some guy to call. When he didn't call, then they'd sit, and they'd cry.

Not me: I had an old '57 Chevy that I used to drag race. My sense was honey why are you sitting

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there crying? Let's just go get them. Let's just go pick them up and get them. One by one, I was banned by the mothers of all of my female friends as being inappropriate for their daughters. They weren't going to get dates if they were hanging around with me, and they weren't acting like girls. So I was thrown out into a world where I found some boys that I could drag race with and felt good about being able to beat them.

Gordene Olga MacKenzie, Ph.D.,
Author, Transgender Nation

Unfortunately, a lot of my friends stayed trapped in that dual gender system. They began to plot themselves along the gender line: many believed the gender propaganda that your genitals and your gender are supposed to match. I know many of you have lived a charade where you felt that the only way that you could get through life is by matching that. I call that going on automatic gender pilot. What that does is it kills the sole like what Laura Skaer was talking about. It kills the sole within individuals when you buy into something and you're not allowed to feel the essence of your real self. It's doomed to failure—doomed to absolute failure.

I believe that there has to be a real division between the categories of sex and gender. As long as we blur the categories of sex and gender we are unable, as Gail Rubin has stated, to think politically about gender. Gail Rubin is a ardent feminist wrote an article called "Thinking Sex." Basically what she said in the article is that in these times of severe social economic stress when resources are limited and there's more people competing for limited resources, people are bound to become dangerously crazy about sex. And I would add also, about gender. I think with the backlash that we're seeing certainly these are those times. Here in America we have not only the right wing but a rise in a very violent right wing fundamentalist movement that is moving towards legislation to deprive people of their basic gender rights,

This is happening in other countries. I get a wonderful newsletter put out about Iranian bisexuals, transgenders, gays and lesbians. It's call "HASA." Of course, it's illegal to be any of those things in Iran. The penalty for it is you get buried up to the your head and you're stoned to death. When such an organization was starting to form in Iran, one of the things that happened—when those gender minorities and sexual minorities came together—was that twenty-one of the founding members were

pushed over a cliff and killed. It was seen as perfectly justifiable, and this didn't come to human rights attention until the late seventies. This is the type of climate we're talking about, where fundamentalism—not only severe right wing Christian fundamentalism—is out there fighting and creating legislation to deprive people of their rights. There's also a rise in Jewish fundamentalism and a rise in Islamic fundamentalism.

I, like many researchers, believe that gender is our most core self. It's also the most basic means of social control. So when I wrote the book Transgender Nation, it was my intent to try and explore historical and contemporary treatments of transgenderism. What I tried to look at was early conceptions of what sex and gender were, and try to understand how those categories—which were seen as medical or scientific categories—began to stigmatize, define and oppress whole generations of individuals. I also looked at media representations, and I'm sure all of you have seen stereotypes of transgenderist from film to television. Although some of those are changing to a more positive attitude, there's still a formulaic representation that rears its head in many films from "Psycho" where we have Norman Bates dressed as his mother to kill a woman, all of the way through to "Silence of the Lambs" and even to the "Crying Game" where the transgender individual has to end up killing a woman. It's in this formulaic representation where the transgendered are portrayed as crazed maniacs, homicidal maniacs dressed to kill.

We know that there could be nothing further from the truth. We know that because we know transgendered individuals who dress and in fact they are the ones being killed. Again, I would say that the community long has had "the ashes to prove it." I think most recently many of you have probably heard about the case of Brandon Tina in Kansas, the young female-to-man transgenderist who, by the mere pretense of being a transgender individual, was not only drug out and raped on Christmas of last year but later on New Years Eve was brutally murdered. This happens all too frequently. It wasn't that Brandon Tina was the threat that was dressed to kill but precisely because Brandon dared to violate the laws of a bipolar gender society that Brandon was killed.

I agree very much with Phyllis Frye when Phyllis says that we are in a period of war. Feminists have also argued that we're in a great period of war. "Paris is Burning," perhaps some of you have seen the film, Jenny Livingston's documentary. Most of the lead characters in the film, starting with Venus Extravaganza, the transsexuals in the film are now dead. Venus was found underneath a bed. What was her crime? She was a transsexual. What was Brandon Tina's crime? Brandon Tina was a transgenderist.

Throughout history as Leslie Feinberg eloquently argues [his work is detailed in Proceedings II], transgendered people have been at the forefront of revolution. Feinberg argues this in a brilliant pamphlet, which I recommend to all of you called "Transgender Liberation." It looks at transgenderists from a Marxist point of view. Why was Joan of Arc burned at the stake? What was one of the major reasons that the Catholic church decided that she should be burned? Because she cross dressed. They even told Joan of Arc, as Feinberg argues at one point, if you'll just put on women's clothing, you can live in prison the rest of your life. Joan couldn't do that. Clearly there was a more authentic self being portrayed, and so Joan was burned at the stake. Feinberg also points out transgendered people were in the forefront of other revolutions and involved in the whole thing about machinery changing the pace of the way the people were living.

We all know about Stonewall. Who was the front line of Stonewall? And who were the people that were sacrificed during the McCarthy witch hunts? Many were the transgenderists. The most

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visible individuals that were ferreted out during the "red scare" where the most masculine females and the most feminine males. They were all confused, because sex and gender in our culture are fused, and I think we have to make a distinction. When I use sex and gender—and this is the way that I use it—I use sex to define male, and female. Sex is to define biological and anatomical genitals, and sex is in terms of having sex. Whereas gender I would argue is absolutely everything else and is definitely what we need to fight for. We're in the period of a backlash that has been going on since the mid-eighties.

Where I come from—in Albuquerque, New Mexico—when the airing of "The Rene Richards Story: The Second Serve"—her biography—occurred, The Common Bond Gay and Lesbian Center there was besieged with telephone calls. Its president called me and asked me to talk to some of the callers who are saying, "I am a transsexual, where can I come? Can I go to the gay and lesbian center?'" So I went to the gay and lesbian center, and we organized an event. We had fifty people for the first time show up in Albuquerque, New Mexico, who defined in a whole area of cross gender. We started a support group from that.

In the early days, we were all brain washed, including myself, by the medical establishment. My partner and I had a young transsexual male-to-woman who had lived with us from 1980 to 1985. I had gone to the medical school and read everything I could possibly get my hands on. That's where most of the literature was housed, so my background was primarily a medical understanding of transsexualism. We would sit around in the group and the early comments used to be—I'm sure many of you can relate to it—"Gee, I wonder what causes this? I wondered, am I the only one here? Do you think there's maybe three or maybe four transgenderist in all of Albuquerque?" The next month someone else would come in and would experience that incredible feeling of being there and not being alone and knowing that there were others out there.

That began to change as did our consciousness. I believe that this is also something that has occurred nationwide. We used to sit around and say what causes it? Or, what's wrong with me? There was an assumption that somehow we individuals were to blame. Sexology, medicine, clinical, psychological, so called wisdom, scientific wisdom, biomedical theories had said, "We're diseased." I would argue instead that we had a culture that was at dis-ease with individuals who didn't walk this straight and narrow path.

I started running the hotline back in 1986. At first I remember, we used to go through the causes, what is the cause, the cause. I concluded that, Hell, we never asked what causes heterosexuality, so why the hell are we asking what the cause is for transgenderism or transsexualism. As I steeped myself into more medical literature, I began to get very angry. I began to think anytime you look for a cause you assume, within the medical wisdom, that there's a treatment or that there's a cure. Someone is going to affect that treatment or cure, and believe me through the ages, some of those treatments and cures have been absolutely hideous.

Luckily, what began to happen in New Mexico, and I also understand in Texas and in a number of other states, was that we began to change our focus. When people would call up and say they were sick and had a problem of being a transsexual or a transgenderist," I'd say, "Let me stop you right there! We live in a culture that has a serious problem, and that problem and that society needs to be cured, not you!" I'd go on to say that it may be uncomfortable living in a bipolar society but you are not sick and are not diseased. Maybe you're suffering problems from living in a very rigid society. What began to change was all of our consciousnesses.

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I can't tell you how I felt when I met Linda and Cynthia—was it 1991 when I came out to San Antonio? I was talking about the issues of "dressed to kill" and the horrible misrepresentations and presentations of transgender people. I just met Linda and Cynthia, and they came to my presentation. When I later went to the Texas T-Party and met so many wonderful people, I felt at home. Then when I met Phyllis, who has become one of my sheroes forever and ever, and heard about ICTLEP—and was going to make it last year but couldn't because of family emergency—I thought "it's changed!" It's amazing. It's like a new dawn. It has moved from being a medical stigma where people are passing moral judgments for the most part. Let me argue that these moral judgments pass as conventional wisdom, as medical wisdom, and those moral judgments are never fully examined in the light of a fully grown, grass roots transgender organization.

Recently up in Santa Fe, we had a young Native American from Santa Clara, a Pueblo, who was talking about gender. He surprised the audience by saying, "You people out there think there's only two genders and at times you think there's three. You're all wrong. There's at least thirty genders." I know that. It's just that we've been told different things. He said, "Just try to imagine that." So it's basically within that imaginative spirit that I tried to write Transgender Nation. Think of it, imagine it as a nation free of gender oppression. Try to imagine a nation that we could live under without gender oppression. Think first maybe of a transgender nation. A nation that would have freedom and justice for all. I conclude with the name of the newly born political organization, "It's time America" and say viva la revolution.

IN EQUAL PROTECTION AND DUE PROCESS, THE BLACK EXPERIENCE AND THE TRANSGENDER EXPERIENCE ARE THE SAME

Introduction by Dee S. McKellar:

We have here with us, Ms. Sharon Kahn, who was last year's Education in Transgender Issues Moderator and this years winner of the third Frye essay competition [her report and essay are in Proceedings II]. As many of you know, the Fryes have endowed an annual writing competition at the University of Houston for essays on transgender law. So Sharon has done something pretty neat by wining that.

by Phyllis Randolph Frye:

I know Ken Okorie from the courthouse. We practice law together. When I invited Judge Carl Walker to come and speak he had conditionally promised based upon his vacation schedule and family obligations. He told me last week he wasn't going to be able to make it, and he was here on Wednesday meeting a lot of you who came early. Ken Okorie on the re-election committee of Judge Carl walker and that says good thing as far as I'm concerned.

When I was talking to Judge Walker—I've known for many years—one of the things that surprised me the most was the fact that all over his walls in his office are all types of different awards from the Boy Scouts of America. I said, "I think it's really great. Judge, did you know that I was an Eagle Scout?" He's known me for a long time, but that was a side of me he hadn't expected. So, while Ken is here standing in for the judge, I want just a show of hands of everyone who was either a Brownie Scout, Cub Scout, Girl Scout or Boy Scout or Explorer Scout, raise your hands high. Keep them up. Now I don't know the girl scout ranks, but who was equivalent to First Class Boy Scout or both? Keep

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your hands up. Who made Star Scout and above? And how many Eagles do we have here in the room? We've got 1, 2—we've got 5, 6—we got 6 in the room. So you can tell Judge Walker that we had six Eagle Scouts here today, Ken.

There's going to be two ethics speakers because the State requires an hour of ethics presentation for attorneys, and that's one of the reasons why some of the attorneys have come here and paid their good dollars, is to get that ethics hour. So Ken is going to make his presentation and then after Ken makes his presentation, I'm going to come back up and make an additional ethics presentation for the lawyers to make sure that that hour requirement is fulfilled.

Reviewing his resume, Ken has written a lot of things. The interesting part that I like is that one of his presentations was on "Ethnic Aspects of Police Brutality." Another one is "True Success in Business Be Accompanied by Morality" and "An Attitude for Arriving Africans, a Response to a Pattern of Alienation from host Africans." He's also the president of the African Bar Association in America. We are very, very honored indeed to have Ken Okorie for our first ethics speaker.

Ken Okorie, Attorney

by Ken Okorie:

Let me say first of all that this is one occasion when I'm glad Judge Walker could not make himself. He asked me to do this for him which is one of several chores he asked me to do on his re-election committee. So whatever I say here today, if it's right, I take the credit. If it's wrong, I'll defer to the judge. I do bring you warm greetings and special appreciation from Judge Walker. For those who do not know him, the Honorable Carl Walker, Jr. is the presiding judge of the 185th Criminal District Court of Harris County. He is the only sitting black Criminal District Court judge that we have, and one of only about three black judges in the entire Harris County courthouse.

Our last speaker talked about a battle, a challenge, the war. That war is ongoing on all fronts, different fronts. I think sensitivity and awareness of the various dimensions of that challenge is what all of us, every single one of us, should be about. I cannot present to you the wisdom of Carl Walker, Jr., because that is something only he can convey. But I tell you that he is someone, if you ever have

an opportunity to encounter him or deal with him, you will come away feeling like this is somebody, with a very balanced view of life. He is willing and compelled by his own personal discipline to accord every human being his rightful or her rightful place in whatever setting. To me, that's what it's all about.

I was born in Nigeria. That's where I did my growing up and where I was brought up. My early education was there until I came to this country and went to the University of South Florida and then later on to the University of Denver Law School. As somebody who did not grow up in this country, one of the things that I was confronted with upon arrival in this country was a sense of alienation. It was a sense of people not warming up to you simply because they felt either there was something about you different from what they were used to. So when somebody talks about transgender and talks about the challenge it presents from that standpoint, I can claim that I have experienced some of it.

In fact, in a very realistic sense, some of my fellow black students, African-American students who are born in this country, felt very uncomfortable dealing with me. My circle of friends had nothing to do with color, had nothing to do with who you were or where you came from. It just had something to do with the fact that you were a human being. That was just a reflection of a society where I was brought up in Nigeria that the skin pigmentation was not a factor of life. So, when talking about discrimination on the basis of color, I have not personally experienced that as they had. That was a very good eye-opener for me, which is not to say that I was blind to the discriminatory experience of the black people in this country. But it's a very tight balance between those two. It's one thing to read about something or be aware of it. It's another thing to experience it firsthand. That challenge can be very compelling. Dealing with it requires oftentimes quite a bit of discipline.

I'm supposed to be talking about ethics. Oftentimes when lawyers talk to lawyers by virtue of training and our discipline, we are supposed to make a lot of research references to cases and to the laws and all of that. I'm going to do something a little nontraditional in that sense and take kind of a practical approach to looking at what ethics really means in the context of transgender law.

When we talk about ethics, to me that conjures up thinking that perhaps there is the right way to do things in that law. Ethics; right or wrong. There must be some kind of a way to do something and if that is right, then it's said to be ethical. If that is the case, then I would suggest that, by the fact that there has to be a special conference like this to bring to people's awareness that there is the right way to do things for transgenders under the law, means there is something fundamentally wrong with the way we are doing business within the law.

If we are very conscious of our responsibilities and aware of what we're supposed to be doing, then it shouldn't really matter. Your gender shouldn't even be an issue. If you're a lawyer, whether you are transgender or not or whatever you wear, it doesn't have anything to do with your ability to study the law. The same happens if you're a judge.

The fact that we have to take this kind of special initiative seems to me that we have some work to do on the people within the legal profession. To me that's a very significant part of the challenge. But since a special conference has to be undertaken, I would then go one step and say kudos to the people who have put this together. It is a lot of courage. It seems that something needs to be done and decided to take a little piece of the challenge and doing something about it. The challenge as I see it also includes the process of the practice of the law. It is my suggestion at least my thinking that the law should be sacred. And if we are doing things right, we should all uphold and respect those provisions of the law.

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We talk about the equal protection clause of the Fourteenth Amendment. When you take a look at that provision, it covers every human being, whether you're old, young, male, female, transgender, black, white. It protects everybody. At least it should protect everybody. The reason it doesn't is because some people, particularly people within our profession, find it convenient to steer the law away from what it was meant to do. It was meant to become the neutral ground where everybody has an equal opportunity to function as a human being no matter who they are. When we do that, then what we do is we deviate from the real issues. To me such deviation says either (1) we are not sure of ourselves and we're not as good in what we're doing as we claim to be, or (2) we're not sensitive to the needs of others and the responsibilities we have as professionals to uphold the law. So that kind of deviation should in no way be encouraged and in no way be sustained. I don't care whether you come to the courthouse as a judge, as a lawyer, as a client, as a juror. All of us are bound by the same Fourteenth Amendment. There should be no provision for skipping around and looking for the diversions that place people in little separate pockets rather than dealing with them as people just as the Constitution is supposed to do.

As I said earlier, the fact that there is a special conference like this suggests to me that we lawyers have either lost the message of the Constitution or we do not practice what we preach. What are the different levels in which this manifests itself. I look at the various levels of dealing with the challenge. And the first thing I look at is self. It appears to me that before you can be effective with a client, effective in making your case before a judge or before a jury, you've got to try and be effective with yourself first. How do you do that? It's not difficult. Be yourself. If you're comfortable being yourself, then you will have the courage to teach others who do not understand. I go back to what the [Mayoral] Proclamation was talking about educating. That is very important. That's the key—the process of education. Sometimes the way people act is a function of their own ignorance. It can be a function of their refusal a accept the truth or of their just are scared of reality. It become a challenge for you, the transgender attorney, to be comfortable with yourself and then put yourself in a position where you can effectively make your case against whoever else you're dealing with.

When you go beyond that, the next thing then is the client that you have to deal with. The client seeks you out or comes to you and makes the deliberate choice of having you represent him or her in a particular proceeding or particular matter. It is my contention in that situation and by virtue of your responsibility, your ethical responsibility as an attorney, that you give that client at least that perspective client all the relevant information to enable them to make an informed decision about what they're going to do. As our moderator or Master of Ceremony had indicated earlier, when she needed to know her rights it became very critical to talk to somebody who was familiar with what needed to be done. Now, if she had at that point not had the knowledge, the body of knowledge, to know what questions to ask, to know where to look for, then that whole assignment, that whole effort, would have been flawed from the beginning.

Your client first of all has a problem and to them that's the most important problem in the world. So now what do I do to gain their confidence and then establish the level of rapport necessary for us to work together as a team. To the extent that you're not in a position to work effectively with your client then you really cannot effectively make the client's case before a third party, be that the judge or the jury. Now, in that context then, the matter of sexual orientation may not be the issue. In fact, it may not even be the business of the client. But because of this need for a level of rapport and comfort to exist between the lawyer and the client, for the relationship to become mutually beneficial, it becomes prudent to suggest that you let your client know who are. If that client cannot deal with it, you don't need that client in the first place.

Another aspect of that is a quick rapport. Give and take situation. As a lawyer, you want your client to be very frank and open with you with respect to the facts. You the lawyer, you don't make up the facts. You only get the facts and see how the facts play against the law and see where your client stands and then you advise accordingly. A client who is not forthcoming with you and up front with you with regard to the facts, who forgets the facts, cannot expect to get much out of your legal expertise. It's like the old saying, "You define problem incorrectly, you're bound to get a wrong answer." So, if you're going to expect your client to be up front with you and level with you, I think it's only fair that you attempt to reciprocate with your client without necessarily making your personal who you are the issue. Just be comfortable with yourself and put yourself in a position where then you can effective in the interest of your client.

When you've taken these steps and been up front with your client, it's my feeling that that could even become an element that bonds you with your client in terms of level of confidence. This will develop you as you go ahead and perform your duties for the client as a lawyer. Rather that than your leaving that client to find some pertinent information about you from some other sources and then the client will begin to develop some apprehension as to whether you've been up front yourself. It would by my contention that perhaps the best person to speak for you is yourself. So I think that's something very critical to consider.

Now, the second level of clientele that we encounter a lot of times is in the criminal end of things when you have a court-appointed lawyer or is in an ad litem situation. I think that's a little difference there in terms of how much you are obligated to disclose to your client. The Constitutional provision that somebody in a criminal situation has a right to counsel, I think it just means right to competent counsel. It's my contention that within the ranks of the transgender attorneys we have, you're going to find, some of the finest that our profession has to offer. And if anybody questions that, all you've got to do is look at the records of the Phyllis Frye's and you tell me anybody who gets the kinds of not-guilties that she gets, in my books, ranks as competent.

So, what I'm saying is that I do not believe that you necessarily have the same level of obligation in a court appointed situation so long as you're competent to do what you are appointed by the judge to do. That judgment has been made already by the judge who sees a whole bunch of attorneys come through their court every time and they decided that you are right and qualified to represent this individual. And to me, that meets the Constitutional requirement and that matter should not get any further than that.

What happens with your relationship with fellow lawyers? I believe that integrity of any professional group defends a great deal on how persons within that profession deal with one another. The bottom line is respect, mutual respect, no more and no less. The way I see it, if lawyers are to be true to themselves and truly professional, then no lawyer should have any difficulty accepting you or dealing with you either as a fellow lawyer or as a client simply because of your transgender situation. That shouldn't even come into the picture. To me, again, that's another one of those deviations. You find that maybe that district attorney or in the family law situation where a lawyer thinks he's got something on you that he's going to use. I believe that if that happens under the prudent eyes of the competent judge, you as the lawyer should have no difficulty turning the table on that individual. That's only a manifestation of that individual's ignorance, nothing more, nothing less. Anybody who is worth the license he or she has as a lawyer who cannot deal with you because of a transgender situation, probably, in my thinking, does not merit to have that license in the first place.

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The other level is with the judges. In the limited research that I did I couldn't find any better way to talk about the role of a judge in this situation than to refer to certain sections to the Code of Judicial Conduct, which governs and guides every judge. Before any judge takes on that robe and takes that chair, they swear to uphold the law and be guided by those provisions. I will quote for you directly, Cannon No. III, Section B6 says the following:

> "A judge shall not in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or social economic status; and shall not knowingly permit staff, court officials and other subject to the judge's direction and control to do so."

And subsection VII continues:

> "A judge shall require lawyers in proceedings before the court to refrain from manifesting by words of conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or social economic status against parties, witnesses, counsel or orders. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceedings."

Now, if a judge believes the authority owed of his or her office, and respects the law, like every judge is supposed to, then this should present no issue. But we know that oftentimes there are some of those judges who will feel a bit larger than the robe they wear. I believe that we have a duty, in fact, we have an obligation as officers of the court, to make sure we keep them within the bounds of that robe.

Again, I think the bottom line is equal protection and due process. When you look at it what we're talking about in terms of transgender is really not any different from the black experience. If you go back to the sixties and before that, it's not any different. What was the basis of discrimination against a black person? Appearance. That's all. Your skin. That's all. It didn't mean you were smarter or dumber than the person discriminating against you. It's just a very shallow-minded, in fact to me ignorant, attitude born of somebody who's not only defined his own world and his own concept of the way things should be and then believes that if it's not by his or her own definition then it doesn't fit. I was not in this country when the black experience occurred, but I don't think it's gone. We still see it everyday, even in the courthouse and even today as we speak. It does not appear to me that the black people were asking for anything other than seeking equal treatment under the law within the law in every phase of their lives. That was the bottom line to the black experience. What are the transgender community asking for? No more, no less. Just treat us equally under the law in every phase of our lives irrespective of what we look like.

Look at the Constitution and the amendments. It's not the largest document in the world, but it's proven to be very effective, and it has proven to be very durable. A lot of the countries in the world who have turmoils, if you look at their Constitutions, you see volumes and volumes. That goes to tell you that organized human society does not have to depend on large volumes to make the right or rather to create the right framework for them to operate in. It just takes the will of the people, the vision of good leadership, and the wisdom of everybody to just reduce it to the common denominator of doing the right thing. What is the right thing? The fair thing. What is the fair thing? The only thing. Treat every human being equally.

All of us in the legal profession, in light of where we are, in light of the experience that we have

had, in light of the work yet to be done, each of us should translate this into our individual responsibilities. What I do to help affect the process in a way that the law begins to do what it's supposed to do? The law is already there. It is just the few that want to divert the law away from what it's supposed to be. If the drafters of the Constitution wanted different laws for white people, different ones for black people, different ones for males, for female, for transgender—I mean, they shouldn't have had any difficulty saying that. Or in the subsequent amendments to the Constitution, if anybody felt there was a need to create these different pockets of law, all of that could have been done. But that was not done. That tells us that the law is their friend and ready to serve everybody.

Everyone of us attorneys, before we began to practice law, we took an oath that we're going to uphold the law and abide by the law. I think we fail any time we either participate in or assist in a process that deals with people in the law or under the law other than on the basis of the fact that they are human beings that require and deserve equal treatment. Suggesting that we're not doing this, I will suggest that we are very far from doing what we thought ethics is all about, which is a good way to do the right thing on that law. That is a challenge.

Once again, I want to congratulate all of you for the boldness and for the initiative to say to the Phyllis Frye's that what you're doing is not just a service of the transgender community. To the extent that you help to raise people's consciousness and help to raise the sensitivity to the needs of other people other than themselves, you are doing a very vital public service to which everybody benefits. If we're not talking about transgender law, we could be talking about any group. If we begin to allow the law to discriminate against people on the basis of their appearance or to allow the law to accord people other than equal treatment simply because of the way they look, then we're not only failing the system but we're failing ourselves. The quicker we get out of the this profession the better off the law will be.

NON-LAWYER CHECKLIST FOR TRANSGENDERS WHO CONSUME LEGAL SERVICES

by Phyllis Randolph Frye:

Ken, that was just absolutely terrific. I'll tell you what Ken has just given you if you get the third Proceedings. He's given you a real checkoff list. When you go back home and you get involved in the gay, lesbian, bisexual, transgender community political groups, and you're getting on their screening committees when they screen judges or legislators or other people that are running for elective office, you now have a checklist of standards and of ethical considerations to quiz these people on. He did a wonderful job of taking about two-thirds of my speech.

When I talk to lawyers about the wonderful things and the very truthful things and the very honest and vital things that he's just explained, a lot of lawyers say, "But when I'm in the trial, when I'm in the courtroom, how do I do this? Does this really work?" So as I talk for just a few more minutes, I'm not going to just talk to lawyers. I'm going to talk to those of you who are not lawyers but are consumers of legal services. Because you need to hold your attorney, that you're giving green money to, to the same standard. And if your attorney, that you're giving green money to, won't abide by that standard, then you need to either educate that attorney or get yourself another attorney.

The thing that you need to do as a lawyer and the thing that you need to as a consumer of law and

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of legal services, is you need to get the Proceedings and you need to read and study the Proceedings and you need to understand the Proceedings. Because a lawyer who is specialist—all any lawyer is—is a gun slinger. A lawyer is specialist in various areas of law. They're your fighter up there in the court. They may know employment law real good, they may know divorce law real good, they may know a lot of areas real good, but they don't know the subtleties of the transgender issues. That's where the Proceedings come in. If your lawyer isn't willing to study these things after you have read and studied them, then you'll know right from the very beginning that your lawyer really isn't interested in you as a transgendered person, but only in you just as another client. You've got to get these Proceedings both as lawyers and non-lawyers. Hired guns, you see them all the time on television and the westerns. If they aren't looking out to the left, if they aren't watching behind the sign up on the saloon, they're going to get bush whacked no matter how good and mighty and no matter how wide a hat they may wear. Your lawyer cannot allow themselves to be bush whacked. They need to understand the subtleties of a transgender issues. You need to make sure that they do it early: they must do it early.

When you go to hire that lawyer, the best way for you to get a good lawyer is call around in various directories, Yellow Pages, whatever. Ask the receptionist, "Does your lawyer handle such and such; employment law, family law, divorce law, or whatever it is?" Find that out right up front. Then ask, "Is your lawyer comfortable working with a transgendered person?" Because you're fixing to shell out your money.

Then you ask, "How long"—"how much does it cost to buy a half hour of your lawyer's time for an initial interview." You don't want to go to that lawyer for free, not really. Be sure at the beginning by paying the fee whether that lawyer is going to be good on transgender issues. Don't negotiate a contract for two or three or five or $10,000, pay that money and then three weeks later find out that lawyer isn't going to bother reading the Proceedings, and doesn't know anything about transgender issues, and continues using the wrong pronouns. You want to put out that $50 or $60 or $100, or $150 for that half hour. It's the cheapest way. Going into a lawyer for a free interview is not the cheap way: that's the stupid way, because you really don't get to quiz that lawyer. That lawyer is giving you their time, so that lawyer doesn't have to listen to your demands and to your questions. If you're buying that time, that lawyer has to listen.

Now, let me tell you something about trials and about juries and about your adversaries and about settling. Eighty-five percent of what is going to happen—up here in the brain of the jurors or up here in the consciousness of the judge, if you just go to the judge for hearing or whatever, or up here in your adversary's mind—is established very, very, very early. You've got to as a lawyer—and as a consumer legal services you got to insist your lawyer do this— stake out your turf very, very early. Ken did a wonderful job about talking about that. It's an axiom in trial work, that by the time you've done your voir dire—now every state but Texas pronounces that as "voir dire", but in Texas it's pronounced "vor diier"—of that jury and you've had your first argument prior to any testimony going in, that the judge and the jury, eighty-five percent of them, have already made up their minds. Or they pretty much reached an eighty-five percent plateau of making up their minds. If you haven't convinced them by then, if you haven't put your policies out by then convincingly, then you can still win, but you have very much an uphill battle.

There's many ways that you can do this. Other attorneys say to me, "Well how do you voir dire on the fact that your client is transgendered? How do you voir dire on the fact that you're transgendered, Phyllis?" It's very easy." I just say to them, "first thing I need to voir dire you on is the fact that I'm a transgendered individual." And I look at them straight in the face and I don't (whisper) "I'm

transgendered. Does anybody have a problem with that? I am transgendered individual and I need to talk to y'all about that. I'm going to explain to you what transgenderism is, and I need to know if you have a problem." Then you go down one at a time to the jury, "Does anybody have a cultural problem, a family problem, a religious problem, an ethical problem? We need to talk about that." They're not going to raise their hands.

So you go one at a time. "Will you promise me, Juror No. 1, that this is not going to effect ——. Will you promise me now?" Now, you're telling them—it's not an oath because they haven't raised their hand—but you really talk to them one on one. "Will you promise me ——?" Go down the rows and all of the religious bigots, they come up to the surface. They come up the surface. "Well, you know, I got a religious problem with that or the Bible says so and so." My reply is "Hey, that's great, no problem." Then when it's all over with you go to the judge and you can usually get them struck for cause. The bigots, man, they just come up. They come on up. They rise like fish to the bait.

It's really a joke, it's a good joke, amongst the D.A.s in Harris County that the very first trial I ever had was a gay cop in an Official Misconduct case. This was seven years ago. And the D.A. was with Special Crimes because it involved a public official. The D.A.s just knew this was going to be lay down because they were going against Phyllis Frye, that freaky trans_____ whatever it was, and her faggot, goddamn cop, police officer, and it's her first trial and oh, man, Special Crimes, and all this other stuff. The reason why I know this story is because recently I was talking to an attorney that I've known for years. She is a D.A. who was recently transferred to Special Crimes. We were working a case together for a hired client of mine. She says, "You know, I just got recently appointed to Special Crimes and some of my colleagues who have been in that division recently found out that you were representing. They told me the story—it's a Special Crimes story. The story is that Phyllis Frye voir dired the jury, and the first thing that comes out of her mouth is "I'm transsexual. Does anybody got a problem with it?" And the second thing is "And my client is gay. Does anybody got a problem with that?" They knew it was a lay down for them, but two days later, I won. Not Guilty!

I've got a probate story. I'm going to give you a bunch of quick antidotes. I've got a probate story. A woman who is transsexual really didn't pass that well, but that's her business. The other attorney was really making a big deal about "he"—because this was a transgendered woman—"he" and was calling her by his earlier man's name and all this other stuff. Every time I talked to this bitch lawyer on the phone about this case I would refer to my client as "her" and her woman's name, and the other attorney would refer to my client as "he" and whatever her name used to be. Finally we came down the hearing and as soon as that person started that stuff up again, I said, "Judge, will you kindly instruct this attorney that my client is standing here and my client is a woman, this is my client's name, and these are her pronouns." And the judge looked at me, and the judge looked at the other attorney and he says, "You see her, that's her name and those are her pronouns and that's the way it's going on the record." No big deal. You just do it.

I had another client who was a homeless person who's transgendered. I took her through when she signed a pauper's oath to get her name changed in Texas. Under the old law, the County Attorney had to come and defend the County Treasurer on pauper's oaths which meant that all the court fees were waved. We were just as bold as could be, and we just walked up there and we laid out our case. "Yes, this person is transgendered, hasn't worked for a long time and is homeless and has been getting trash from this group and trash from this group. And the homeless shelters won't take her because she's not a man, and the homeless shelters won't take her because she's not a woman and all this other stuff and yadi-yadi-yada. And to make the point, Your Honor, that she deserves to have a pauper's

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oath, I'm going to do my services for free." The attorney from the county said, "Well, Your Honor, I really don't have a problem with that." And the judge looked at that County Attorney and says, "Well, that's the only human thing to do," and gave us the pauper's oath.

A divorce case where the wife had to get another attorney. Stake out your territory early. Stake out your territory early. Those of you who are consumers of legal services you make your lawyer know your issues, transgender issues. They're in the Proceedings. We will take plastic. This is your document. My client had already estranged herself from her spouse. The wife was suing. I got notice that we were going to have a temporary hearing for temporary orders. If you lose temporary errors you've got an uphill battle. Before there's a temporary hearing, usually the two attorneys get together and see what they can agree on. We went into one of empty jury rooms to start negotiating before we met with the Master, the Associate Judge. "Do you know your client is transgendered?" I said, "Yeah. Did you know I'm transgendered too?" "Oh, really?" And we started talking. And after forty-five minutes the wife's lawyer was on my side. And it was so bad that after three weeks she had to fire him and get herself another attorney.

A divorce case where there's children involved. Where there's children involved there's going to be an "ad litem" lawyer. Your lawyer knows transgendered issues, if your lawyer has a copy of the Proceedings. As soon as your lawyer files for the divorce for you, or you are sued for the divorce and you go get your lawyer, insure there is a motion for an ad litem to represent the children. I assure you that opposing spouse is going to be feeding those children all kinds of garbage. You want an ad litem attorney to make sure that that child is protected from as many things as we can protect that child from. Put in your Motion for an Ad Litem—or if you are on the receiving end and you are answering the Motion for the Ad Litem—not only do you agree but you specify that we want an ad litem who is familiar with transgender issues. Demand an ad litem who has read and studied the Proceedings from the International Conference on Transgender Law, who understands transgender issues, who has read Transgender Nation by Gordene MacKenzie, who understands The Uninvited Dilemma by Kim Elizabeth Stuart. You rattle all that out in your answer or in your motion. You make darn sure that you get an ad litem who's going to understand what's going on.

Most judges, even partially biased, are interested in the best welfare of the child. If you let the judge know that there's some good stuff out there, that judge is going to be hard pressed not to appoint an attorney that's going to be familiar or going to promise to become familiar with your transgender literature. If you know that hasn't happened then there's always another recourse. You can try to recuse the judge or can you try to move for another ad litem. Get it on the record. Take it up to an appeals court. All you're asking for is somebody that's unbiased who has studied the issues. I did that and now the ad litem is on our side.

An involuntary civil commitment was another case. A divorce where the wife put the husband in the county mental ward because my client was transgendered. We got my client out within the minimum amount of time the statute allowed. At the hearing we just argued it up front. I ripped the county psychologist apart who endorsed the fact that my client was crazy because my client was transgendered. And the judge, when it was all over with said to the psychologist, "Go home and send no more." [Bad pun, but try story.] The judge instructed my client to go to the doctor that I recommended. From then on in the divorce, we were on even ground."

I'm going to talk a little bit more about criminal court where a transgendered person was arrested. I heard about it and went up there a couple of days later and asked the judge if I could be appointed

to represent this person in the criminal matter. She already had an appointed attorney, but the judge knows who I am, said, "Oh, please, please, yes because I know you'll do it right and I know it won't blow up on me in an appeals court. So please do that." He appointed me, and he gave the other attorney some other work. My client told me that the first day she had been there in court—she had been arrested, and after night a jail (obviously since she was nonsurgical or preoperative, she had spent her time in the men's jail) she was just really a sight—she was scared. Everybody was giggling at her. Everybody was laughing at her. The D.A.s were laughing at her. Her attorney was very uncomfortable with her. These were for two felony offenses, and they were both trumped up by homophobic and transphobic cops. When it was all over with, I got her a two-year deferred adjudication. That means that there's no record if she fulfills the probation. Even though these were felony offenses, we're going to get them terminated after seven months next week.

I staked out my position early; transgender issues early. On the criminal cases for you lawyers, the first thing you need to do—if you're appointed or you get a criminal case where somebody's been arrested appropriately or inappropriately for prostitution or whatever—you need to get them bailed out first. You need to get them bailed out first. You cannot take a plea even for time served, which means they're going to get out that afternoon. You cannot take a plea even for time served on a petty case because then that person has a criminal record. You must insist on a reasonable bail. You must insist on personal recognizance bond. If the judge won't give you a personal recognizance bond, ask for to be put on the record. Have a hearing and say, "Judge, I've already talked to the D.A. and the D.A. will roll the case, four days credit for two. She'll be out this afternoon. But, we want a try this before a jury and on the record. We want a pretrial release bond, Judge. If I pled guilty, she'd be out today anyway, so you don't have anything to lose." You've got to do that.

Throw out words like "42 United States Code 1983" which makes it a civil rights case. Throw out the Dee Farmer case where "Chief Justice Renquist and even Scolia agreed. In the Dee Farmer case, in the nine to zero unanimous decision that came out of the Supreme Court, with respect to the prison's decisions there is a level below which the standards cannot fall even for the lowly transsexual." Put that stuff out there. Then recuse your judge if they won't help you. Drag out the "Policy for the Imprisoned: it's in your second Proceedings. Drag out the "Bill of Gender Rights": it's in your second Proceedings. Reference ICTLEP. Drag out the page close to the very front where the State Bar of Texas has blessed this law conference. Drag out the health law standards.

Ladies and gentlemen, if you go to hire a lawyer, be willing to pay your lawyer a good fee because the only thing your lawyer can sell is her or his brains.

One last thing on employment case strategy. Not only do we have the "Employers Manual" which is a good guide and can be read into the record as evidence because it's part of our first Proceedings. We now not only have "Co-workers' Manual" [in Proceedings II], we also have the "Gender Change Employability Issues" which is that marvelous statistical study which is in the second Proceedings. And you can read that into the record. We also have the Boulton & Park study that's going to be part of the third Proceedings [see Appendix D]. You now have things that you can enter into the record and use as evidence.

That is your ethics talk. Those of you who are not lawyers, that's what you need to demand of your lawyer. Demand, demand from your attorneys early on, early on, early on. Be willing to pay your attorneys what they're worth.

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