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[Notes: photos added to online version; use browser back button to return to text from a link to a note]

FACING DISCRIMINATION, ORGANIZING FOR FREEDOM: THE TRANSGENDER COMMUNITY

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INTRODUCTION

I was the second son of three children. I became an Eagle Boy Scout, my high school's ROTC Commander, a multi scholarship university student, a career military officer, a licensed civil engineer, a husband and a father. I am now in my fifties and have lived as a woman for almost one-half of my life.

Afraid of becoming the woman whom I had felt was inside me since I was approximately age six, and afraid of being labeled as a queer in 1950's and 1960's, I struggled throughout my youth to suppress my really inner self. I also feared that my family would reject me. To avoid detection, I took on the attitudes that I had been taught were acceptable for a straight, white, Protestant, American man: a Catholic-Jew-queer baiter with overt chauvinism, racism, and sexism and the superior attitude of someone with that privileged social status.

By the early 1970's, I allowed the woman who was inside me to openly express herself part-time. This resulted in my being divorced by my first spouse, discharged by the United States Army, and blackballed by engineering employers. When my she came out on a full-time basis in the mid-1970's, all of the fears of my youth came [\[page 452\]](#) true. Society did label me as a queer and did mistreat me as a queer. My family did ostracize me so completely that my father took his disgust with him to his grave in 1998. I was transformed into a person without any civil rights and certainly without any privileged social status.



honorable discharge



engineering license

Transgendered individuals will sacrifice vast amounts of short-term discomfort and cultural punishments to attain the long-term comfort of a close fit between their inner sense of gender identity and gendered behavior that society has deemed inappropriate for them. Cultural punishments as a child can be mild clues of not allowing play with the culturally defined wrong gendered toys. Cultural punishments as an adolescent can be severe teasing, ostracism and violence.

Cultural punishments as an adult are called discrimination and can take many forms and can last for ten to twenty years or longer. The forms of discrimination include unemployment or underemployment or less pay for the same work. Also included are loss of child custody or visitation, loss of housing, loss of community services that are gender based, such as medical clinics for the poor or homeless shelters, and mistreatment by or lack of protection by the police. Ostracism and threats of violence from parents or siblings are frequent. Vandalism from previously nice neighbors is also common. And there is continuing search for a safe place to go to the bathroom when away from home or when seeking to retain employment.

The bathroom situation is not a jest. It, and the use of shower stall at work or at the gym, recur as the largest hurdles that most anti-transgender rights people place before us. As you will read later herein, it is the reason that transgenders -- as recently as the June 24, 1999, reintroduction of a federal job non-discrimination bill -- remain purposefully excluded from proposed protective legislation.

In 1997, at the "Tenth Annual Creating Change Conference" in San Diego sponsored by the National Gay and Lesbian Task Force (NGLTF), Jamison Green, Shannon Minter and I held a workshop to ask the question, "Is sexual orientation a subset of gender identity?" [\[note 01\]](#). In a nutshell, the question turns on its head the common misperception that transgenders are kind of a hang-on or add-on group to the lesbian, gay and bisexual civil rights movement and but

for society lumping us all together as queer, there would be nothing in common. Instead of that, this question supposes that lesbians, gays and bisexuals are actually the subsets and members of the larger gender identity community.

I had so titled the workshop to generate controversy because there are still a lot of queer people who did not consider transgenders to belong to the lesbian, gay and bisexual civil rights movement. I wanted to make them think, and I wanted to spotlight their misperception. I expected a small group and a lot of negative debate. In actuality, the large room filled to overflowing. Every gender-variant lesbian, gay male and bisexual who was not overwhelmingly [\[page 453\]](#) drawn to another workshop was there at our workshop. And more came after they completed their other workshop. They entered the room agreeing with the workshop title and seeking the community of others who felt the same way. The silent majority had come to speak out.

Speaker after speaker from the audience confirmed that the discrimination they felt as a lesbian, gay man or bisexual was not because of who they had sexual intimacy with, but was instead because of the gender expectation that society imposed. The culture did not see them actually having sex, but the culture did see and reacted angrily at two women holding hands, at two men dancing, and at any people who stretched the range of allowable gender expression.

Today, most activists in the transgender community and many activists in the lesbian, gay male and bisexual community agree that people who hate, despise, feel ashamed of, preach from the pulpits against, or otherwise act in a disparaging manner toward transgenders, lesbians, gay men and bisexuals simply do not distinguish among the categories of queers. In the struggle to stay employed, maintain family relationships, stay out of jail, stay with children or adopt children and not be verbally abused by people who wield some form of holy writ, all transgenders, lesbians, gay men and bisexuals are labeled as being *queer*.

FACING DISCRIMINATION

The transgendered face discrimination from straight people in the form of violence and hate crimes. Several deaths illustrate the point. Brandon Teena was a young FTM (female to male) who was murdered in Nebraska several years ago. Prior to his death, he had sought police protection and had been refused. Tyra Hunter was a MTF (male to female) who was involved in an automobile accident in Washington, D.C. As she was bleeding to death, paramedics on the scene stopped treatment when they discovered that her genitalia did not match their expectation. In both cases huge public outcries finally got the authorities to act. Brandon's murderer was convicted, and the

city that hired Hunter's paramedics was found liable. In most cases the murderer is not found. In many cases the families do not want the body or they bury the body dressed as the former incorrect self.

The transgendered face discrimination from straight people in the form of employment discrimination. In the introduction, I referred to the military and engineering careers that I lost. The engineering firing was typical in that it was over which rest room I would use at the office. I still appeared as a man to my employers, but I had told them about who I was and that a transition was in my future. They would not let me use the men's or the women's rest room, so I was fired. [\[page 454\]](#)

As a lawyer and as a transgender rights activist, I receive lots of letters, calls and E-mail from people who are about to lose their jobs because the employer cannot solve the rest room problem. I advise them to ask for the use of just one rest room that is close to where they work and give notice that they will either lock the door or put up a Post-it note when they enter. What usually happens in a company that is willing to try to keep the transitioning employee is that the friction is generated by just a few folks who make a lot of noise. After the transition, if time is given for this matter to settle down, and if the company insures that employees know the company wants to keep the transgendered employee, it becomes a non issue. Unfortunately most companies will not invest that time, and the transgender is fired. Diana Cicotello has written some pamphlets to help employers through this transition [\[note 02\]](#).

Finding work for the recently transitioned or just-fired transgender is difficult. Most employers simply do not want to take the initial risk of having a problem while they are trying to incorporate a new employee into the workplace. As a result, most transgenders apply and interview by hiding as much of their past as possible. At that point identification documents become crucial. Because of immigration law, most companies ask for identification at the time of application. If a judge only changed George's name to Susan and refused to change the M to an F, then the judge gave her an incomplete change of name, and she will probably not get the job. Of if a judge only changed Janette's name to Ralph and refused to change the F to an M, then the judge gave him an incomplete change of name, and he will probably not get the job.

Fortunately, I am beginning to see evidence of change. Even though more transgenders lose their jobs than keep their jobs and even though more transgenders have difficulty getting new jobs, I am noticing a shift. The numbers of successfully employed transgenders who are using their full skill packages and not having to accept less pay for the same work is increasing. Although they are still in a minority, what I see in my office or in my mail or on the Internet

suggests that their numbers are increasing.

In the family law area, many transgenders are forced into divorce. That cannot be helped if one spouse wants a divorce, but sometimes the divorce is from the misperception that the couple has to divorce. This misperception used to be promulgated widely within the medical profession. Doctors would tell married transgenders that they would not begin the alterations because that would make an illegal, same-sex marriage. Over the years, as a lawyer, I have fought this misperception vigorously. Once a person with male genitalia is legally married to a female-genitaled person, they will remain legally married regardless of whether one has genitalia-altering surgery and it then becomes a de facto same-sex marriage. The state cannot force a divorce. The first time that I promoted this idea publically, outside of the Transgender Law Conferences [\[note 03\]](#) was in my platform speech at the 1993 march on Wash- [\[page 455\]](#) -ington. Since that time Mary Coombs expanded upon it in her 1998 law review article [\[note 04\]](#).



addressing the 1993 March on Washington

But many were forced to divorce and many others simply were divorced. In those cases, the fear of exposure often left the transgendered spouse to be fair game in the divorce settlement. Often children were involved, and the courts would only allow supervised visitation. This aspect of transgender discrimination is getting a little better, but it is still not that good. I get lots of letters and calls and E-mail from people who are being forced into lopsided property settlements and out of partial custody or visitation of their children. It remains another uphill climb.

Straight parents, siblings and children are often very unsure about how to respond to their transgendered family member. If they come around to acceptance at all, it is usually long after the transgender has struggled by herself or himself through transition. Recently the Parents and Friends of Lesbians and Gays became transgender inclusive. The PFLAG Transgender Special Outreach Network also published a

helpful pamphlet [\[note 05\]](#). Evelyn Lindenmuth and Mary Boenke are both straight parents of transgendered children, and they have written helpful books that I recommend [\[notes 06 and 07\]](#). Even so, initially accepting parents, siblings and children of the transgendered remain the exception.

Discrimination is rampant in homeless shelters, and therefore homeless transgendered often have no where to go but the streets. Homeless shelters will not take them except if they go to a matching genitalia facility. Imagine the harassment, beatings and rape that would go on in those situations.

The unemployed homeless or the underemployed transgenders get little help from public medical clinics. They are often ridiculed by staff in the waiting rooms and do not come back. I know of FTM's who could not afford male hormones after being fired and began menses again several months later. They could not get help because they were laughed at or refused. An MTF with prostate problems is out of luck at a public medical facility.

Transgenders are often harassed or arrested by police. This usually occurs on trumped up charges of hitchhiking or using the wrong public rest room. Imagine being an MTF on female hormones for several years, but being unable to get a good job because some judge will not give you a complete change of name. The judge gave you identification of a Susan with an M or of William with an F. Therefore, if you did want genital surgery, you could not afford it. Imagine being arrested and spending the night in the side of the jail that matches your genitalia. Prisons are doubly hard on transgenders. Prisons usually refuse to allow transgenders to continue on their hormones. The rationale is to conserve taxpayer money or some such inappropriate reason. The Transgender Law Conference did a prison study and published [standards for prison care for transgenders](#) [\[note 08\]](#). So far, no prison authority has expressed interest. [page 456]

I am always amazed at how straight people can carve out exceptions to allow them to do whatever they wish. The following tongue-in-cheek exception brings a perspective to gender cross-dressing. Most folks who don country-and-western garb do not own cows, or horses, farms or a ranches. And yet some people cross-dress in this country-and-western manner part-time, while others do it full-time. When folks are asked why they cross-dress in country-and-western, a common response is, "I like the way it makes me feel." Often there are sexual undertones to the expressions. People are able to vent feelings of virility, coquetry or flirtatiousness when so dressed. Men frequently wear cowboys boots with their Manhattan business suits -- a great way for a man to be socially permitted to wear a high heel. There are country-and-western clothing stores, catalogues, bars, dancing, music and literature -- all readily utilized by people who do not own cows,

horses, farms or ranches. And yet these social cross-dressers do not fear loss of jobs, friends and families. They do not fear religious persecution whether they are country and western some of the time or all of the time. I call them, the transwestites.

Discrimination from the lesbian and gay community comes in many ways. For instance, some lesbian and gay political leaders want the homosexual transgenders to host events to raise funds for lesbian and gay political needs [\[note 09\]](#). And yet, frequently, those same political leaders distance themselves from us or shun us when the media turns the cameras on us at queer pride community events.

Frequently we are left out of proposed local, state or national anti-discriminatory legislation that is sponsored by lesbian and gay political leaders. During the late 1980's and most of the 1990's legislation was almost always in the form of protection on the basis of sexual orientation only. The most important exception was in Minnesota [\[note 10\]](#). Sexual orientation, unless specifically defined, does not protect gender identification.

Interestingly, and this has been difficult for some lesbian and gay leaders to understand, sexual orientation protection without an accompanying gender-identification protection leaves all gender-variant lesbians and gender-variant gay men unprotected for their gender variance, which can then be used as a legal cover for discrimination against them. With time and with the actions discussed in subsequent sections of this chapter, more lesbian and gay leaders are understanding this gap.

I have never noted or been aware of any discrimination from bisexuals. Many years ago leaders of the bisexual community and the transgender community met to discuss that both of our communities were marginalized by the lesbian and gay community. Bisexuals get mentioned more often than do transgenders, but they still fell left out. Therefore we made a mutual pledge that we would support each other. The transgenders would always speak out for the [\[page 457\]](#) rights of transgenders and bisexuals, and the bisexuals would always speak out for the rights of the bisexuals and the transgenders.

ORGANIZING FOR FREEDOM

Some Background – prior to the fall of 1993

Most transgenders have remained hidden in their races and cultures throughout much of recorded history. Those who have come out and been recognized have had to do so in very brazen ways in order to be acknowledged as transgender. Usually they have come out in a piecemeal fashion, and most often they have been confused with or mistaken for just another homosexual, even if they were

heterosexuals. As a result, a great deal of transgender history has been lost or has become intermingled into the backdrop of what is called gay history. Either way, the bigotry against transgenders by most Western cultures has been intense, but it usually has been called homosexual discrimination. It has not been recognized as discrimination against transgenders.

The modern queer rights movement began in 1969 with the riots in New York City at the Stonewall Inn, a queer bar. It has often been incorrectly called a gay bar, but the initial police abuse during that riot was directed at the bar's heterosexual transsexual patrons and homosexuals with extreme expressions of gender variance. So, from the very beginning, and ever since, in the history of the gay rights movement transgenders have been present. And yet, even though a large contingent of people who threw the first stones at Stonewall were transgender, the transgender community soon began to be segregated from the modern queer rights movement.

In the heterosexual transgender community, the most noted and earliest education activist was Virginia Prince (formerly Charles Prince) of California. After many years of cross dressing, he combined his small organization, Feminine Personality Expression (FPE), with Carol Beecroft's larger Ma'mselle Society to form the Society for the Second Self (SSS or Tri-Ess) in the 1970s. Tri-Ess is known as a group for the heterosexual cross-dresser and his wife [\[note 11\]](#). Charles Prince then decided to live the rest of his life as Virginia, but without genital surgery. Thus Virginia Prince came into the world and the term *transgenderist* -- as a distinction from the transvestite and the transsexual -- was coined by her in the 1970s to describe her decision.

Virginia Prince's early educational work was so fundamental that she is considered the godmother of the heterosexual transgender community. The International Foundation for Gender Education (IFGE), created by Merrissa Sherrill Lynn in 1987, named its highest award for lifetime achievement after [\[page 458\]](#) Virginia Prince who was also its first recipient [\[note 12\]](#). Today at eight-six, Ms. Prince is still active in shaping the community.

Others in the heterosexual transgender community also formed groups and began to hold social events, some local and some regional. Many of the first groups were formed in the 1970s and 1980s with names such as Be All You Can Be, the Texas T-Party, California Dreaming or Southern Comfort. Also there were national organizations called the Renaissance Transgender Association (RTA) [\[note 13\]](#) and the American Educational Gender Information Service (AEGIS) [\[note 14\]](#), led by JoAnn Roberts and Dallas Denny, respectively. Tri-Ess was renewed largely through the efforts of Jane Ellen and Mary Frances Fairfax. Most of the local, regional and national heterosexual transgender newsletters and magazines were concerned with fashion

or how to keep your family or where to get hormones or surgery. There were also some early attempts made to bridge the gaps between the heterosexual transgender community and the gay, lesbian and bisexual community.

There were spots of local transgender legal and political activism during the 1970s and 1980s, but very little was of a national sweep. In the 1970s, some very brave and valiant transgenders lost federal court cases. Most of this history was compiled in 1995 by JoAnna McNamara [\[note 15\]](#). McNamara reported that in *Holloway* [\[note 16\]](#) (1977), *Sommers* [\[note 17\]](#) (1982), and *Ulane* [\[note 18\]](#) (1984) three federal appellate courts ruled that the Title VII prohibition against sex discrimination did not apply to transgenders. The courts held, in effect, that discrimination against post-surgical transsexuals was not discrimination based on sex, which would be prohibited by Title VII. They held that this was change-of-sex discrimination upon which Title VII was silent.

Defeats were balanced by successes. During that time, the California Department of Motor Vehicles was persuaded to change its regulations so that names and gender identities of preoperative transsexuals could be changed if they were undergoing their real-life tests. The lobbyist was a veteran of the US Navy, now a MTF nun in the order of the Sisters of Saint Elizabeth. Sister Mary was acting as the Chair of the Transsexual Rights Committee of the Southern California Chapter of the ACLU. She also tirelessly lobbied the California State Legislature to allow the amendment of birth certificates to reflect new gender identities after genital surgery. In addition, she published an early work on transgender law in 1990 [\[note 19\]](#).

Other legal work was done by men and women who were lawyers in transition in the 1970s and 1980s and fought in their states for similar legal rights. But there was still not a national focus on transgender legal and political rights.

Local work centered around municipalities with antimasquerade laws that made cross-dressing illegal. These ordinances were used by police to make life miserable for any transgenders thought to be in the homosexual commu- [\[page 459\]](#) -nity. Vagrancy ordinances were used to harass poor people, and people of color. In a similar manner, police used these ordinances to hassle queers. Any gay man who remained cross-dressed after a performance was subject to arrest, and this frequently occurred. The same attitude greeted lesbians wearing fly-front (rather than side- or back-zippered) pants. Heterosexual cross-dressers visiting gay bars were often arrested. Even full-time preoperative transsexuals with name change, on hormones and carrying letters from their physicians were often arrested. After much trial and appellate court work, and lobbying of city councils and state

legislatures, most, but not all, of those ordinances have been repealed [\[note 20\]](#).

Most queer civil rights political activity by transgenders was done by homosexual transgenders and by those heterosexual transgenders who had by now made a conscious decision that they would not be concerned with the queer stigma. This recognition that transgenderism already carried a queer taint has steadily increased. Some were simply tired of the oppression and ready to make a stand. They assumed that fighting for gay rights in the sixties, gay and lesbian rights in the seventies, and gay and lesbian and bisexual rights in the eighties was also a fight for transgender rights. All of their contributions, therefore, to all of the gains made by the gay, lesbian and bisexual movement remain invisible, but inextricably intertwined.

As the 1980s drew to a close, the attitudes of many transgenders began to change and they started to assert and acknowledge their own contributions as transgendered men and women. They realized that they had been segregated, and determined that they would no longer tolerate such treatment. The shift came about in dozens of local situations. The common scenario involved overt discrimination by police or an employer against an out and open full-time transgendered person. The transpersons experiencing discrimination were often already active in local queer political caucuses, and they mistakenly assumed that their colleagues would join in the fight for their civil rights when they were wronged. Sometimes that was the case, but often enough, in many places around the country, the response was that it was not a gay problem.

And on the national scale, the invisibility of transgenders to the gay and lesbian communities grew more obvious. Perhaps the biggest examples have come from the queer marches on Washington. The planning meeting for the first March on Washington was held in the summer of 1979. There was a protracted floor fight over whether transgenders would even be mentioned in the event brochure. In the 1987 march, transgenders were again left out. By the 1990's many transgender leaders -- mostly heterosexual at this time and mostly MTF -- recognized that the queer freedom train was leaving the station without them, and it was time to become vocal. They saw numerous organizations, local, state and national, that used "lesbian and gay" in their names, but typically omitted any reference to bisexuals or transgenders. [\[page 460\]](#)

The first national act of defiance by transgenders, I would argue, was the protest of Susan Stryker, Anne Osborn and others at the 1993 March on Washington for Lesbian, Gay and Bi Rights. Transgenders had once again been left out of the name of the event, but we were visible in the event's written "Purpose and Goals." Big deal, who in the media wrote about that? Stryker, Osborn and their friends were

planning to lie down in front of the march and be arrested to protest the transgender omission in the name of the event.

I wish now that they had done it, but I was one of many who helped to talk them out of it. I should have joined them then, and as you will read, I was moved to do so one year later. I believe that such an act then would have probably moved the transgender reintegration movement ahead by several years. And that is a worthwhile point to discuss. Transgenders were seeking to be reintegrated into the queer rights movement. We were not fighting for our initial, first time, inclusion in the queer rights movement.

Transgenders have never fought to be included. Instead, after Stonewall, and as the help of transgenders became necessary for fund-raising even as we remained a politically embarrassing subgroup, the segregation began. It reached full blown proportions in the late 1980s, and we have been seeking every since of our rightful place in a greater, reintegrated lesbian, gay, bisexual and transgender (LGBT), queer community. A thousand times I have wished that I had not been a party to convincing Stryker and Osborn to call off that protest, but I did.

In summary, the status of national transgender legal and political activity in the fall of 1993 was as follows. The homosexual transgenders still thought of themselves as homosexual first and foremost, and they put up with the verbal slaps from their political leaders and kept raising money. Most of the heterosexual transgenders tended to their local or regional gatherings, but the leadership was beginning to push for a merge with the homosexual and bisexual communities. Most national heterosexual transgender organizations dealt with everything except legal strategy and political action. Most transsexuals went from one closet to another. And most FTM's were still holding back and presenting either as androgynous straights, or as butch lesbians. But the shift was building.

Our Time Has Come – beginning in the Fall of 1993

In 1993, there were activist people like Stryker and Osborn all around the country needing a national focus. The Congress of Transgender Organizations (CTO) had been formed in the late 1980s. Unfortunately it did not meet very often, and it did not fill the national legal and political vacuum.

The [International Conference on Transgender Law and Employment Policy](#) (ICTLEP) was formed in 1991 because all of the national homosexual law groups had omitted the transgender community. By 1993, ICTLEP had [page 461] held two annual conferences designed to bring transgender leaders together to focus on strategies, and to train

them for progressive legal change.

Also, JoAnn Roberts and Sharon Stuart had each independently drafted and published different versions of an [International Bill of Gender Rights](#). Later, with the blessing of both, and the continuation of the work by Stuart under ICTLEP's flag, the Bill evolved to read, in part, as follows:

1. The Right to Define Gender Identity -- All human beings carry within themselves an ever-unfolding idea of who they are and what they are capable of achieving. The individual's sense of self is not determined by chromosomal sex, genitalia, assigned birth sex, or initial gender role. Thus, the individual's identity and capabilities cannot be circumscribed by what society deems to be masculine or feminine behavior. It is fundamental that individuals have the right to define, and to redefine as their lives unfold, their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex, or initial gender role. [\[note 21\]](#)

The document goes on to demand the following:

- The right to free expression of gender identity
- The right to secure and retain employment and to receive just compensation
- The right of access to gendered spaces and participation in gendered activity
- The right to control and change one's own body
- The right to competent medical and professional care
- The right to freedom from psychiatric diagnosis or treatment
- The right to sexual expression
- The right to form committed, loving relationships and enter into marital contracts
- The right to conceive, bear, or adopt children; the right to nurture and have custody of children and to exercise parental capacity.

By the fall of 1993 the FTM community was beginning to organize nationally and under the guidance of Lou Sullivan formed FTM International [\[note 22\]](#). In the fall of 1993, bitterly recalling that *transgender* had been left out of the 1993 march name, transgender activists began planning for June 1994 -- the celebration of the twenty-fifth anniversary of the Stonewall riots, and the Gay Games. Both were scheduled to occur in New York City at the same time that year. Both events were going to exclude transgenders in some fashion. Jessica Xavier, Denise Norris, Riki Wilchins, Sharon Stuart, myself and others did a huge amount of work.

Sharon Stuart and I took a page from the Stryker book. We threatened to lie down and obstruct the Stonewall march and be arrested. Upon our arrival [\[page 462\]](#) the day before, our attorney advised us that

although our goals were not fully met, the point had been made forcefully over the preceding six months, and that we should declare a victory and march. Wilchins, who lived in New York City, told us later that the point had been made so well that the Stonewall March organizers were going to assign a team to encircle Stuart and me when we lay on the street so that the Marchers could go around us. The organizers recognized our protest but did not want us to suffer being arrested.

A month later in July 1994, after the third ICTLEP conference had been held, Karen Kerin and I went to Washington, D.C., to attempt to speak before the Senate Hearings on the Employment Non-Discrimination Act (ENDA). Transgenders had been omitted from the ENDA language, and Kerin and I felt that if we showed up, we could address the problem. Even with the help of Senator Jim Jeffords, we could only watch as ENDA was discussed. Transgenders had been omitted, and much of the anti-ENDA attacks were centered around cross dressing at work. Kerin and I met with people who told us about a coalition of human rights organizations for ENDA that was being led by the Human Rights Campaign (HRC) , and that a year earlier the decision had been made by the HRC-led coalition to omit transgenders. Kerin's close ties to Senator Jeffords, the ranking Republican in the committee considering ENDA, allowed us to work for a transgender-inclusive ENDA that would be ready for introduction in the 1995 Congressional Session.



Kerin, Jeffords, Frye

In October, 1994, ICTLEP was invited to present transgender legal workshops at the Lavender Law Conference sponsored by the National Lesbian and Gay Law Association (NLGLA) at their meeting in Portland, Oregon. Between sessions, Melinda Whiteway, JoAnn McNamara, Sharon Stuart, and I met with a very small group of gay political law leaders. Prominent among them was Professor Chai Feldblum of the Georgetown Law School, who had drafted ENDA as a contractor for the HRC. We confronted the group with the news that we were aware of the HRC-led meetings the previous year when it was decided to omit transgenders from ENDA. Feldblum acknowledged this, and stated that it was felt at the HRC-led meeting that transgender inclusion would cost thirty votes. From this revelation, transgender leaders began to criticize HRC in thirty pieces of

silver/votes traitor arguments.

During that time a political action group called the Transsexual Menace was conducting other protest demonstrations against transgender discrimination in New York City. Transgender Menace, along with Martine Rothblatt, also began to protest the American Psychiatric Association (APA) for continuing to include "gender dysphoria" as a diagnosis for transgenders in its official list of disorders, the *Diagnosics and Statistics Manual (DSM)* [\[note 23\]](#). Anne Osborn and others were arrested at another such protest. The APA has not changed its damaging diagnosis. Many transgender activists feel that it should be an [\[page 463\]](#) anatomical or endocrinological diagnosis rather than a damaging mental diagnosis.

Through 1994, the internet was still a fledgling tool of communication. Until 1995, the cheapest and fastest way to get out the word to other community leaders was by fax. The fax machines were hot during those times. Not until the summer of 1995 did the groundwork laid by such people as Gwen Smith at America On Line, and others, come to fruition. She and people using other servers fought for the right to have transgender keywords and chat rooms. Through the internet, closeted transgenders began to discover how many others like themselves were out there, and they began to come out. The internet gave a jump start to the FTM community, and it has rapidly been catching up in numbers and organization. Very notable is the rapid growth of The American Boyz, another organization of female to male transgenders [\[note 24\]](#).

In January 1995, the NLGLA became the first national organization to unanimously pass a board resolution calling for transgender inclusion in ENDA. Shortly after that the National Lesbian, Gay and Bisexual Veterans Association (NGLBVA) amended its bylaws at the request of Tere Fredrickson to include transgender.

From October 1994 to March of 1995 Sharon Stuart attempted to create an organization that she called the Transgender Education and Advocacy Coalition (TEAC). Her aim was to get us all moving together and pick up the momentum that ICTLEP had generated. In March of 1995, a meeting was called in Washington, D.C., for folks who might want to move TEAC along. The meeting was also called because Riki Wilchins wanted to organize a transgender march on Washington. Karen Kerin attended, as did Riki Wilchins, Jessica Xavier, Sharon Stuart, Jane Fee and myself. Jane Fee had recently been instrumental in persuading Minnesota politicians to become the first to enact statewide anti-discrimination legislation that was transgender inclusive [\[note 25\]](#). TEAC never came into being, but neither did the transgender march on Washington. Instead, Karen Kerin from Vermont, Riki Wilchins from New York, Jane Fee from Minnesota, myself from Texas, and two others preferring anonymity went to the congressional

offices of our four states over two days and lobbied. That was the first organized transgender lobbying event in our nation's capital.

During the spring of 1995, the faxes continued between leaders as we slowly began to convert to the internet. Most of us agreed that the national leaders would meet at the fourth ICTLEP conference; and all but three national transgender leaders actually came to the conference. We already had a transgender-inclusive ENDA ready for Jeffords to introduce. It was a particularly propitious time, because Jeffords was now the Chair of his Senate committee due to the the Republican sweep of the Senate in the previous national election. Wilchins had been so turned on by our lobbying successes in March [page 464] that she and Kerin and I agreed to tri-chair the organization of a second and vastly larger transgender lobbying event in October. We were all feeling pretty proud of ourselves. We were all pretty sure that this would slide through without much resistance.

Our bubble burst on Thursday, June 15, 1995, in Houston, Texas. That evening, all but three transgender national leaders assembled at the fourth ICTLEP Conference. We were shocked to learn that the HRC had pushed their non-transgender-inclusive version of ENDA through for introduction in Congress. I believe that was the defining and galvanizing moment for the national political and legal movement of the transgender community. Feelings of betrayal and anger were palpable. From that moment to the end of the year was a blur of hectic activity. The Internet came to life. Many of our personal businesses suffered radically during those months. New people from towns and states across the nation came on-line and asked to be a part of the movement. HRC became the whipping post, and we whipped hard. By September, HRC asked for a meeting. They paid for the hotel rooms and airfares. The following transgender leaders went to their offices for a daylong meeting: Kitt Kling, Gary Bowen, Sarah DePalma, Sharon Stuart, Karen Kerin, Jessica Xavier, Riki Wilchins, Tere Fredrickson and myself. It was a long and anger-filled meeting. HRC agreed to have Jessica Xavier and Sharon Stuart work with Chai Feldblum on drafting a transgender-inclusive ENDA.



I-r: Stuart, Kerin, Xavier, Prasse (Fredrickson), Kling, Frye, DePalma, Bowen, Wilchins

The second lobbying event was in October. It was the largest and the best up to that point in time. Over 100 transgenders, MTF, FTM, people of color, and spouses and children from thirty-five states came for the two-day event. We trained them on Sunday evening, assigned them to teams, and gave them score sheets and handout materials. Wilchins had organized a press conference for Monday, and Kerin, through Jeffords' office, insured that the Capitol Hill Police would leave us alone. We lobbied over 95 percent of the House and Senate offices and had no negative incidents. In November, at the annual Creating Change Conference of the National Gay and Lesbian Task Force, I received an award. The presenter, NGLTF staff director Tracey Conaty, stated that "1995 was the year that the transgender community had stood the lesbian and gay community on its ear." Even though I was the recipient, the honor went to all of us who had worked at a fever pitch for the previous six months.

In 1996, the homosexual portion of the transgender community was beginning to catch on that they were not going to be protected by ENDA the way it was written. Later, at the 1998 Lavender Law Conference, Chai Feldblum addressed a Plenary Civil Rights Roundtable. She confirmed what we knew then that gender-variant lesbians, gays and bisexuals would not be covered by ENDA. More lesbian, gay and bisexual leaders across the nation also began to pick up on this huge omission. They began to urge transgender inclusion in ENDA. And more [\[page 465\]](#) heterosexual transgenders began to recognize their need to merge politically into the LGBT movement.

In the fall of 1996 came the trade-off vote in the US Senate. Some Senators traded their votes on the anti-same-sex marriage act called the Defense of Marriage Act (DOMA) for a vote on ENDA. DOMA prevented federal recognition of same-sex marriages. In the trade-off, ENDA got forty-nine votes. ICTLEP had been arguing since 1993 that legal, same-sex marriages already existed. As the leader of ICTLEP, I also worked to convince the homosexual leaders to use the transgender same-sex marriage as an equal-protection argument in court cases. I suggested that during the news programs and talk shows that homosexual leaders use the legality of transgender same-sex marriage to combat the opposition, which frequently argued that same-sex marriage could not work. To date, most homosexual leaders continue to ignore this resourceful argument.

Although a lot of transgender political activity had been ongoing, there was still not an umbrella organization of transgender groups that would provide political clout. In late 1996, JoAnn Roberts sought to form a group called Gender PAC (GPAC). Unfortunately there was distrust amongst some of the major leaders, and the new executive

director did not take direction from the provisional board. As a result, Roberts dropped the idea. Even so, Riki Wilchins and Dana Priesing continue to use GPAC as their banner as they do their work in the D.C. area.

In November of 1996, the next large transgender community meeting with HRC took place. There was a dramatic attempt to insure that the transgender delegates truly represented the geographic, racial, and sexual diversity of the transgendered. Eleven people from the Atlantic to the Pacific attended, including people of color, MTFs and FTMs, cross-dressers and postsurgical transsexuals. They were Allison Lange, Phyllis Dickason, Yosenio Lewis, Gary Bowen, Jon Banks, Stephanie Young, Jamison Green, Janice Galeckas, Shannon Minter, Melissa Dixon and myself. The thrust of the meeting was to reposition old stances. HRC was not going to put us into ENDA. We on the other hand, were going to settle for nothing less. The upshot of the meeting was that this group decided to meet with other groups in the D.C. area, including the NGLTF [\[note 26\]](#). As a result of that display of diversity, the NGLTF and other national LG groups (not HRC) began to amend their mission statements and bylaws to include transgenders and bisexuals if they had not already done so.



l-r: Frye, Kerry Lobel NGLTF Exec Dir, Laing, Dickason, Lewis, Bowen, Banks, Young, Green, Galeckas, Minter, Dixon

In February 1997, I organized a third gathering of transgenders to come to Washington, D.C. Twenty people came, and in two days we met with the offices of the forty-six senators remaining out of the forty-nine who had voted for ENDA in the fall of 1996. Time and time again we were told that if Senator Ted Kennedy and Representative Barney Frank put transgenders into the next [\[page 466\]](#) ENDA bill, they would still support it. Time and time again we were also told that if Kennedy and Frank left us out, they would still support it. It was up to Kennedy and Frank.

Some of us met with Kennedy's staff. And we met with Barney Frank. No movement. We went to the Commissioners of the Equal Opportunity Employment Commission (EEOC). Jo Anne McNamara argued that with rule-making power, the EEOC could find that Title VII

protected transgenders and essentially override the *Ulane* trio. The commissioners understood, but declined, noting that the Republican Congress would retaliate by reducing appropriations for the EEOC in the next budget. In the fall of 1998 the Department of Justice announced that it would begin to do pretty much what we had asked EEOC to do. In May 1997, GPAC had the fourth gathering of transgenders in D.C. to lobby primarily about hate crimes and ENDA. Later the new ENDA was introduced, omitting transgenders once more.

Even though the 1998 DoJ decision could make the ENDA struggle moot as to the issue of transgender inclusion, most transgender leaders are painfully aware that a DoJ case could easily meet the same ultimate fate as the *Ulane* trio if it went to the Supreme Court. Therefore, we still believe that having transgender placed into a Title VII law like ENDA is needed. Also, we choose to remain in the fight alongside our gender-variant lesbian, gay and bisexual sisters and brothers who are not protected by the current ENDA language.

In 1997 ICTLEP held its sixth and last conference. Much of what it had formed to do was happening. In addition, the NLGLA was beginning to embrace many of ICTLEP's goals. Lavender Law Conferences became increasingly transgender inclusive in the workshop subjects and in panelists. By 1999, transgenders and bisexuals were in the mission statement, bylaws and literature. Over a quarter of NLGLA's directors were transgender lawyers, and one of its current co-chairs, Melinda Whiteway, is a transgender Director of ICTLEP. NLGLA's affiliation with the American Bar Association has opened the door, and NLGLA now presents GLBT workshops at the ABA Conventions and midyear conferences [\[note 27\]](#). ICTLEP is still a corporate entity, but in 1999 it went into stasis until it is needed again. In 1997 the National Organization of Women (NOW) adopted in convention a strong resolution of support for transgenders. In 1999, the NOW Lesbian Conference was strongly transgender inclusive.

In 1997, the Roundtable of Executive Directors for National Gay, Lesbian, Bisexual and Transgender Organizations, concerned with national public policy, began. Before the first meeting, I lobbied hard for more than three transgender representatives. At that first meeting ICTLEP, It's Time America (ITA -- a grassroots transgender political organization founded at the third ICTLEP Conference [\[note 28\]](#)), FTM International, GPAC, the American Boyz, and Transgender Officers Protect and Serve (TOPS -- for transgender police, fire, [\[page 467\]](#) and military officers [\[note 29\]](#)) were represented. The executive director of the Intersex Society of North America was also present [\[note 30\]](#).

In 1997 Maggie Heineman, Mary Boenke, Jessica Xavier, Nancy Sharp, Sharon Stuart and others began to work with the Parents and Friends of Lesbians and Gays (PFLAG) which was also bisexual

inclusive in its bylaws. In 1998, PFLAG became transgender inclusive [\[note 31\]](#). In late 1998, PFLAG became active in the movement to persuade Senator Kennedy and Representative Frank to include transgender in the ENDA bill for 1999.

The momentum continues. There are a host of transgender activists. Some are working quietly and behind the scenes, and others are working boldly and openly in their towns and states to effect change and transgender protections or inclusion in GLBT legislation.

While HRC continues to resist transgender inclusion in ENDA and in its own mission statement and bylaws, It is now working to have transgenders covered in federal hate crimes legislation. It has also published a transgender employment guide authored by Dana Priesing.

Trying to stop transgender political activity at this point will be like trying to stop the ocean's tide. Even in Texas, complete with its stereotype of independence and the Old West, the State Bar allowed the creation of a Section on Sexual Orientation and Gender Identification Legal Issues [\[note 32\]](#). This was the first LGBT state bar section to have transgender in the name. In January of 1999, fifty-plus Texas transgenders lobbied their Austin statehouse on a number of bills and were included in the proposed Texas ENDA. As Texas transgenders loudly proclaim, If we can do this in Texas, you can do it where you live. In addition newer law journal articles are appearing, such as those by Elvia Arriola [\[note 33\]](#) and Mary Coombs [\[note 34\]](#) that are being written by people who actually know the transgender community.

In 1999 the fight for ENDA inclusion remains and is refocused. Interestingly, the resistance has been focused on Barney Frank and rest-room policy. When President Clinton took office, gays in the military became an issue. Barney Frank took a lot of heat on this issue and it concerned rest rooms and showers. It seems that men who gawk at women do not like the idea that they may be gawked at themselves. And for such non-compelling reasons, gays are being run out of the military. Now, in 1999 it has come to a single point that the main resistance to transgender inclusion in ENDA is that Barney Frank does not want to revisit the rest room and shower issue again.

Rest rooms and showers are an interesting issue for Americans. When I grew up in the South, I noticed that business made accommodations for bigotry and spent the money to build three restrooms -- (white) men, (white) women, colored (men and women). Concerns for privacy did not require gender segregation when the goal was racial segregation. Now with the Americans with Disabilities Act (ADA) there is often a "handicapped" restroom -- [\[page 468\]](#) unisex with a lock. So why are transgenders continuing to face legal job

discrimination by being omitted from ENDA simply because businesspeople cannot provide a lock on a door or maintain rest room stall door locks? What is the cost of a lock compared to the cost of unemployment benefits?

On Friday, June 25, 1999, ENDA was introduced to the new Congress. Transgenders and other gender-variant lesbians, gays and bisexuals were again omitted. On June 28, 1999, five years passed since I began the ENDA fight. Let right be done.

ACKNOWLEDGMENTS

I wish to thank Kim Stuart, JoAnn Roberts, and Jamison Green for their editing assistance.

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NOTES

1. This session was tape recorded by HMR Duplications, 18 Gregory Place, Oakland, CA 94619, tel. 510-482-8732. From the NGLTF, 10th Annual Creating Change Conference #231, session: "Sexual Orientation Subset of Gender."
2. Diana Cicotello, "Why is S/HE Doing This to Us?: An Employer's Handbook" and "What is S/HE Doing?: An Informational Booklet for Co-Workers." Both are reprinted with permission in International Conferences on Transgender Law and Employment Policy, *Proceedings I and II*. Cicotello may be contacted at E-mail dainna@aol.com.
3. The Transgender Law Conference is the International Conference on Transgender Law and Employment Policy, Inc. or ICTLEP, at P.O. Box 1010, Cooperstown, NY 13226. Executive Director Sharon Stuart, e-mail ictlephdq@aol.com. Although now in stasis, for a review of much of ICTLEP's work and for a free downloading of an index to its five volumes of *Proceedings*, go to www.abmall.com/ictlep.
4. Mary Coombs, "Transgenderism and Sexual Orientation: More Than a Marriage of Convenience," *National Journal of Sexual Orientation Law*, 3, no. 1 (1998), found at <http://sunsite.unc.edu/gaylaw/issue5/coombs.html>.
5. Transgender Special Outreach Network of Parents, Families and Friends of Lesbians and Gays (PFLAG), "Our Trans Children." PFLAG may be contacted at E-mail communications@pflag.org.
6. Just Evelyn, *Mom, I Need To Be a Girl* (ISBN: 0-9663272-09) (Imperial Beach, Calif.: Walter Trook Publishing, 1998). Just Evelyn may be contacted at E-mail justevelyn@earthlink.net.
7. Mary Boenke, ed., *Trans Forming Families: Real Stories About Transgendered Loved Ones* (ISBN: 0-9663272-1-7) (Imperial Beach, Calif.: Walter Trook Publishing, 1998). Boenke may be contacted at E-mail MaryBoenke@aol.com.
8. The report on prison conditions for transgenders is in ICTLEP *Proceedings II*. The "Policy for the Imprisoned Transgendered" states:

1. Segregation in the interest of an inmate's safety and dignity shall not deprive any inmate from the rights, privileges, and facilities afforded to other general population inmates.
2. Access to counseling shall be allowed all transgendered inmates and shall include peer support group participation by those from inside the institution and those from the outside where possible. Counseling professionals should be qualified with respect to the current in gender science.
3. Transgendered inmates shall be allowed to initiate or to continue hormone therapy, electrolysis and other transgender treatment modalities as prescribed by the involved professionals.
4. The transgendered inmate shall have access to clothing, personal items and cosmetics that are appropriate to the gender presentation of that inmate and appropriate within the institutional setting.
5. Special care shall be taken not to make a spectacle of transgendered inmates to the amusement of others, or to deny or to deprive transgendered inmates of their dignity.
6. A process shall be established to afford a hearing of grievances to the above policy items and appropriate resolution shall be made.

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9. The Imperial Court system is the best known of these groups. Originating in San Francisco in 1965, it was intended mainly for "camp" fun. From that beginning came the camp titles and coronation. The Court system raises and contributes tens of thousands of dollars each year to local community services. The International Imperial Court and links to its individual service organizations is at www.impcourt.org.

10. Minnesota Statutes 1992, section 363.01 was amended to add subdivision 45 to read as follows:

"Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such an attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult."

11. Tri-Ess is the Society for the Second Self, 8880 Bellaire B2 #104, Houston, TX 77036, E-mail jefftris@aol.com.
12. International Foundation for Gender Education, P.O. Box 540229, Waltham, MA 02454-0229, tel. 781-899-2212. Web address www.ifge.org.
13. Renaissance Transgender Association, Inc., 987 Old Eagle School Road #719, Wayne, Pennsylvania 19087. Web address www.ren.org.
14. AEGIS, PO Box 33724, Decatur, GA 30033-0724. Web address www.gender.org/aegis.
15. JoAnna McNamara, "Employment Discrimination and the Transsexual" appendix E, in ICTLEP, *Proceedings IV*.
16. *Holloway v. Arthur Anderson Company*, 566 F2d 659 (9th Cir. 1977)
17. *Sommers v. Budget Marketing, Inc.*, 667 F2d 748 (8th Cir. 1982)
18. *Ulane v. Eastern Airlines, Inc.*, 742 F2d 1081 (7th Cir. 1984)

19. Sister Mary Elizabeth, SSE, *Legal Aspects of Transsexualism* (ISBN: 0-9625976-0-0) (International Foundation for Gender Education, 1990). Sister Mary may be contacted at E-mail mary.elizabeth@aegis.com .
20. As an example, after three years of lobbying, I saw the Houston, Texas, Code of Ordinances, Section 28-42.4 be legislatively repealed on August 12, 1980. The ordinance prohibited a person from appearing in public dressed with the intent to disguise his or her sex as that of the opposite sex. During those three years of lobbying and being subject daily to arrest, my spouse had the additional burden of having to come home from her job not knowing if I had been arrested that day.
21. Sharon Stuart, "The International Bill of Gender Rights" (ICTLEP). The JoAnn Roberts document can be found online at www.3dcom.com/pw/bgr.html .
22. FTM International, Inc., 1360 Mission St., Ste. 200, San Francisco, CA 94103, Web site http://www.ftm_intl.org , E-mail TSTGMen@aol.com , tel. 415_553_5987.
23. The National Center for Lesbian Rights and ICTLEP published a Joint Statement against the continuation of the gender dysphoria diagnosis of the *DSM*. For the text, go to www.abmall.com/ictlep or ICTLEP *Proceedings V* (1997): A1-2.
24. The American Boyz, Inc., 212A S. Bridge Street, PMB 131 Elkton, MD, 21921. Web site www.netgsi.com/~listwrangler , E-mail transman@netgsi.com .
25. [See note 10.](#)
26. The National Gay and Lesbian Task Force has a Web site at www.nglftf.org . For a photo of that historic gathering, send me an E-mail at prfrye@aol.com .
27. The National Lesbian and Gay Law Association sponsors the annual Lavender Law Conference and has a Web site at www.nlgla.org .
28. It's Time America can be contacted through its National Director, Jessica Xavier at thexgrrrl@aol.com .
- [page 519]
29. Transgendered Officers Protect and Serve can be found through its founder, Tonye Barretto-Neto at tbhawk@aol.com .
30. Cheryl chase is the executive director of the Intersex Society of North America at www.isna.org .
31. [See note 5.](#)
32. The Sexual Orientation and Gender Identity Issues Section of the State Bar of Texas can be found at www.texasbar.com .
33. Elvia R. Arriola, "The Penalties for Puppy Love: Institutionalized Violence Against Lesbian, Gay, Bisexual and Transgendered Youth", *Journal of Gender, Race and Justice* (University of Iowa College of Law), 1, no. 2 (1998).
34. [See note 4.](#)
- [page 522]

NOTES ON CONTRIBUTORS

Phyllis Randolph Frye spearheaded a successful effort to overturn the Houston Texas cross-dressing law. In 1979, 1981, 1983 and 1985 Phyllis was elected, as an out transgender delegate, to the Texas Democratic Party Convention, and was also instrumental in persuading the Party to adopt a gay rights plank in 1983. She also served, as an out transgender woman, as an elected director and later a vice president of the Houston League of Women Voters. In 1998 she was also appointed by the State Bar President to the Committee for Legal Matters Concerning the Indigent in Criminal Matters. In 1993 she was honored with the highest award giving by the transgender community to one of its own -- the Virginia Prince Lifetime Contribution Award from the International Foundation for Gender Education. She now practices law part-time and teaches consumer rights at the Thurgood Marshall School of Law. On the Internet, she is known as the Phyllabuster. Her Web address is <http://members.aol.com/prfrye> .