
DOCUMENTATION LAW PROJECT REPORT

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Third Annual International Conference on Transgender Law and Employment Policy

Moderator:

o Melinda Marie Whiteway, Attorney, Documentation Director, ICTLEP, Inc.

PHILOSOPHY AND HOW-TO'S OF DOCUMENTATION CHANGES

by Melinda Marie Whiteway:

The reason why I found my way to Houston, Texas, was because of a wonderful pair of young ladies. The first one I'm referring to is Cynthia Phillips. I met Cynthia and Linda Phillips at the IFGE convention in San Francisco, California. She says, "Oh, you're an attorney. You need to meet Phyllis Frye." And I said, "Who's Phyllis Frye?" She says, "Oh, you don't know Phyllis Frye?" "Oh," she said, "You've got to meet Phyllis Frye." And I thought to myself. "Yeah, well I'd really like to meet Phyllis Frye." She says, "No, no, no. YOU REALLY NEED TO MEET, PHYLLIS FRYE." She says, "You will not believe Phyllis Frye." I said, "yeah, yeah, yeah." So she says, "No. You need to come to the law conference next year. That's what you need to do." And I said, "Yeah, yeah, yeah." And so she saw to it that I got to the law conference. And I'm very, very grateful to Cynthia. Linda, I've just got to tell you that I love Cynthia. And Cynthia, I've got to tell you that I love Linda, too. So you're both in trouble. I met so many other wonderful people here that I just have feel are very, very special friends, and I hope that you-all have had similar experiences.

One of things I want to emphasize here at the outset is that so many people think that this conference is just for lawyers: it really is not. You are all advisors and counselors of the law. Each one of you are going to go back to your communities and interact with your friends and associates and acquaintances. Hopefully you'll be able to give presentations to your local groups and pass along some of this information. Those of you here who are attorneys at law have an even greater responsibility to pass law and accurate information. What we're trying to do is give us all accurate information so that we can organize our own lives and can advise others and can make their jobs a little bit easier than some of ours have been.

We have handouts that we did in the documentation law sections workshops that those of you who didn't get the opportunity to attend can get from me after the report here this afternoon. Although Phyllis isn't here, but—oh, there she is. I'm sorry. There you are, darling. What I think we probably should have done is instead of giving them the handouts since they don't get the Proceedings with their registration fees this year, is to withhold that information, put it in the Proceedings and make them buy the Proceedings. But I don't really believe in extortion, so I'm going to give them to you for free. But I want you to buy the Proceedings. Now, repeat after me [Audience repeats "Buy the Proceedings" and all laugh]. You need those Proceedings. You really do. [For those handouts, see Appendix G.]

Unfortunately, these handouts are only a very, very primitive beginning. Hopefully we're going to be expanding on those as time goes on. One of the participants mentioned that she felt that the

information that she was able to glean from the Proceedings were worth many thousands of dollars of talking to attorneys and buying attorneys' time. Yes, Denise [Copp], I believe you're going to take credit for that one, so good for you. And the beautiful thing about it is I think they're still available at the bargain price of \$65. They're almost worth their weight in paper. They're about two inches thick, the size of a good size metropolitan phone directory and they're chucked full of interesting stuff.

Getting into the accomplishments or the agenda at the documentation law workshops, we started off by trying to do a survey of what has gone on at the law conferences before this. I found that there was really no reference specifically to documentation law in the first Proceedings. The very first time that any specific documentation law project began was in the 1993 conference which was headed by a wonderful lady from California Sister Mary Elizabeth, who works and lives in San Juan Capistrano. Sister Mary Elizabeth was a member of the documentation law committee that led up to the conference this year. Essentially, it seemed to be more or less of a survey of the needs of the community as it pertains to documents. The general concept that came out of the 1993 conference with regard to documents was that there was a tremendous need for an educational process with regard to documentation for transgendered individuals. There was a lot of confusion, a lot of misinformation and a lot of diversity on how the various legal jurisdictions handled document issues. Nothing really specifically was accomplished with regard to nuts and bolts issues and handling documentation law matters for the 1993 conference, so that's what we decided to focus on in 1994.

After we surveyed the participants in our workshop, which was to my delight very well attended, I was somewhat surprised to find that many of the individuals in the workshop had not completed all of their documentation. Many of them had not even started. A lot of the participants in our workshops needed information and guidance regarding getting their documentation changed. We decided that the documentation issues were of primary interest to people who were [pre, non or post-surgical] transsexuals rather than casual crossdressers. Although casual crossdressers would love to have documentation to make their incidental contacts less uncomfortable, that was probably not something that could be easily accomplished, nor would they want to once the reality of the procedure set in.

The next issue that we grappled with was to what extent can an individual change their documentation? What can we reasonably expect to do? The general idea there was not only which documents we could realistically expect to change but which documents we realistically probably could not expect to change. One of the ways that that issue can be categorized simplistically is the distinction between newly created documents. Those are documents that you could go into a bureaucracy or a records custodian and they take a blank form out of their cabinet and put it in their typewriter or on their computer screen, type in new information and generate a brand new document at that time. Those newly created documents are certainly the ones that in most cases we can expect to change with the proper information presented to the agencies.

The more difficult issues arise in changing what I term historical documents. These are documents that were correctly prepared at the time that they were made but are no longer perhaps appropriate for some of our purposes. These include the majority of documents, most notably things like birth certificates, school records, credit records, military records, employment records, and so forth. For those documents one needs to have a dose of reality in that many of those just can't be changed. There's many reasons for that, but one of them is that they were accurate at the time that they were made. Going back and changing something is like trying to go back and change history. If you were born in Germany, for example, the youth who have grown up post-war Germany are very puzzled and

somewhat embarrassed and ashamed of the Nazi history that they have. They want to dissociate themselves from that in somewhat of a similar fashion that many of us want to dissociate from our backgrounds. And it just would be logically absurd to go back in and rewrite the history books and delete all references to Hitler's name or to the Nazi party or what they did. Those were historical facts, and they are important if for nothing else than to hopefully teach us what important lessons there are to be gained from the mistakes that we have made perhaps and to document our progress.

The most important example of that is medical records. You just can't go back into your medical records. The most obvious example that I can think of there is when a doctor does a physical examination. You can't expect the medical records to be stricken or rewritten to indicate that they did an examination of your genital system and found that it was normal male or female when the opposite was true. Nor would we want them to really. Regardless of what procedures we have had performed, medically, the medical health care providers that we see are going to know what our medical histories were and accurately reflect our medical histories. I wasn't able to attend Dr. Shrang's presentation. I understand that Dr. Shrang related an almost tragic incident that occurred recently where he almost lost a patient due to severe bleeding. The patient hadn't been honest with him in their medical history, and the patient had been taking street drugs which affected clotting time. Had they known that, they would have been able to take measures that would have prevented that very near fatal mistake. So, being realistic as to what we can expect to change is kind of a beginning.

The concept that goes with that is a more general philosophical one. What kinds of documents do you really want to change and to what extent do you want to change your past, your present and your future? A lot of people that I met in the gender groups that I belong to have expressed this frantic urgency to complete their transition. I can understand that because it's so emotionally draining and it's so energy consuming. It will be such a relief to get it over with and get on with our lives. But the other often expressed concept is that they want to just disappear. We've all seen people who have done that. We have been good friends with them in some of our groups, and all of a sudden you never hear from them again. They just never reappear, and are going into another closet. The danger of that philosophically and psychologically is that all of the fears and shame and guilt that we have felt in the past are going to be waiting for us there again in our new closet. Those people are going to be forever waiting for the other shoe to drop. They're going to be forever afraid of somebody discovering their past, suddenly exposing them to the light of day much to their ashamed and embarrassment.

We spent some time talking about the fact that disappearing just doesn't work for most of us in wonderful reality. Now being a transgendered individual going from female to male in most cases because of the power of testosterone they can make a very, very convincing appearance. It's much easier for them to effectively work in their chosen work and live in their chosen gender roles without having to disclose their past. But for almost all of those of us who are going in the male to female direction, the stark reality of it is that those people who are looking at us with knowing or open eyes aren't going to really have much trouble in figuring out that there's something just a little different about us than the genetic females that they know. Most of them are going to figure that out soon or later. Most of them will figure it out really soon even if they don't say anything. The net result is that I don't think it's possible for most of us to completely hide our past anyway. I think most people really kind of resent people trying to fool them and feel cheated somehow when you aren't honest with them. I think most people appreciate the honesty and appreciate your having the confidence in their friendship to be a human being with them and to be who you really are with them. So I would certainly urge every one just as a personal matter to just, if you can, somehow deal with that issue and get over it and stop trying to hide.

The other major advantage of that, of course, is that the world is not going to know about transgendered individuals if they don't know that there are transgendered individuals. If everybody goes and hides, nobody is going to know that we're out there. The best way to get people to lose their discomfort with transgendered people, as with any other minority, is for them to get to know you and find out that they don't have as much to be afraid of as they thought; that we do have a lot of good things to contribute; that they don't need to worry about losing the person that they used to know; that we're really the same person underneath it all anyway; and that we can still contribute just as much as we were before.

The next thing that we discussed was that given the fact that the need to change our documents is primarily to facilitate our lives because documents are just an unavoidable part of modern life. One of the groups that I belong to in Santa Cruz is a recently formed a group called the Parkhurst Society, named after a real interesting character that lived in a little town in Santa Cruz County on the coast of California called Socal. It was a little logging town. They did logging, they had a saw mill, and they shipped lumber products off to the rest of the world. Charley Parkhurst lived there in the 1800s and was apparently a good lumberjack and a sawyer and just an all around good fellow. He was well respected in this little community up until the time that he died: you all either know or expect what happened when he was taken to the mortuary to be embalmed. They discovered that Mountain Charley was not Charley really, but Charlene, and that he had lived his entire life as a male even though he was born genetically female. This was in the 1800s when you really didn't have any documents so it was much easier to do that then. Charley was able to pull at off at least until the final moment. But you can't do that any more. In order to live in modern society, we need the documents, and we need to have them changed to save time so that we don't have to constantly be explaining why it is that our name that we go by is one thing and the wanted documents of something else. Although that is a wonderful outreach opportunity.

We tried to develop the priorities of our documentation needs. There was unanimous agreement that far and away, number one, the document that you need is a driver's license, or if you don't drive a state identification card or identification card from some governmental agency. That's what everybody wants whenever they say, "Well, can I see some identification?" That happens to us all the time, cashing checks, going to the bank, getting stopped by law enforcement officers if you're that unfortunate, and so forth.

Next in the priority order was the employment documentation such as Social Security card. Any time you go to apply for a job almost all the forms nowadays require you to list your Social Security number, even though at least on my card it says not to be used for identification. If there's any one number that identifies you nationally, it's your Social Security number. And everybody wants it. There's nothing specifically to prevent you from disclosing your Social Security number without changing your Social Security administration records, but the Social Security number is oftentimes used to index you as an individual. Sometimes if they try to index you and bring up your Social Security number that you've given them they're going to find that there's a name there that they didn't quite bargain for.

For self-employed people, credit records are probably of equal importance in case they need to do a DBA [doing business as] or get a credit rating. And many times for employment applications and employment background checks, one of the first thing a perspective employer or a credit agency will do is pull a credit bureau report for you. Of course those are some of those records that you're not going to really be able to change. You just can't go back in there for somebody like myself that's got

a credit history that goes back thirty-something years. There's no way that I could even find out where all those records are, let alone expect them all to be changed to conform to my name that I choose to use nowadays. So that's another just good argument for just abandoning the idea of trying to completely and forever change your identity and hide your past.

Close behind that and maybe as a facilitating document to get all of your other documents would be a court ordered name change. A court ordered name change is the document that will be universally accepted by everyone in allowing you to document your current name and perhaps more importantly change from one name to another. A lot of people who think that they are going to get through this process and not have anybody else ever find out who they were before, they can do that if they're really diligent for a while. But there's always something that they need to be able to do that requires them to prove not only who they are today but who they were and the fact that they are the same person that they were by this other name back then.

There's many, many examples of this such as changing title to personal property such as automobiles, boats, air planes, if you are that lucky, and so forth, and to real property. If you've been around for a while and have been diligent in your financial affairs and have acquired some assets, you're going to need to change the title of those holdings probably at somewhere along the line. You can do that in many cases by going to your local attorney and getting their assistance. In drafting a document basically deeding that property from yourself in your old name to yourself in your new name, you're going to be required to sign that document in your old name. Most of us, once we get through this process a little ways, no longer have any documents in our old name. We have a current driver's license that shows who we are today. You don't have anything that shows who this person is on your deed and you're going to need to prove that to the notary public who's going to have to notarize your signature. The most effective and convincing and universally accepted way is the court ordered name change.

So, in my view, the documentation priority is, number one, driver's license or I.D. card; number two, Social Security card; and number three, court ordered name change. You can do those all in pretty rapid succession and one will usually strap one into the other.

I'll just touch briefly on school records. School records are a lot like credit records and some of these other categories of records that we'll talk about here in a minute. Being historical documents, I think in most cases the best that you can hope for in that regard is to have them cross index the existing school record to reflect your current name. As you go in to apply for a job, you need to prove certain things like who you are and that you have legal status to be employed, which is of importance to people who weren't born in this country. If there's any question they are going to require proof of citizenship which is either going to be a birth certificate or a passport, in some instances. Many schools might accommodate you in issuing a transcript of your activities at the institution reflecting your current name, particularly if you have a court order. They might even go so far as to change your gender designation on the transcript. A transcript is kind of a hyper document: with the computers they can probably create a record of your attendance from the institution and it's just a matter of changing your name in the computer in putting out the transcript showing your grades. That is one thing: going back and changing handwritten documents, class records, is another. You're certainly not going to get them to go back in there and reprint all the year books, send out recall notices for all the people that had yearbooks and change your photo and your picture.

So you just can't do that stuff. So don't even try. That's the message, but rejoice in it. Rejoice in

the message. Be who you are. Educate. Use it as an opportunity.

The real nuts and bolts stuff and the stuff that you need to know badly is how do you get some of these specific documents changed? So we began the first of the federal documents even though federal documents in many cases are not the first ones in chronological order that you're going to want to change. But we began in the workshops talking about federal documentation. Luckily Social Security records are pretty easy to change. Quickly, show of hands, people who have changed their Social Security records already. [Several.] Anybody have any serious problems doing it? [None.] Social Security records are pretty easy to change. Social Security gender designation does not appear on your card. The Social Security form that you need, the SS-5 application for Social Security card you can get it by calling 1-800-772-1213 and ask for form SS-5 which comes with the instructions.

Laura reported that when she did her change preoperatively that she just scratched out the Question No. 4 on the application which is entitled SEX. It has the typical two boxes, "male" and "female." Laura was successful in just marking out the word "sex" and writing in the word GENDER and checking the female box since she was concerned about doing something incorrect under the penalty of perjury, as a good attorney she is. Actually I think that's fear of losing your state bar license if I'm not mistaken.

The Social Security application form and the accompanying instructions, which are all in one four-page document, are remarkably clear for government bureaucracy. They're really pretty easy to understand and they give some good examples of what documents they will accept. With regard to change of name that they need documents identifying you in your old name and documents identifying you in your new name. They don't require the court ordered change. They'll accept some remarkably ambiguous documents, at least in my opinion, they're ambiguous. For examples, they'll accept insurance policies, church membership records, hospital or medical records, health insurance cards, marriage or divorce records, passports, course, I.D. cards, driver's license, and court ordered name change, of course, but some of the others are really kind of surprising but they will accept those.

The thing that I would like to remind everybody of is that the whole purpose of Social Security is to make sure that you get the benefits that you're legally entitled to. The way that they do that is with your Social Security number. It's my understanding at least that if you really wanted to that you are probably able to get a new Social Security number issued. You will in any case have to identify yourself by your previous identity and your previous Social Security number if you've ever had one before. You wouldn't want to ever conceal that information in any event because Social Security is an entitlement program. The whole purpose of maintaining your Social Security records is to make sure that you get the benefits that's you're entitled to.

The basic categories of Social Security benefits are what they used to call old-age benefits, but know they call it preretirement benefits. The next category is survivor benefits—if you die and leave a spouse with minor children, then they may be entitled to survivor benefits up until the children are a certain age. The third category benefit is disability. The technical definition of disability for Social Security requires you to be virtually dead. One of the related benefits is SSI, and I have several clients and friends that are transgender people who are receiving SSI benefits. SSI is supplemental security income, and it depends on your income level. It's kind of a welfare benefit; that is, administered in many cases by the states. But it is tied into the federal system. The main thing is to make sure that they don't get your records fouled up. Although many, many people change their name and that's primarily what they're going to go by, it's very important, I believe, for you to keep your same Social

Security number and just change your name and make sure that they get it right.

One of the things that everybody needs to do regardless of whether you're transgendered is, about every three years or so, to write to the Social Security Administration or call that 800 number and request a statement of your Social Security earnings. I believe that after three years they will no longer amend your Social Security earnings record even if it's incorrect. So you want to make sure that your earnings are reported to Social Security correctly and that you're being given credit for all the earnings that you've reported.

The other practice pointer that I would make regarding Social Security cards is that you can apply by mail if you have had a Social Security card at any time. If you've never had a Social Security card, you must apply in person. I would encourage transgendered people to apply in person in any event because they require that you submit original documents or certified copies, and I don't know about you, but I just think that the possibility of getting those documents lost is too great. The possibility of them not understanding what in the world is going on is too great. If do you it in person to hand the documents to them and hopefully have them handed back to you, then you can explain any questions and handle any problems that arise right on the spot.

The next thing that we discussed was U.S. passports. We were very fortunate to have input from Jessica Xavier who had the experience to apply for her passport in the headquarters of the U.S. Department of State. In dealing with her passport change, she was fortunate to be able to talk to the individual that writes the policies for changing name and gender on passports. She was able to get a photocopy of the current procedure which I want to caution everybody is being changed. Their procedure is in the process of being changed, and we have the wonderful opportunity to give input to the official procedure for changing passports. So it's a really exciting opportunity. But the current policy is basically pretty much the same as the Social Security records. I do have a passport in my former name. But I've never used it. Why do we need a passport? And what is the passport doing for us anyway? What does the passport do? The passport is the document that you need to exit and re-enter the country, to establish your right to pass freely through the border. In cases of the United States passport is proof of your U.S. citizenship. So you need to prove first of all who you are, and that you are a U.S. citizen and that you are the same person who has this U.S. citizenship status. So, a passport is kind of a combined document of identification and entitlement.

It is a very interesting document because you can be a U.S. citizen by virtue of either birth in this country or by naturalization process. So the passport is not identical with a birth certificate because you can be a U.S. citizen without having been born in this country. The thing that you're going to need to prove to people is that you are a U.S. citizen to be able vote and to be able to work in this country if you were born in another country, and so forth. Proving your U.S. citizenship in many cases is all that you're going to need to. The birth certificate will also do that, but a birth certificate does not provide any evidence of identity. You can carry around anybody's birth certificate and there's no way of proving or connecting this piece of paper with you as a person. That's what the passport does. It's got your picture on it. It's got a physical description of you on it, and of course one of the items of physical description whether we like it or not is what our anatomical characteristics are. That's primarily why the sex designation appears on documents of identification to divide you into one or the other approximate one-half of humanity. It's something that is reasonably and usually readily identifiable. Of course, we challenge those boundaries and confuse the heck out of most people.

The only time that I'm aware of that a person absolutely needs a passport is if they're traveling out

of the country to countries who are not in the immediate vicinity of the United States. For Mexico and Canada you really don't need a passport for in most cases. It doesn't hurt to have one, in some case it's very helpful, but it's not absolutely required. We had a little discussion about a couple of incidents that some of us were aware of with regard to people passing back and forth across the border to Mexico and the United States and Canada and the United States. If you never leave the United States you never need to have a passport. This is not a document that most of us are going to require as a routine method. But some of us do travel pretty widely.

For those of us who go to Mexico and Canada, it's a document that I would certainly recommend that you get. It does greatly facilitate your entry and exit to the country in the event that the border patrol or the customs people think that some of us, particularly at various stages of our transition, do look kind of kinky. The border patrol people are trained to look for things that are pretty serious stuff. They're in many cases looking for international refugees. In some cases they're looking for fugitives from international justice. They're looking for evidence of smuggling or contraband which are all very serious offenses.

We spent some time discussing the almost scary power that border officials have in any country. I'm not even sure that they absolutely require probable cause to search you. They may have the power to search you just as a matter of routine or do spot checks, like road blocks or to field sobriety check points and so forth, for no other reason that you are a statistical sample coming through the gate. They're going to search one out of every 137 people coming through the gate today and you're No. 137. You're going to get strip searched, including cavity searches and everything. So when you're going across the borders, be prepared for that: be well documented particularly if you're in the state of transition which may arouse their suspicion. If you're coming back across the border from Mexico with 237 bottles of hormones in your purse, then they're going to wonder what in the world is this person doing? You may say, "I'm doing it for my own personal use." I wouldn't feel comfortable doing that even with a passport, because I in many cases they can use a relatively hazy pretext to cause you some serious grieving.

One person reported to me not long ago that when she was coming back across the Mexican border, she ultimately ended up getting very seriously harassed, arrested and incarcerated. She was put into the jail where she was known a correctional officer. She was noticed, embarrassment and made an issue. It's not really clear whether that was an legal set of circumstance on the part of the border patrol people, but she was not properly documented. Whether being properly documented would have avoided that or not, we don't know, but it certainly may have helped.

So, if you are going to do international travel, make sure that have a passport. They really aren't that difficult to get. What they need is evidence of your U.S. citizenship, because that's what they are certifying by your passport that you are a U.S. citizen. You're going to bring in a birth certificate in many cases that isn't going to match the name or the gender that you want to have issued on the passport.

Whether or not you even want to change your gender designation on the passport, preoperatively, is something you want to think about. Most of those border patrol people are going to be thinking in very simplistic terms and—whether we like it or not, and God knows how I love Martine and her concepts and brain sex and all those wonderful books and everything—think of sex as being between the legs and gender as being between the ears anyway—if they even understand that they are two different terms. So when they see sex "F" and they are going do a cavity search they're going to expect

a cavity to search. And when you don't present a cavity to search, they're going to be very confused. And then they're going to start wondering who in the hell are you really. What are you really trying to do here anyway. That can be the start of a very, very long nightmare. Even though the State Department does have a procedure for getting a preoperative change of gender which requires a letter from a medical doctor describing your circumstances and whether you are in the transitioning process, I would question whether you want to do it.

In all cases they require a photograph of you which depicts your true identity. If you're in the transitional process where your appearance changes radically from time to time in going from male presentation to female presentation or into an androgynous presentation at times, then I would encourage you to have your photograph taken in the buff—in the all natural presentation. If they have to start doing serious searches and they start taking off all of your artificial parts to match your photograph, they're going to see you in the pink room across the border. So think about that before you march into the passport office or to the U.S. Department of State and start getting a passport in a contrary presentation. Border patrol people have incredible power and authority. Just watch out for them, and don't try to fool them because they will come back and cause you some serious grief.

Jessica mentioned the Scottish driver's license. Some of the transgendered groups in Scotland solved that problem by saying, "Hey, we'll just document both genders" with a two photo drivers license. Jessica wondered if it was time for us to move Scotland. I think that luckily all of these issues can be handled pretty easily by just being honest. Just knock off this concept of trying to hide your past and you go in there and say "Look, this is who I am." And if you're going to travel outside the United States or travel anywhere for that matter, particularly when you're in a transitional phase, if you've got a court ordered name change, court ordered gender change, whatever, carry a [certified] copy of that with you in your purse or your wallet or your attache case. Doesn't hurt to have that with you at all, and don't be ashamed!

The next federal area of documentation discussed was military records. Without restating the obvious, military documentation changes are a non-issue for anybody in active military service. If you want to change your gender or your physical appearance in active military service, then you aren't going to be in active military service for very long. It's just not tolerated right now. So, this is only of interest to people who are former military and are entitled to military benefits such as retirement pay, as use of base facilities or PX privileges and military transportation. I'm not aware of any major difficulty in getting your I.D. cards changed to reflect your current appearance. We were delighted to see Jane Fee's military I.D. card. She said, "Did you realize that the military I.D. cards do not have gender designation or sex designation on them?" That was news to me. For whatever reason, it just isn't there, so you don't have to worry about that on a military I.D. card.

We were fortunate enough in our session to have some people who were civilian employees of a military facility. They reported that they found that there was no difficulty in changing all their documentation except the DD-214, the record of service. It is the military equivalent of your college transcript. It shows a brief history of when you were in the service or dates of separation in service and generally what your specialties were in so forth.

So military records hopefully shouldn't be a problem. If you need a new I.D. card, go to the agency that issued it and ask them to reissue it showing your current appearance and your current name. Again, with the court ordered name change, it should be no problem. The handout that we gave on military law includes a form that you can use to change military records if you have the need to. It

also includes addresses of where to write, depending upon your branch of service and so forth. Just be aware according to Sharon Ann Stuart, our Military Law Director, that with the consolidation of the military these days, those addresses may no longer be accurate. If you write to the addresses indicated on the form, you should at least have them hopefully forwarded to the right place.

What we're going to do now is to go into the state documentation. This is not in order of priority of need for documentation change. I should point out that these procedures are not just for people who are contemplating a surgical change. These procedures apply to anybody who needs to change their name for any reason. The only difference for transgendered people is whether you want to change your gender designation. And in many cases, that can be done preoperatively or non-operatively.

We're going to begin with the concept of just how one goes about changing one's name. In every jurisdiction that I'm aware of, without having done exhaustive research on this subject, is a procedure for changing names. In the days of Mountain Charlie, they didn't have to worry about that because anybody could just, you know, what's your name, and you'd tell them, and that was your name. That's still true today, at least in California. A person can use any name they want with very few restrictions. Most of the restrictions are that it can't be used to defraud somebody or to avoid paying your just debts.

Some of the cases denied a change of name if it would be cause confusion in your identity—and I don't mean that in the transgendered sense—ff you're trying to take a name of some very famous person. Even though there are a lot of people around named Washington that don't look too much like the president, there are a whole bunch of people who you wouldn't want to take some really famous person's name. Not that such would be totally prohibited, but you might run into a little bit of difficulty if it was a very unique name of a famous person. The other category was taking a name that would be likely to create a disturbance. There was a case reported in California of an individual who wanted to use a name that incorporated a very racially pejorative term into the name. Every time the person was called by the new name it would be repeating a very offensive racial slur. This was being done as a means of political protest. The Court denied saying, "That's just asking for more problems than we already have."

The so called common-law right to change one's name is merely a description of a generic right to be known by whatever name you want to be known by that doesn't require any particular formal procedure. The purest example of this is in the Mountain Charlie days of just going around and somebody asked what your name is, you tell them whatever name you want them to call you. At some point in time when they started putting those things down on paper, you do it with a form that's attached to the documentation called a Declaration of Name Change. And all that is is just a formal statement that you have notarized saying that "I want to change my name from this, to this, and from here on after I want to be known by this name." You can give that document to people such as your creditors or your employer or whatever it may be. This is a document that just demonstrates that I'm exercising my common-law right to change my name. In California that is perfectly legal. There is nothing wrong with that procedure in California.

In California you can get a driver's license in any name you want just by going into the Department of Motor Vehicle and filling out a name change. There are certain consequences that attached to doing that, but you can do it. Since we're on driver's license, why don't we talk about that for a moment. The procedure varies from state to state. In California, the driver's records are governed

by the Department of Motor Vehicles. To the best of my knowledge and from the research that I was able to do, I wasn't able to find any statute that specifically authorized any particular procedure for the Department of Motor Vehicles to follow in changing the gender designation on driver's licenses. There is a California statute which reiterates the common-law right that every one has to change their name. The Department of Motor Vehicles just has the typical bureaucratic form, like the Social Security record, that includes a change of name section. You just fill out your old name and your new name and your number so forth, and they'll give you a new card in your new name with the same old number.

If you want to change your gender however, the good news in California is that you can do it, and you can do it preoperatively. Now you can't do it preoperatively as a matter of right or without following certain procedures. But the Department of Motor Vehicles does have administrative procedures that they have developed which are in writing and which are summarized in the handouts to the documentation law section. I have a photocopy of the Department of Motor Vehicle policy manual that sets forth exactly what the policy is, with great thanks to Sister Mary Elizabeth and my therapist Milly Brown of Los Gaddis, California. The Department of Motor Vehicles has a form for changing your gender designation. God bless the bureaucrats. If you fill out the right paperwork for a bureaucrat, they're just as happy as they can be. They have no problem doing that. And all you need to do in California is have this very simple one-page form filled out and it's signed by a medical doctor or a psychologist stating that in their opinion your gender presentation is either male or female. That's all. They check the box. Actually there's two boxes. I can't remember what the other one is. They check two boxes, and they don't have to say that you've had surgery. Just say that your gender is male or female and then they sign it. You attach that form to your application for the driver's license, you pay an administrative fee—I think it's \$20—and you get a new driver's license stating your new name and your preferred gender designation. Randall mentioned that the other box is the person's demeanor: male or female.

In California having that driver's license changed just simplifies the heck out of your life because that's the one piece of identification that you're asked for just constantly. Once you got that, then you're all set. The main problem, even in California, depends upon the level of transition that you're in. Since I haven't completed my transition there's times when I still appear in male mode. Not very often, but when I do, my driver's license doesn't look anything at all, at least I hope not, like I looked when I am driving around in male mode. Just like the old days I have to potentially explain away what I was doing, but it doesn't cause me any major distress. It does have a different name on it too. So I just have remember that if I need to go to the bank or something like that, that I have to make sure that I do it when I'm well documented.

In California probably like in most states, it is a crime subject to fine or imprisonment to have more than one driver's license. So I would caution people. For God's sake, if you're going to do what many people do and don't pay any attention to your attorney and have two driver's licenses anyway, don't carry them both at the same time.

In my case, I could have had an entirely new number issued, but I chose to keep my old number because I was kind of fond of, and I had actually memorized it after all these years. I decided since I didn't care whether they referenced me under my old name. But they actually don't. It's my understanding that the change of gender designation and status on your driving record is confidential. That doesn't mean that it's top secret, but at least it should not be available routinely to Joe Citizen that walks in and fills out a request for your driving record. Until recently, in California anybody could

go in and get anybody else's driving record. It was a public record. That presumably would not be available today to casual inquiry. I don't believe it's even available to casual law enforcement inquiry, as if you're stopped on a traffic violation or for any other law enforcement contact in California. Theoretically, the police officer who radios in and requests your driving history or your criminal history, it should not cross reference you to your prior name and gender, at least as far as your driving record is concerned.

Now, if you are lucky enough to have a rap sheet, those are the kinds of things that you're probably not going to get changed anyway because the FBI and all those wonderful people are going to want to know your background. If you were previously convicted of a criminal offense, for example, they're going to need to know what court it was in, what name that you were known by, and so forth. You're never going to get those records changed anyway.

Probably the most important document after the driver's license, in my opinion, is the court ordered name change. In California that's a very simple process. It's spelled out in detail in the statutes, the statutory guidelines are in the documentation that's attached to the workshop handouts. They're relatively easy, even for a non-attorney to follow. Some counties even have fill in the blank type forms that will allow you to do that and instructions that go along with it. So it's not critical [in California] that you have an attorney. The procedure is so relatively straightforward that if you don't feel comfortable in doing it yourself or you want somebody to hold your hand, then it shouldn't cost you very much to have an attorney do it for you. The biggest expenses are going to be the court filing fee in California. It's \$182 these days and it will probably go up next year. Then there is the fee for publishing the notice of the intention to change your name in the newspaper. It's obviously a very public proceeding, so it has a disadvantage over the method of the common law method of just declaring that you're going to be known by Jane Doe instead of John Doe. But it's just unavoidable.

The purpose of going to court and changing your name is to make this a public pronouncement. Any person having an objection to that change can come forward in California to show cause as to why the Court should not issue the order. So in California, the presumption is in favor of your right to change your name by court order. In many states, the procedure is virtually automatic. All you need to do is fill out the proper paperwork, publish the notice in the newspaper for the required number of consecutive weekly publications or have it posted prominently in the county of filing in required public places commonly used for legal notices. What happens is at the time you file the petition and pay your filing fee, the Court issues what they call an order to show cause which is just that. The Court is ordering anybody that has any objection to the change of name, to make a written objection to the Court before a hearing date that they set at the time you file the petition. They'll give you a hearing date. Prior to the hearing date, anybody that objects to your name change has got to file written papers with the Court. If they file the written papers with the Court, then they can additionally come forward at the court hearing and show whatever objections they may have to your name change. That's very uncommonly done. The time you might possibly encounter that is if you got a particularly vindictive spouse or a family members who are upset about it or something or possibly creditors. But it's such a public proceeding that the creditors are going to follow you to your new name anyway.

Once that's done, you don't even need to show up the court hearing. Your attorney doesn't need to show up, so you don't have to pay your attorney to show up. If you want to have the attorney to file the paperwork for you and to be available in case somebody does file an objection to go into court or to hold your hand, talk to the judge, tell them what the proceedings are and get it done for you, then get one. It's a question of whether you have confidence or whether you'd want somebody to kind of help you along. It shouldn't cost you more than a couple of hours at the outside of your attorney's

time. Probably even as little as an hour of attorney's time at their normal hourly rate. The attorney's fee should be less than your other fees. Total procedures should be in the neighborhood of \$500 or maybe even less. Of course, unless you go to a high rolling attorney who charges a lot money per hour, more than I make.

[Note from the Executive Director: As informative as this is for many states, not all states are this way. Some states, like Texas, require you to be in court and to file a sworn petition stating many facts. If you are not sure, hire an attorney.]

The other neat thing about California is that they have a combined proceeding for getting your birth certificate changed. You can do the name or gender designation on your birth certificate; that is, you can get your birth certificate changed with your name alone. You can just have your name changed on your birth certificate. And in California, if you change only your name on your birth certificate then they will not issue a new certificate. They draw a line through your old name and type your new name in there and give you certified copy of that new birth certificate showing your old name with your new name line over it. If you change your gender designation, however, at the same time, then they will issue a brand new birth certificate, which is really neat. It's a brand new document, and it won't have any reference to the name and gender designation that you had on your original certificate. But the only catch to that is that the only way that you can do that with a California birth certificate or with a California court proceeding is to have had sex reassignment surgery.

[Note: It's Time Texas is lobbying to change Texas law to streamline the name change, gender correction and birth certificate alteration. For those who wish to use this as a guide in their states, the information is included herein at the end of Appendix G.]

We spent some time discussing an issue that has come up in several instances, primarily with F to M's. That issue is, what constitutes surgical alteration? I think in the cases of the males to females, the procedure is pretty straightforward. The procedure that they're looking for in the certain certificate that you have to attach to your petition is that they've done SRS or sexual reassignment surgery and converted your penis into a vagina and removed the testicles. So that's the procedure that they're looking for with male to females. But with the F to M, however, the issue is not that clear. Dr. Shrang even said yesterday that he doesn't do female to male surgery simply because he doesn't feel that the procedures that are currently available are adequate. From my talking to the other surgeons and seeing some of their slide shows and so forth, I will tend to agree. It's still a very, very primitive procedure, and the results are very, very rudimentary at best. I don't believe at least in the California statutory procedure, it doesn't define what kind of surgery is needed.

by Phyllis Randolph Frye:

I think we're going to get to the point soon, especially in Texas because I've been working on it in the case of the transsexual women, that we're not going to have to have a doctor's certificate saying that they have finished all genital rearrangement surgery and now we have a neo-vagina. Instead, I believe, and I've talked with doctors in Houston and Galveston who do the transsexual men, there is the analogous situation with transgendered women. Many of the doctors are becoming comfortable with putting a notarized letter on their letterhead to the effect that this person has undergone "transsexual alteration," and in their professional opinion, this person has completed their "transsexual alteration" and has no other procedures required. That "completed transsexual alteration" could be a nonsurgical transsexual who has undergone very long-term hormonal therapy. This applies to both

FTM and MTF.

by Melinda Marie Whiteway:

One of the issues that we have discussed throughout the conference is that the fact that there is so little law on this subject may be in many cases an advantage rather than a disadvantage. Where the statute is vague, I'm not sure that we want to call attention to it. What we suggested in the workshop was that for those individuals who aren't sure whether their procedures, if any, really qualify them to get that physician certificate, I would just encourage them to consult with an attorney [who has read the Proceedings and truly understands transgender issues]. The attorney and the doctor can hopefully work together to get the doctor to sign a certificate that they both feel comfortable with and one that will satisfy the Court sufficiently to issue the order for the change of the birth certificate.

The final comment that I'd like to make is that this reminds me of another little song that we had about the ant and the rubber tree plant. I don't know if any of remember or are old enough to remember that, but there was a cute little song: the title of it was called "High Hopes." We had an issue come up which, fortunately because of Phyllis and the individuals involved, I was aware of before the conference. It was an individual [living in California] who had been born in the State of Arkansas and had wanted to get the birth certificate changed in the State of Arkansas. They said, "Gee, I'm sorry we don't do that in the State of Arkansas." The individual was undaunted by that procedure and went to an attorney and said, "I really want to get this birth certificate changed, and it's in the State of Arkansas." The attorney was resourceful and said, "Well, heck, we're just going to go to our court here in California, get a court order and order the birth certificate to be changed." In dealing with the State Registrar of Birth Records in Arkansas with the California court order, a brand new birth certificate was issued with the preferred name, preferred gender designation, no reference to the prior birth name. Like the song says, "Oops, there goes another rubber tree plant." There it goes: who would have thought it.

If you would have come to me, I would have said to just forget it because that is Arkansas. My therapist likes to call those boulders that turn into pebbles: we examine the boulders more closely and find out that we've been looking at merely pebbles through a high-powered telescope rather than through a one-to-one magnification. All those people who were not here are going to have to buy the Proceedings now because there's no other way they're going to get this invaluable information.

Just a couple of really brief closing comments so we can all go to the lobby bar and relax after this long session. To the attorneys out there and to those counseling transgendered individuals, there's a lot of transgendered people that have a lot of pent-up anger and hostility because of the way that they have been treated, of the grief that they have gone through, of the abuse that they have been subjected to intentionally or unintentionally by their family and loved ones. They are very angry. And many, many people are very quick to want to litigate: they are anxious to sue, to sue the bastards. Of course, that's another reason for being fully out in the open with your gender transition. If you sue somebody, then every little scrap of your past history will be open to scrutiny in the litigation. That's one thing that you need to be aware of before you undertake any sort of litigation.

Secondly, as attorneys, we have a saying that bad facts made bad law. A really good example of that was a case that we studied last year here at the transgender law conference that originated in Seattle, Washington. Seattle, you might remember, is one of the very first West Coast cities to have a nondiscrimination ordinance that gives some protection to individuals who are transgendered. In the

fair city of Seattle, or nearby, was the case called Jane Doe vs. Boeing Aircraft. Jane Doe was a very high ranking executive in Boeing Corporation, and she was apparently involved at the very highest levels of sales of jet aircraft worldwide. To their credit, Boeing Corporation at that time had something like seven or eight people going through gender transition. Boeing had established procedures in their company for how this was going to be handled. By and large, the procedures weren't all that bad.

But apparently—and forgive me Jane Doe if you're out in the audience there somewhere—in my reading of the case it just seemed like it was a situation where Jane Doe said that you got your way of doing things, and I got mine; and I'm going to do it my way; and if I want to come to work wearing a certain outfit, then I'm going to come to work wearing a certain outfit; and I'm not going to wait for you to make me jump through this hoop and that hoop. Now we probably all know people in our local groups that have that kind of an attitude. They're very much against all of these little procedures that people want us to go through. Now I'm not going to get into that discussion: I'm not saying that I agree with those procedures either.

Jane Doe refused. She was counseled. She wasn't spontaneously terminated, but she was counseled and Boeing said that these are our procedures, and we feel that they're reasonable, and we want you to follow these procedures. The next day as I remember it, in comes Jane to work dressed in contravention of those company policies and she was ultimately terminated. As you might expect, Jane Doe with that kind of attitude did file an action against Boeing Aircraft. She lost. I think, as far as the facts were presented, the reason why she lost was fairly obvious. Number one was that she was taking a position which was at least arguably unreasonable or untenable. At least viewed slightly differently and somewhat oppositely, Boeing's position was not patently unreasonable, arbitrary, capricious, or discriminatory. And secondly, she did not have proper forensic back up. Even her own experts testifying on her behalf could not say that Boeing's procedures were outside the standards of practice and care in the industry as evidenced by the Harry Benjamin International Dysphoria Society. [For additional discussion, see Skaer's Employment Law Report in Proceedings II.]

The net result was that we do have one of the very few cases where in a transgendered individual was denied the right to be reinstated. So, watch out for those cases. I caution you against filing a case when you don't have as good a facts as you can possibly get. Even then you're going to be fighting an uphill battle. You're not going to have much of a chance if you've got bad facts. That not only hurts you in your own individual case, but it provides a negative precedent for all the rest of us to have to overcome.

The good news is that then there are other cases like Jessica Sterns who some of you had the pleasure of meeting the other day [in the workshop], who flew in here from one of her routes. Jessica Sterns is the same pilot that sued Continental Airlines because they terminated her flight status because she was going through a gender transition. Unfortunately for us that case is not going to be reported because she was able to favorably settle the case. She is now flying again for Continental Airlines back in the cockpit as Jessica Sterns. She says she's number thirty-one of the pilots to whom the FAA has reissued a commercial pilot's license. She has been fortunate enough to be able to help thirty-two and thirty-three already. She's back in the cockpit again, even though arguably she's not as qualified as she once was. I know you're asleep out there—"cockpit," get it? [This is also in Skaer's report in II.]

Next year we want to expand on our program of documenting the procedures available and so forth

in other states. It's an overwhelming large undertaking, and I encourage anybody who has experiences that they want to share to save the forms. Send them to me. Fax them to me. My name and phone number is going to be in the proceedings [see inside back cover]. I will be happy to incorporate those next year. Tell us your successes and your failures. Next year come to the conference whether you're here this year or whether you're out there listening somewhere or reading this. Come to the conference next year and share those with us, and help us formulate these policies.

Some of the forms that you got this year are specific to California, but I want you to take those back to your states. Even though some people like to refer to California as the land of fruits and nuts, we are the most populous state in the country and one of the geographically largest states [behind Texas, of course, and Alaska is mostly ice] in the country. I think we do have, at least as far as the law goes and legal issues go, kind of a reputation of being on the vanguard or leading edge of legal technology and legal precedent. So I think a lot of other states, if they don't have their own procedures already, may copy ours if you will push it. "Here, this is another state that has the procedure, and in fact here is a copy of their procedural manual. Here's a copy of their form. Hey, let's do it their way and see what's happens." Bureaucrats, even if they are from another state, might feel comfortable in following the example of another bureaucracy without worrying about getting in trouble.

We're [Documentation Project of ICTLEP] going to try add things like veteran's administration procedures, federal civil service, state civil service procedures, selective service procedures. A really interesting discussion we got into in the workshop was, "My God, we still have to register for Selective Service." I wasn't aware of that since I'm an old woman now. I'm not sure whether young "women" have to register for civil service. You know, if you were born a male and you go through a gender sex change, are you now exempt? Conversely, if you were born a female and you now change into being a male, do you have to register? One of the interesting and wonderful things about this is no matter which way you're going, as soon as you tell Selective Service what your situation is, they're going to say that you're 4-F. Don't call us, we'll call you. So you aren't going to have on worry about being called under any circumstances under the current procedures.

During one of the rare times when I've been able to watch television and we were having probably a pitcher of Margaritas one day, and I asked if the others had ever seen the movie "Switch?" The movie "Switch" among many, many other things, I think it's a great movie. It's just very well done, starring an actress named Ellen Barkin. It's a film that was produced and written by Blake Edwards, who is married to Julie Andrews. Interestingly they did another film that some of you may have seen named "Victor/Victoria." In the "Switch" film, in one of the early scenes is something that I think epitomizes our situation. Ellen Barkin plays the female portion of a film about a bachelor advertising executive, male, named Steve, who's a total jerk with respect to women and chauvinistic as they come. Three beautiful ladies who he has screwed in more ways than one, invite him over very seductively for a party in his honor and kill him.

They kill him because he's such a bastard particularly with regard to women. Steve is going into to the world beyond and is confronted by God who has a marvelously male/female duet voice. God discusses with the Devil as to whether Steve is going to go to Heaven or Hell. The Devil bargains with God to send Steve back to earth to see if he can possibly find one female who likes him, but as a woman. When Steve awakens he is in his pajamas in his very plush apartment in New York City as a woman but with his previous mind and mindset. He walks into the bathroom and he reaches down into the pajamas and does a quadruple take and ends up freaking out and starts screaming at the top

of his lungs.

The building security guard rushes in, and they get into this big long discussion as to what in the world [s]he is doing there and where is Steve anyway. Ellen Barkin has got to try to convince the security guard that she is entitled, legally entitled, to be in Steve's apartment. Now after you've listened to my long explanation, we get to the documentation area. She said, "Obviously, Steve must have said it was okay because here I am." Then she suddenly realizes what the magnitude of what she just said. She repeats, "Here I am," and she jumps in front of the mirror, and she says, "Here, I f__king am!" Well, that's what documentation law is all about. Is not only saying to the world "Here I am," but "I've got the documents to prove it." And that's it.