

EMPLOYMENT LAW AND POLICY PROJECT, LAURA SMILEY, ATTY  
(presented by Phyllis Frye, Atty)



By Phyllis:

It's time to start and we're going to talk about employment law and policy. But before we talk about employment law and policy I want to tell you a little bit about the person who should be here at this moment making this presentation. Her name is Laura Smiley. She is an attorney, a member of the transgender community, and she hails from Denver, Colorado. She's a member of the Board of the International Foundation for Gender Education. She is also on the Winslow Street Foundation which gave this conference a grant and covered almost all of our advertising budget. Laura could not come, but Laura was very helpful in helping me take the idea for this conference and making it happen.

There was actually two people who were very fundamental in the formulation of the early planning. One was Laura Smiley. The other one was Merissa Sherrill Lynn who is Executive Director, IFGE. Those two people helped me in August, early August of 1991 and in subsequent months to formulate and focus and bring about the early presentation of the words that attracted y'all to come here. Y'all, that's a Texas word, y'all.

There was an illness in the family, and Laura could not be here. But I do want you to know that the legal research she did, and it was extensive, is on the tables in the registration room. I am going to refer to them. I am not going to refer to them in detail because they're available will be part of the proceedings.

Also, Diana Sicetello, Diana raise your hand, has been working very hard in Denver with Laura. She has prepared a draft of an employer's handbook and those are also on the desk in the registration room. She is using this conference, and she has used the employment law and policy committee, to refine her draft. She has told us that when she comes up with the final edition, it's going to say, as approved by the Employment Law and Policy Committee of the First International Conference on Transgender Law and Employment Policy. Diana, I want to thank you for being here and for all your hard work. Even though her publication is going to be copyrighted, she has said in front of many witnesses she is going to allow us to put her employer's handbook in the proceeding; isn't that right? See now we got some more witnesses. Say yes, 'cause the court reporters can't do a shake head.

By Diana Sicetello:

Yes.

By Phyllis:

Let the record so reflect.

Employment Law and Policy is very very important to us so let me give you an example of why. December of 1977 was an extremely bleak month for my spouse, Trish, and myself. I had been unemployed for 19 months since I was last fired for being a "dress-wearing freak." Trish's job was not generating quite what we needed because at that time when we were both employed we had accumulated much debt. And also because her profession just didn't pay back in the 70's. Several years later her profession enjoyed a substantial pay raise but that was later.

We had used all of our savings which wasn't a lot learning how to downgrade our standard of living. When you lose your job, or if you lose your job, you will learn how to downgrade your standard of living. Someone was talking about that to me yesterday and we both got very indignant about some of the people in our community who are fearful of their standard of living being downgraded because if they take a risk to be who they are they might have to downgrade from a BMW down to an Oldsmobile. Well that's not what I'm talking, I'm talking about basic necessities.

To make matters worse I'd been unable to get unemployment compensation. My last employer did not fight it, but I had a very homophobic referee with the Texas Employment Commission who chose to write up my interview, even though it was unchallenged,

in such a way that I was blocked from benefits. Eventually, I won the appeal, and I did get the benefits, but that was later.

We felt very alone because neither of our families would have anything to do with us. Later, much later, her mother eventually came around and became one of our allies, but that was later and it remains weak.

The fight to change the ordinance was not making much headway. At the time Houston had a cross dressing ordinance. I had already been lobbying against it for about a year. Everyday I never knew when I went out if I'd be arrested. Everyday Trish never knew when she left for work if I'd be home from job hunting or lobbying or if she would find out that I was in jail. The ordinance was overturned in 1980, but that was later.

Christmas of 1977 was going to be meager. Yes, we had shoes. Things had not gotten that bad, but they were not winter shoes. We had some warm clothes, but they were becoming a bit tattered. It was depressing as hell. It was just depressing.

About the only things we did have were each other. We had and still have our faith in God, and at the time we had a very strong church family. Even though she and I loved each other, and we still do, and even though we were best friends, and we still are, those years of hardship bonded us together. She's talked about this time to many people and said, "you know I thought about leaving, but Phyllis didn't do anything wrong. All she was trying to be is who she is." Times like what we went through can either completely shatter a relationship or really forge a bond and those times bonded us together.

We felt that our faith was being tested much as in the story of Job. But no matter how bad it was, we always tithed and we still do, ten percent of our gross. Our church family helped to keep the loneliness and isolation at bay. At that time we were with the Metropolitan Community Church of the Resurrection in Houston, Texas. Many of you know the Universal Fellowship of Metropolitan Community Churches has many MCCs throughout the world. We sang in the choir at that time.

Just as a light point, back when I was a young man in Junior High and High School I sang tenor. When I went to college I sang bass. I remember particularly the Halleluia Chorus, because I learned it in tenor, and I learned it in bass. At MCCR I sang soprano and once I even had to learn the alto line. So now when

I hear the Halleluia Chorus I sing along, line to line. I just sing whatever bits and pieces I remember.

Each year at MCCR, as in most other churches, they have a White Christmas Offering where people bring canned and non-perishable goods each Sunday in December, wrap it up in white paper and place it at the alter. Poor families are given it the day before Christmas. And as I was key punching out this article and as I am saying it now I still get emotional and I start to cry again because they brought that food to us. We were the white Christmas family that year. It was quite wonderful.

We were brought eight boxes of food, all wrapped in white paper. We unwrapped it all. We put it in categories and we took out ten percent because we had a transgendered friend who had been living on the street, because she'd lost her job, and we gave that food to her. And the three of us cried a lot. And Joan, I don't know where you are right now, I haven't seen you in a couple of years, but I still remember then, and I hope you're making it. I know she's gotten a job since then in her engineering technology field. With the money that we'd saved from not having to buy food for the next several weeks we were able to buy warm shoes and we each got a warmer coat.

As you know my spouse and I did survive and now we're prosperous. The other transgendered person I referred to does have a job. I want you to know that I will never forget that day and that time. I do want you to know that if I can make it back then, you can make it today.

Now Employment Law and Policy. A job is radically important. We're going to be talking about health law, and we've talked about insurance law. People want our money for premiums, but don't want to help us out when we've got problems. We talked about probate law and the different ways people have tried to scare us about civil commitments. We're going to talk about criminal law and all the laws that make our life miserable. If some of us do get arrested for whatever reason, even if it was a driving-while-intoxicated, if we are cross dressed, we'll go through hell in jail before we're bonded out. We're going to talk about family law and custody of our children and divorce and things of that nature. Anti-discrimination in law in general will be discussed by Helen Cassidy, another kick-ass person, you're going to love her. Keith Stewart was tame. If we have our jobs we can survive the rest of it. We can somehow make due, we can buy time until the rest of it finally works out for us. And so it's drastically important that we are able to keep our jobs; that we are able to get some kind of job.

We are good people. The transgendered community is just like every other cross section of society. There are those of us who are college educated. They're are those of us who might have a 6th grade education. There are those of us who work real hard. There are those of us who don't. There are those of us who are physically impaired. There are those of us who are not. There are those of who are criminally inclined. There are those of us who are not. We're just like every other cross section because we really don't have a thing in common except for the fact that we are repressed for the same reason. That is, we're trying to be who we are.

When you really get down to the core of it, what are we doing? All we're doing is being who we are. You know there was a Broadway musical many years ago. The song was, "I've got to be me, I've got to be me." Everybody says I've got to be me. You see the free spirits, and you see -- as Ray Hill called them -- the mossbacks, you see the football players, you see the jocks, you see the country/westerns, you see everybody else. They want to be who they are, but they don't want us to be who we are. All we are doing, if we are not transsexuals or cross dressers in the transvestite area, all we are doing is occasionally cross dressing, putting on different clothing.

For that they do all the things that we know. And they take away our jobs, even if it's the job that we're trained to do, and they won't let us get another job. They won't let us keep another job. We are unable to contribute something back to society, and that goes to self worth and that goes to self esteem. Someone I am really coming to know better and better has been unemployed for a long time. I think it's due to the recession more than anything else, but she is one of us. She's been out of work for quite a while. Recently I was able to get her a job. It doesn't pay worth beans, and it's a part-time job, but it's a job. It's something for her to get up in the morning, to think about, to get dressed for, to go to, to meet other people, to interface. They know she's transgendered. And you know what? This charitable organization is just thrilled at what she's doing, and, her esteem is getting all these wonderful strokes. She knows she is contributing, she knows she's bringing in a little bit of money to offset her expenses and she's being told what a wonderful person she is. She's been told what a wonderful job she does and she's getting to interface and continue to practice her new presentation.

We've got to have our jobs. In Laura Smiley's paper called, "Transgendered Law and Employment Policy" she talks about the lead case. I am not going to give all the cases and I am not going to give all the cites because they are written down. But this one is called Eulane vs. Eastern Airlines and for those of

us in audio tape it's 742 Fed. 2nd 1081. It's the 7th Circuit Court of Appeals case in 1984 and essentially this dealt with an airline pilot who transitioned. These federal judges who were appointed by presidents who were very conservative are also conservative. I believe that they just didn't want to come up with a way to protect transsexuals. They got their law clerks to come up with some way that they can get out of this. The law clerks came up with a very interesting legal fiction. It is illegal under Title VII of the 1964 Civil Rights Act to discriminate on the basis of sex. Sex is a suspect classification as is religion, race, creed, others. So sex is a suspect classification. What does that mean? That means that if you file a lawsuit that says you've been discriminated against by sex, that the court will give it a very high standard of review and make the person charged with that discrimination really have to jump a high hurdle to screw you out of your remedy, your legal relief. The law clerks invented: this isn't discrimination based on sex, this is discrimination based on change of sex. It ain't covered. They came up with this junk: you cannot discriminate against men because they are men and you cannot discriminate against women because they are women but you can discriminate against transsexuals because they are transsexuals.

Well you can't crossdress on the job 'cause you can't wear women's clothes 'cause you're still a male. Or in the female to male, hey you can't wear men's clothes 'cause you're still a woman. And you can't get your names changed until you go to court and you can't get your birth certificate changed until you go to court. That's what I call in committee a "poof." Poof means legally you're a female woman then "poof", legally when the judge says so granted and signs the order, you're the other. And you're always legally either woman or a man. But this court says, hey if you're a transsexual, you ain't a woman, if you're transsexual you ain't a man, you're just a damn transsexual. Okay. That's where we are.

We don't have any legal rights as to our jobs, none.

What we talked about in our committee was that when you fill out a job application it may be advisable when it says what sex are you just to leave it blank. Let them fill it in. Because if you fill in a job application incorrectly and they want to get rid of you and they have no legal way to get rid of you, the first think they're going to do is check your job application. I see the attorney's in the audience are shaking their head yes. They're going to find something that you filled in wrong and you know what, you're going to get fired for one reason -- because you filled out a false job application. And you know how much that's

worth if you take it to court? It's not worth the paper it's written on. It's not worth anything so leave it blank and let them fill it in. Of course we joke about the fact that where it says sex you might put "O" for occasionally or "Y" for yes or "S" for seldom or "T" for terrific, "B" for boring. Any way, that's something you might consider.

There's a whole lot of other cases in here. She goes through them meticulously time after time after time. And court after court after court has said legislatively, as we read the history when the laws were created, it goes back to the Civil Rights Act. Sex means sex. We're going to give it its plain meaning. It doesn't cover you. You're out of court! You're out of court! Out of court! Out of court!

Interestingly, I do want to say this with respect with the suspect class. One of the reasons that I have pushed and prodded and yelled and screamed that whatever jurisdiction you're in, if you're in another country and you're lobbying, if you're in another state or you're in another city and you're lobbying to be in some type of legislation to protect you either in job or housing or anything else and you're trying to get yourself put into the laundry list, if you think you are protected under sex, read the definition of sex in that statute. Honey, if you ain't in there, you ain't in there.

If you think you're going to get in under the term gender, you better read the definition of gender in the statute. If it doesn't say transgendered, transsexual, cross dressing, you ain't in there.

And if it says sex orientation and it relates to gay and lesbian people, guess what, you're not in there.

You've got to lobby, you've got to do your work, you've got to do your networking and get the term put in "gender identification" "gender identification".

Now as to lobbying and politics. I get so tired of people say, "well I'm not political, but damn, I'm sure tired of being repressed." Political can mean a lot of things. It can mean that you wear buttons, you wear t-shirts and you put on bumper stickers and all this other stuff and that's what I do. But political can mean a whole lot of other things. It can mean that you contribute money to organizations that you believe in that you may never attend one of their meetings, but you believe in

what they're doing. You might contribute to the National Organization for Women. You might contribute to your local gay/lesbian/transgender political caucus even if you've never attended their meeting just to get their newsletter. You may get active at the time of screening of judicial candidates. It might be with A Women's Political Caucus locally statewide. It might be with the Mexican-American Bar Association or some other organization. It might be with the NAACP.

I'm an Anglo and yet I'm a member of the Mexican-American Bar Association. And you know what, those are fine people, and I enjoy them, and they enjoy me. In the last judicial screening meeting, when they found out that a couple of judges had given my clients hell in court and reluctantly signed the order, they chose to endorse the other candidate on one race. They also chose, even though they were going to endorse this incumbent in the other race, to send four members of the group to talk to that judge and say don't do it again or we ain't going to endorse you again. They said if they discriminate against transgendered persons they discriminate against hispanic people. That's politics.

And we've got to rebuild our bridges. That's what Judge Andel was talking about. That's politics. And when you get an endorsement card from an organization that you believe in, you follow it or you follow most of it. Because that's where the downline ballots come. You already know who you're going to vote for, for president, you already know who you're going to vote for Senator, you already know a lot of people you're going to vote for. But who do you know that you're going to vote for J.P? J.P. is the one who is going to enforce that eviction notice. That family law judge, and if you live in a county that's smaller so that is just one of your civil judges, that's the one who's doing to give your spouse a temporary restraining order. Temporary restraining orders are ex parte, in other words, for a short period of time that temporary restraining order governs until you get a chance to present your case at a hearing. You aren't even heard for a temporary restraining order, did you know that? You ain't even heard. You don't even have to be served yet and the judge makes a decision. It's a temporary one but the point is all that stuff can go on, like take your kids away, all kinds of things. Unless those judges are sensitized in their screening meetings as to who you are. I've sat through a lot of screening meetings and judges have come and State Representatives come and State Senators have come, and members of the City Council have come and members for candidates for County Commissioner's Court have come, and they've met Phyllis Frye. I've said, "Hey, these are our issues and you know what, I'm a good person and all the people on the screening committee that are there with me know me, and they know I am a good person." We network. My organization supports their endorsement cards and their organization supports my endorsement cards. That's politics.



Everybody has asked me where I get all these neat speakers this week. Well, I work with these people. I lobby with these people. I network with these people. I know these people, and you can too. That's politics.

I don't care if you never join a party. What I am describing is politics.

Now, there are two very interesting cases that we don't have any follow up on. I want to tell the lawyers that are reading this and listening to this, and I want to tell the nonlawyers that are reading and listening to this, that if they got an employment problem to get this information to their lawyers. Two cases, one in 1985 and one in 1986, were both against federal government agencies. People sued, they were transgendered people, and it had to do with jobs. As usual, the company or the bureau or the department filed for summary judgment saying you don't have anything, toss this out before we all spend a lot of money. Both times it was the Federal District Court in Washington, D.C. In both cases the Court said this transgendered person has standing to proceed with this lawsuit. The reason why there is no more history on either one of them is, pure speculation, probably because they were settled. In other words, the person was either re-hired or kept on the job or got some good money in their pockets to leave.

The cases are Doe vs. USPS, United States Postal Service, 37 FEP cases 1867, and the other is Blackwell vs. the Treasury Department and that's in the Volume 41, year is 1986 and these were all fought out under the Rehabilitation Act of 1973.

I encourage the lawyers to glean these cases to find out what's going on. I encourage the none lawyers to get this to their lawyers to glean these cases and come up with strategies.

At least we can have standing.

At least in the Appeals Court if we win in the District Court and they appeal or if we lose in the District Court and we appeal, there's a good chance, if we do our politics right and we do our education right, that there are going to be some good judges. If we get a president whose going to appoint some different judges in the Federal Courts we might start getting some opinions that are going to help us out.

Now, Federal, we don't have anything. By the way that was Federal United States.

The other part of federal is the EEOC, the Equal Employment Opportunity Commission, where again we have nothing. I remember in 1976 when I filed. They investigated it for a year and-a-half, and they said, "Ms. Frye, you have been discriminated against, make no doubt about it, but it's not illegal. I'm sorry. Go and get yourself an attorney and try it." In Canada I've been told by a participant in the committee, contingency contracts are illegal. I don't know for sure that's what I've been told. If they're illegal and you are poor or you are indigent or you cannot afford it, you go to a Canadian legal aid clinic. They determine whether it's something they want to fight or not. Essentially, their legal aid clinic is the same as the U.S. EEOC who decides whether you have something to fight or not. If you don't have anything to fight, which is what the U.S. EEOC told me, what do you do in Canada or any other jurisdiction that does not allow contingency contracts?

Alice Oliver-Parrot got up here yesterday and talked about the lawyer is the only thing that stands between you and the State and that you've got to cherish the legal profession. Sure there's jerks in the legal profession: there's jerks in any profession. But by large as a profession, we stand between you and the State. We are your mouthpiece.

The reason why we have contingency contracts for these issues and other issues is because the people that fired you, they've got all the money in the world. They've got corporate lawyers who are going to bill them; so, corporate lawyers don't care whether you settle any time soon or not. They've got staffs, and they've got fax machines, and they've got Lexis and Westlaw -- which are the computerized law search stuff. They've got their books, and they've got their cozy offices and all that other stuff. You who have just been fired don't have anything. Not only that, you don't have your income. You probably don't have any savings. If it's not a job discrimination, but it's a personal injury, how are you going to fight an insurance company? Most of the time you need a lawyer on contingencies because you can't afford it.

Some people ask, and I am going to put it on the record right now, "but aren't they being greedy?" Well let's look at it. Most contingency contracts are 40 percenters and if it goes to appeals, it's a 50 percent. At least that's what I do. What is the lawyer risking? The case that I spent the most time on is into its 5th year. I became so into it that I lost my objectivity and sold it to another lawyer. In the first three years I spent over 900 hours on that case and invested over \$1,500 of my own personal money and we never even got to the point where I was deposing the other side. Now the lawyer who's

your mouthpiece, who's going to represent you, they are risking everything. They are putting up all the up-fronts. If you get a good contract, then some lawyers do up-fronts or they make you pay the up-fronts: that's fine if you want to negotiate that. The way I do it, all my clients pay the up-fronts because I'm just not rich enough to have a big plaintiff's firm. They're taking all the risks and they may or may not get paid down the road.

If you win and if there is some good money coming out of it, all the out-of-pockets are going to come out of the top whether you paid them or your lawyer paid them. Then you're going to divide it according to the contract. If you lose, your lawyer doesn't get anything. So that person has taken a financial risk.

That's what's going on in the federal level both of the United States and Canada. I got a lot of letters from other countries. They said, "Is this going to be a United States law conference", and I said, "Come to the law conference and participate in the committee because this conference is going to be what you want." So those of you who are reading and those of you who are listening, if you want more input from more countries you better come to the next conference. We'll put in anything that shows up in the committees.

State law. You're going to hear a lot about tonight from Charlie Baird, that's one of the reasons I asked him, about the new federalism. States are beginning to come up with their own laws to protect people.

And as we know, and you go back by your history, there was a time especially during the civil rights fights and especially during the days prior to feminist victories that the federal courts were where you got relief because the states were awful. It's beginning to change. And it's beginning to be where the federal floor for protection is getting pushed so far down that a lot of the states are stating, as Ray Hill would call it, bullstuff. I usually don't use that word but I've cursed enough on the record. Bullstuff! These States are going to protect their citizens and they're going to create a higher floor.

If you are a lawyer reading or listening to this or if you're going to go into a fight make sure your lawyer understands this. If your States gives you a good protection and your State's laws floor is higher than the federal floor do not plead anything that has to do with federal law. Do not plead the Federal Constitution. Do not plead Title VII. Don't plead any of that stuff but your State. Here's why. Because it'll go all the way up to appeal to your State's highest court. If it's ruled for your and money bags wants to appeal it they can take it to the federal system and suddenly the federal laws which have the lower floor begin to be applied so you lose all your protection. Therefore, plead State Law.

Jessica Sterns -- we had the privilege of meeting her recently -- lives in New Jersey. Jessica Sterns is an airline pilot. Jessica Sterns is a veteran of Viet Nam. She is, one year older than I, a very proud woman, a very strong woman, a very emotionally strong woman. Continental Airline said, "bye" and they tried to get rid of her. She said, "No, I am going to fight." She hired a New Jersey lawyer, and the New Jersey law has an interesting caveat.

I think the Washington State law does too. Roxanne, by the way, I hope I remember if you want me to put your card and address in the proceedings, do you want me to?

By Roxanne:

Sure.



ROXANNE L. VIERRA  
INVESTIGATOR

SEATTLE HUMAN RIGHTS DEPT  
PHONE (206) 684-4537  
(206) 684-4503 (TDD)

ARCTIC BLDG  
700 - 3rd AVE  
SUITE 250  
SEATTLE, WA 98104

ROXANNE L. VIERRA  
Investigator  
Seattle Human Rights Department  
Arctic Building  
700 - 3rd Avenue #250  
Seattle, Washington 98104  
206/684-4537  
206/684-4503(TDD)

PAGE 196

By Phyllis:

Roxanne is an investigator dealing with these areas for Washington State or the city of Seattle, I don't remember which but the point is she is on our side.

They have a suspect classification called perceived handicap and this follows handicap. Essentially it says, even if you aren't handicap, if the person discriminates against you because they think you're handicapped, because they treat you like you're handicapped, you fall under the statute and you're going to be protected. Well, they were treating Jessica as though she were handicapped. She sued Continental Airlines, who's based in Houston, Texas in New Jersey state court under New Jersey state law. Continental Airlines said, "Hey, that's easy. We're in another state. We'll remove it to federal court under federal diversity. We'll get one of those judges whose been appointed for life by the conservative presidents, and we'll just take care of this." The luck of the draw they got somebody else. And the federal judges applied that state law and ate Continental up.

Now a lot of this is conjecture because under the settlement Jessica couldn't tell me anything, but it has to be what happened. I don't know what her settlement was, but they settled, and she's flying airplanes. We met her. She came to Houston about a month ago. She was in flight training, and I got a hold of her. The committee that put this thing on for y'all had the privilege of buying her dinner that night and sitting with her and hearing her war stories although she did not reveal -- for anyone at Continental whose read this proceedings - - the terms of the settlement and she should receive an applause. [Applause] That's state laws and other state laws.

Local discriminations, I'm not going to get into them. There's a bunch of them. Colorado has several good city non-discrimination laws and the bigots in that state are trying to get them removed by a state amendment to the State Constitution. That's all being argued.

I want to pose this question to the lawyers reading and listening to this as well as the non lawyers who get this, I want to make sure your lawyer thinks about this and you ask your lawyer this question. I seem to remember somewhere in law school, and I've never found the case since I read it in law school, but somewhere in the area of Social Security or some other endowment, the federal court said, "This is not a right. This isn't a right. But it was granted. It was endowed. It was given. Because it's given and it is a very large part of that person's being or very

large part of that person's life, it just cannot be arbitrarily taken away. Somebody was arguing that they moved the voting age up and down. They move the age for consent to drink alcohol up and down. But it's my feeling and I think it should be argued that when we're dealing with very fundamental things like our jobs and like our families, that if a municipality or if a state or if a federal government or agency grants us a right or makes us a top classification, then they should not be able to arbitrarily take it away. I would argue in a court or in an appeal that they gave it status.

In the states that are trying to get rid of this stuff what they're going to do is, by a simple majority vote, knock out all these other ordinances. I believe that the courts should say, "If you give a right and you later want to remove it, you're going to have to do it, not by a majority vote, but by a 2/3 vote or 3/5 vote, something higher than just the majority vote." That's just ranting and ravings of Phyllis Frye and you can take it for whatever it's worth.

Americans for Disabilities Act. The Americans for Disabilities Act hasn't done anything for us. I really don't want to be listed in there because I don't think I have a disability. I'm incensed, and I resent the fact that we were put in with pyromaniacs, kleptomaniacs, drug addicts, child molesters, pettiphiles and all those other people. We ain't those people. We are good people. We are very good people.

We now go to the employer's handbook. We went through this in committee, and it goes into a tremendous amount of explanation. It has become a question/answer booklet. It's extremely well done. The committee chewed up a lot of paragraphs, spit them back out. I think the final edition is going to be great.

But, as some of the federal cases did, and as this does, and in my own situation when I got fired, and most calls that I get from people that I have to defend, and most of the employers that call me and say what in the world do we do with this person: it always revolves around the potty.

Every time I say that, Helen Cassidy cringes. It infuriates her and y'all will hear more about it when she talks. The restrooms is what drives them all nuts. They don't know what to do with us in the bathrooms.

I went through this in law school. Before I came they had a

bunch of one holers that had locks on the door. They had some one holers and some multi-holers. They kind of alternated: some said "men" and the other "women" and visa versa. They decided to take all the one holers and put "restroom." Then anybody can use it and lock the door and that works fine. I agree to that.

The problem was is that none of those one holers were anywhere close to where my classes were, to anywhere close to the law library, anywhere close to my study carole. After a couple of weeks I was getting along relatively good. Nobody hit me yet. Nobody screamed at me yet. I got tired of walking half way across campus to go to the bathroom. I mean -- think about it. You're sitting here eating lunch. Somebody's talking, and you need to go to the restroom you just get up, quietly you just go a few doors down, use the restroom and come back. In the situation I was in, you would have to think about it at first urge and you would have to walk up a couple of flights or down a couple of flights of stairs or take an elevator and walk all the way across to find your assigned restroom or one of the few assigned restrooms. Well ladies and gentlemen, you're really going to have to think about it. You're going to have to go at first urge.

So they called me in, and I told them what I just told you. I asked how many people are complaining? Four people in five weeks have complained. I said, "tell those four people that I use this women's restroom because it's near where I study. I use this women's restroom because it's near where I take classes. I use this women's restroom because it's near the law library, and the other eight women's restrooms in the law school I don't use. Tell them to use the others." It sounded reasonable and that's what happened.

I also know in the committee that one of our persons works for a large company. They wanted to keep her so they said, "We have men's and women's. Everybody knows you because you've worked here before and you're working now. We want to keep you but there's some people that are uptight about it. We don't want to give you a special potty just for you because that's embarrassing. So if you have to go to the bathroom, you're pretty close to the elevator, you're only on the third floor, just go down to the main lobby where there's a general public men's restroom and a general public women's restroom and it's not specific for you and use whatever restroom you want to use." That really didn't call any attention to her. It didn't make her feel like she had her own special potty. It wasn't stupid. It made sense. She's coping quite well, and so is everybody else.

There's a million ways to handle the restroom other than fire somebody! Now, what are strategies for change? Well they're very simple -- education. Education. Education. Out of this law conference is going to come a proceedings. Send it to your employer, don't send it to the CEO of a big company. He isn't going to read it. Send it to the Personnel Manager if you have a big company. And put a little letter on there. If you're afraid they're going to read your handwriting, if you're afraid they're going to know whose typewriter it came off, go to a local print shop. Every print shop has a typewriter that you can rent or borrow, type it on their typewriter. And just say, "Hey I work for you. Some day I might transition, and I'd like for you to know a little bit about what's going on to think about it."

If you're afraid that they're going to find out who you are, then lie and say, "I used to work for you and I want you to know that I was here." Write them and say, "I'm thinking about applying for work with you some day soon I just wanted you to know." There are a million ways to take the light off yourself if you're scared about it. But make sure your employer knows.

And if you buy your own proceedings and you don't want to send the whole proceedings then copy the small section. We're not going to give an entire permission for everybody to xerox the whole thing but go ahead and copy the pages of the law, go ahead and copy my presentation, send it to your employer with a little letter.

Also make up a little introductory letter if you are coming out of the closet, and tell them a little bit about yourself. I used an introductory letter with my neighbors when I transitioned. I just drafted a two-page letter, told them all about me. How many of your neighbors do you know? Do you know where they were born? Do you know whether or not they were Eagle Scouts? Do you know whether or not they hold four degrees? Do you know whether or not they're licensed in three states? Do you know whether or not they care? Do you know whether or not they're adopted? Do you know whether or not they have gay children or their children or sisters or brothers or mothers have died of AIDS or had been gay bashed or maybe they've been raped and they've been in the closet all their life about it. They might have some sensitivity as to who they are.

Well, you don't know that and they don't know that about you either. So, write them a letter and cover the whole block. Just make 50 copies and just go up and down and say, "this is who I am, and you're going to see me cross dressed and you're going to wonder what's going on. Well this is going on and some of you



aren't going to like it. And there's nothing this letter is going to do to change that and some of you aren't going to care and there's nothing this letter is going to change about that. But a lot of you probably didn't think about it or you're going to wonder about it and hopefully this will answer the questions." And that's what I did in my neighborhood and it didn't work for everybody but it worked for a lot and it's a good technique.

If none of that works, sue the bastards!

I'm a trial lawyer, and I'm going to tell you about suing. A lawsuit revolves around two things; one is the law and the other is evidence. I don't care how good the law is, if you don't have the evidence you're out. No jury is going to find in your favor if you don't have evidence.

You may not have the statutory law. You may not have the federal law. You may not have the local law, but you know what you might have? You might have their own policies and practices to hang them with. If they're a big company and they got standard hiring practices and they got standard firing practices and they violate their own practices in the United States, the Federal Constitution will come to your help because they've violated the due process clause. And you are in court. And they can't summary judgment you out.

So, if you are transgendered and you're in the closet or you think this might be an issue some day, you have right to go to your employment counselor, to your human resources professional and a lot of people are evaluated on a yearly basis. You were probably given, you probably have it stuck somewhere, and if you don't then get another copy, get a copy somehow of your company's hiring policies and your company's firing policies. And don't leave it in your desk at home 'cause when you're fired the guards are going to keep you off. They're going to give you a box that's got your pencils, and it's got your envelopes but it doesn't have anything else out of your desk.

You're entitled to some of it by discovery but that's tough to get. Take it home. Every 'atta girl, every 'atta boy you've gotten, take it home. Every commendation you've gotten, take it home. Every pay stub that you have, keep it. Show a length of time that you've worked for them. Show progressive pay raises, both in merit and inflationary. Show bonuses. If you're a school teacher and you get letters from the parents that are good letters, keep them. Keep all that stuff.

If you think something's starting to happen, if it's starting to rumble where you work or you fear it's going to start rumbling

where you work, go buy a tape recorder. Get a small tape recorder, rehearse using it at home. Don't rehearse when you're there trying to fiddle in your pocket or your purse so you can turn it on to record what the dumb idiot is saying. Practice it at home. Practice it at home. And be ready to be able to reach in your pocket and push the button or be ready to reach into your purse and push the button so that tape recorder goes on. When you're sitting in the trial and your attorney says to them, "didn't you say something or other that is totally completely illegal" they will say, "no, I never said that." It's your word against their word. You may not have been able to get that tape into evidence directly, but you can sure as hell get it into impeach that bastard.

Go to Radio Shack or some place else and get the little machine that hooks on your telephone, don't get the little rubber stick'em on the bottom, get the hard wire. And have it ready to go so that if there's any calls that you get from supportive co-workers or from bad co-workers or from your boss or anybody else you record them. Why do I say supportive co-workers? I don't care how much someone likes you, if you get fired and they know that their job's in jeopardy if they come forward, there's a good chance you lost that testimony. But you can squeeze it out of them in deposition. If they begin to lie or they get cold feet and you've got the tape. "But didn't you say this?" And you pick up the tape of such and such. You've got to have evidence.

Now, you also need to go to the drug store or grocery store or any place else that has little spiral books that you can carry in your pocket or your purse. At the end of the day, if someone's been rude to you, if someone's said something good about you, if some instances happen -- you need to go to the restroom, close the stall, sit down on the pot, and write down what happened. Write the date of what happened. Write exactly everything that went on. Write the names of people that were involved. What's going to happen two or three months now when this thing finally blows up and you're crying and you're sitting in your attorney's office and you're saying "but all these people did this" and "you know what the other day, somebody heard this." Who was it? "Well, it was Joe and Mary and Sue." Well, what day was it that Joe was there and what exactly did Joe hear? "Well, I know Joe heard something, but I don't remember exactly what Joe heard, but Mary might have heard it." You've got it all in the book.

If you've recorded something on tape, things could get misplaced on the tape. Your lawyer doesn't want to listen to eight hours of tape. Number your tapes, date your tapes, and if you've got a tape entry, put it into your memo book.

In Texas, and I think this is pretty well universal in most jurisdictions, in evidence when you're at trial three years later and you pull out that book you can use that book in one of two ways. Before you get on the witness stand or even if you're on the witness stand and you're a little confused, you can pull out that book and you can refresh your memory. And if that book is a book, not looseleaf pages, and is in your own handwriting and is meticulously kept as a diary is kept, you can testify. You can use that to refresh your memory on the stand. And if three years later you've forgotten what happened you can read from your diary as past memory recorded. So either way, you can get it in.

If you've got the evidence, they're going to squirm.

Now, if you don't think I do this, let me tell you what happened. I've got a sweet person who is not only handicapped physically, she's got multiple sclerosis. She's in a wheel chair, her hands are kind of like this, and she has a terrible speech impediment. Not only is she non-white, which is not an impediment except our society makes it, but she's a lesbian on top of it. And she rides Metrolift in our city. And she was putting up with with all kinds of trash.

We had a couple of hearings and her testimony was just awful. The Judge wasn't giving us a whole lot of help. I taught her to do exactly what I told you to do. I'll tell you what, that woman can take out her pen and she can scrawl a date on a tape and she can change her tape and she can change her batteries and she can pull out that little booklet and she can scrawl the words of what's happening and who the driver was and what the van number was and what happened whether it was good or bad. I remember our first hearing after that, we started playing tapes and they went just absolutely crazy. So, it will work.

That's the nuts and bolts of how to keep your job. And if you can't keep your job, sue the bastards.

If you want to get a job do the same thing. Get hold of a policy handbook, get hold of the law. Get hold of the proceedings, send them to people. And have your tape recorder going during your interview and after the interview take good notes. And before the interview, take good notes.

How many of y'all saw the movie, "Norma Rae," with Sally Field? She was a union organizer. And they called her in and they were

going to chew her out about something and her lawyer instructed her well. The first thing she did was she whipped out a pad of paper, she started writing names of everybody who was in that room. And they freaked out and they said, "What are you doing?" "I'm writing down names of everybody in this room, I'm putting down the date, I'm putting down the time, so that I can recollect everything that was said so if we get into a hearing I'll know exactly who said what." That hearing ended. That meeting ended just then.

And you know what I tell my school teacher friends? I tell them the same thing. What happens if you get called in and it's all friendly and they say, "We don't want to fire you but we've heard such-and-such and such." I tell them, "Don't say a damn thing, don't admit to a damn thing." Start immediately asking for a piece of paper. Write the names of everybody that's in that room and tell them you're not going to say anything until you get your lawyer. I assure you that meeting will end real quick, and they will not have gotten what they need to fire you. They'll have a whole lot of guesses but if they had them, they wouldn't have called you in, in the first place. Call their bluff. Write down the names, get the evidence and keep your job. Thank you.

An addendum to that presentation is that I practice law mostly in Texas, and in Texas in the penal code it is legal to tape a conversation and the other person doesn't have to know as long as you are a party to that conversation.

I was told after the presentation that in some states and other jurisdictions that could be a felony crime. So I suggest that you check your law in your location, and if it is a felony crime obviously don't do it, but if it's not a felony crime as long as you are a party to that conversation that I would suggest you use that as a method of gathering evidence.