
ETHICS DINNER AT COURTHOUSE CLUB

Thursday, August 26, 1993

Second Annual International Conference on Transgender Law and Employment Policy

Speakers include:

- *Sharon F. Kahn, Director of Bar Association for Human Rights (BAHR) of Greater Houston*
 - *Hon. Yolanda Navarro Flores, Texas State Representative*
 - *Annese Parker, Past President, Houston Gay and Lesbian * (and Transgender) Political Caucus*
 - *Laura Elizabeth Skaer, Employment Law Director, ICTLEP*
 - *Marshall Shelsy, Staff Attorney, Harris County Criminal Courts at Law*
-

By Phyllis Frye:

I want to begin by welcoming you tonight to the Courthouse Club in Houston, Texas. For those of you who are watching this video or listening to the audio, the law conference has moved from the hotel to the Courthouse Club.

For those of you who were not here earlier at the luncheon, this is a continuation of the Second International Conference on Transgender Law and Employment Policy. My name is Phyllis Randolph Frye. I am an attorney in private practice and the Executive Director of this conference.

We have several guests I would like to introduce. First, as you know when you came here for cocktails, most of the Board of Directors for the Bar Association for Human Rights of Greater Houston, which is one of our affiliate sponsors, were here. Three members have stayed and joined us for dinner. I want to introduce you to two, well all three board members, but one of them is going to speak. Betty and Barry raise your hands. This is a joint meeting with BAHR.

This hour is on ethics for the MCLE, and we'll satisfy the hour ethics requirement.

WELCOME FROM THE BAHR

By Phyllis Frye:

Sharon, come up here, please. Representing BAHR tonight is Sharon Kahn, who is also our Education-in-Transgender-Issues moderator. She is going to say a few formal BAHR words. BAHR is very near and dear to my heart because when they formed a little over two years ago, they were very willing, and they were very accepting, to inclusify their original by-laws and include the term "gender identification". So, please welcome Sharon Kahn.

By Sharon Kahn:

I'm going to say very little this evening. I plan to bore you on Saturday, and I don't want to do that twice. This is a great pleasure for me personally. And it's a great pleasure to welcome all of you here. One of the things that we talked about briefly today is the way in which the gender community can educate especially the gay and lesbian community in terms of issues, and this is one of the ways of building a bridge. So, it's really a pleasure to see us all here together and I welcome you.

I'd like to invite anybody, especially in Houston, of course, but anybody in Texas or if you live out of Texas and get our newsletter, we would like for you to join BAHR even if you join only to get the letter. We would like to have more members from your community and we're very active and vital organization. I hope you enjoy your meal, I think we have a nice program tonight, and I thank you all for being here.



Sharon F. Kahn, Director of BAHR

NEED TO SENSITIZE OUR LEGISLATORS

By Phyllis Frye:

Yolanda, you want to make your way up here? Also present tonight is a member of the Texas State Legislature. Yolanda and I went to law school together. This is the Honorable Yolanda Navarro Flores, and I've asked her to give us a few words of welcome. I've educated her over the many years on the need to ensure that whenever legislation is introduced to protect people with respect to "sexual orientation" that they also include the term "gender identification" in those proposed statutes. I know that she can give us a few thoughts from insight as to the last legislative session fight over gay rights and the penal code. Would you please welcome Yolanda Navarro Flores!

By Yolanda Flores:

Thank you, Phyllis. I do want to welcome all of you. I think this is a great conference, and we have to give a lot of credit to the folks who are putting it together. When I first got the information from Phyllis, I looked at it and I called her back immediately I said, "Hey Phyllis, this is great. You have a really good program." I was very impressed by all the topics that were going to be covered. At first glance you look at it, and you're not real sure what exactly it's going to cover. And then you look at real issues that are involved, and we're talking about a multitude of problems that society has to start working towards solving. And certainly in the legislature, we have to still do a lot of work.

There's a lot of sensitivity that needs to — well, let's just say we have to sensitize a lot of our legislators. It's been very difficult, to say the least, to try to get laws passed that are strictly based on fairness and on justice and in recognition of people's human rights and a right to human dignity.

I was just, in some cases, appalled at some of the things that were done and said. And in other cases I was very pleased at some of the warm responses that we received from the other legislators. I guess what I'm telling you is that we still have a long way to go to teach people that we have to learn to live and work with each other. And above all, I think we need to learn to respect each other for whatever we are; whether you're an ethnic minority; when you're a person who's affected by the penal code in some detrimental way; or whether you're a person who has a lot of concerns about transgender issues. There's just a lot of work yet to be done.

I don't want to make a long speech, but I do want to welcome you. Like I said, I do want to recognize the people who put this conference together.

Certainly I know Phyllis has gone through a lot. I do have to say one thing. When we were in law school, I did not know about Phyllis. Then we heard. And then I saw some very ugly things on the bathroom walls. There were some petitions that were being passed around, some objections that were being made, and I couldn't believe it at that point that these people were doing that.

And Phyllis doesn't know that there were some of us in the background who were fighting against these people and telling them Phyllis has to be accepted for what Phyllis is. And we have to respect her because she is a human being. And I wish that everyone would accept that. That we respect each other for what we are. And everybody deserves, at the very least, respect. Thank you very much.



Honorable Yolanda Navarro Flores,
Texas State Legislator

DON'T BE AFRAID TO ASK FOR HELP

By Phyllis Frye:

Thank you. I have the distinct honor to introduce another friend. She's a very good friend I've asked to come tonight, and I've asked her to help in the continuing effort of making your closets a little smaller and little less comfortable.

I first met Annese Parker at a committee meeting about twelve years ago in the old Gay Political Caucus building. Well it was an office on the second floor of a building near the Holiday Inn on South Main. You remember that office? Anyway, it's been twelve years, and she and I have gone far and very long time towards beating down various doors of oppression.

Last Saturday, the woman you are about to hear from was recognized with a Life Achievement Award for human rights work. And the local pundits in this area say that Annese Parker, this very fine person you're about to meet, has the best chance of being the first openly elected lesbian to any local or possibly state office. So, I want you to please welcome my friend, Annese Parker.

By Annese Parker:

Actually, I've known of Phyllis for a lot longer than twelve years. I know Phyllis doesn't remember me from back then, but I was a mere child when I first saw Phyllis. I was a Rice student and Phyllis came and spoke to a human sexuality class at Rice University. It was probably 1977, 1978. So, she's been out there propagandizing for the transgender community for a long, long time.

We did get to know each other after a few, quite a few years after that through the Houston Gay and Lesbian Political Caucus. What I am here tonight to talk about is not politics or political activism or any of those things that Phyllis and I worked on together.

Phyllis is very modest. She talked about my award that I received last Saturday night. Phyllis also received an award from the Houston Gay and Lesbian Political Caucus. It was the Bayard Rustin Civil Rights Award, and it was an honor for a lifetime commitment to civil rights for all people. I think we should all thank her for those years of effort and acknowledge that award as well.

But I want to talk to you about another



Annese Parker, Activist and
Past President, Houston Gay and Lesbian *
(and Transgender) Political Caucus

person, another side of Phyllis. And that is Jock. Many of you don't realize that Phyllis deep in her heart is a jock. Yes, it's true. Sometime in the mid 1980's, I'm not exactly sure when it was, we were traveling to Austin together for a conference. I don't even remember what conference it was, but Phyllis and I and another woman were riding to Austin together. And I don't know if any of you have spent a long time in a small confined area with Phyllis, but you get tired. Your ears kind of close up after a while.

But one of the things that she said to me on that trip kind of filtered through. That was that, as a transgendered individual, one of the things that she really, really missed, that had been a very big part of her life, was the opportunity to participate in sports. Growing up, she'd been athletic and very active and missed the camaraderie and the competition of sports.

She tried to participate in, I think, a woman's softball league out in the area where they lived and had been rejected. She really wanted an opportunity again in her life, before she got too old, to get back into it. Well, a lot of people look at Phyllis, and well a lot of people say a lot of things, and see a lot of things. But I looked at Phyllis and I saw the power hitter I've been looking for on my softball team.

At the time, I was coach of a women's softball team in what is known as the Montrose, the Houston Women Softball League. It is a lesbian softball league. We've been around for more than a decade. The league was formed so that we, as lesbian softball players, would have the chance to compete in our own teams against each other without worrying about being harassed by other people. We did not ask that people be lesbians to participate, but they had to know that this was an all gay league. And they had to be accepting of that if they were going to participate with us.

So, when we got back to Houston, I went to the next council meeting. I said that I wanted to recruit someone for my team and that that person was Phyllis Frye, that she was a transgendered person and that I expected the rest of the softball league to accept her and welcome her. As you might expect, there was some discussion about that and quite a bit of controversy. But you might not realize what the discussion centered around and what caused the controversy.

I know there were a few individuals who were upset at the idea of a transperson participating in the league, but that wasn't the thrust of the discussion. There were also a few people who were worried that I had gone out and found a ringer who would make my team so wonderful that they wouldn't be able to compete against us. But that also wasn't the real trend of the discussion. There were genuine concerns about whether Phyllis, who probably hasn't been petite since she was maybe 18 months-old, and maybe not even then, I don't know, but she could physically hurt some of the other women she was playing with, or that she could hit the ball harder than she actually could. This is a concern that often comes up in co-ed softball league, where men and women play against each other and women worried about this.

It wasn't about Phyllis Frye, a transgender, or Phyllis Frye, who used to be a man. It was about, is it safe for us to play? And of course, I gave a very impassioned speech about she has nowhere else to go. And we formed this league to fight against discrimination so that we wouldn't be discriminated against. And how dare we even consider turning around and discriminating against someone else. I don't know if the speech convinced them or not, but we accepted Phyllis in the league on a provisional basis. And I don't know if she knows it was on a provisional basis, but it was simply to see how it all worked out.

As she played with us, as things developed, it turned out that the fear that Phyllis' physical skills would be so much greater than the other women didn't materialize. There were, wonder of wonders, there were women out there who were a whole lot bigger than Phyllis and a whole stronger than Phyllis and a whole lot better athletes than Phyllis. They got used to her.

Now, there were some concerns that no one had thought of that did materialize. There were some things about the way I as a young girl was taught to play sports and the way Phyllis learned how to play sports growing up. There's some differences in socialization and they came out. We weren't taught quite the killer instincts that Phyllis has and as y'all know, Phyllis takes that killer instinct everywhere she goes. No, Phyllis needed to be taught how to turn it off in certain situations which is something that none of us had ever thought about. As we played together over the years, it became obvious that in some ways there were differences in upbringing and differences in attitude that had to be overcome. But, Phyllis became a normal part of the league. After a few months I don't know that anybody even noticed that Phyllis was there or that there would be any difference about Phyllis.

I know what finally decided for me that things were going to work out. We were playing in a game and Phyllis had — she is a power hitter, by the way, except that she has a terrible tendency to want to swing for a home run every time — on this occasion rounded third and she was running into home and the ball got thrown in and it was close. She had to jump in the air to miss the softball. She jumped up in the air and she squealed. I cannot even attempt to squeal that way, but she squealed as she jumped over the ball. The entire bench just broke into a hysterical laughter. And after that, she got back to the bench and the discussion centered around, "Phyllis, we're going to have to teach you. We don't do that sort of thing: we're dykes."

I'm glad that you're amused and I hope you enjoy the story, but there is a more serious point to that. First of all, don't be afraid to try to do any of the things that you really want to do. Don't be afraid to ask for help. Phyllis happened to say something to me that got me interested in helping her achieve a goal that she wouldn't have achieved otherwise. But once she was in that position, once she was on the team, it was up to her to find her own level and to find her own accommodation with the rest of her team members.

Also, don't assume that because people hesitate or because they may have to stop and discuss or re-evaluate their opinions on the whole — on all sorts of gender issues — that they're automatically biased against you. Or that it is something that you should take personally. Remembering the discussions we had about Phyllis participating in our softball league and remembering the genuine concerns that were raised, it was perhaps better that Phyllis wasn't involved in those discussions. We could sit and talk and learn and grow before we all had to deal with each other. Remember that you all have to be patient with the rest of us as we reach the same level of acceptance and understanding that many of you already had to achieve. And that finally after — I don't know — Phyllis, how many years did you play softball? Five wonderful years she said. I guess we all got so used to Phyllis that she was like, you know, old furniture. It's the couch we see everyday and we don't think about. It becomes normal. It becomes usual, it becomes comfortable and you don't think about it any more.

But you have to have the courage to go for it. Thank you.

By Phyllis Frye:

That was my coach. We played on a team called Coffee Beans. We were sponsored by a local coffee house. They called us the "Special Blend". I remember that conversation in the car because we were talking about softball. I didn't know she was a coach and so she starts kind of pumping me, "Well, could you hit the ball good?" "Yeah, I could hit the ball real good." "Well, what position did you like to play?" "Well, I can pitch good and I can do this, but I really like to catch." And that's what really lit her up because that was the position that she was missing, was the catcher. Those five years filled a real void because I had a void. I had played for so long but then I had not been able to complete it. I got to play those five years and it was really great.

"LAURA, IT'S OKAY. WE KNOW WHY."

By Phyllis Frye:

We have one more short speaker, then we've got our main speaker. I'm going to say a few words about our short speaker and then I'm going to have her come up to a round of applause. This is another person that is going to make you feel a little bit uncomfortable. There are three of us tonight at this law conference who are totally and completely out of the closet, practicing professional attorneys accepted in our professional arenas, and she has a little bit of her story to tell. I want you to welcome your Employment Law Director, Laura Elizabeth Skaer.

By Laura Skaer:

It was at the Texas 'T' Party, February, 1991. Phyllis was doing the little one-hour legal thing. I happened to be there, and she had asked me to help her with it. I hadn't done anything like that before so I did. When we got done, she looked at me, and she said, "You can do it." I said, "Do what?" She said, "You can do it." And I looked at her.

I just assumed that she was talking about transitioning on the job where I was, which happens to be in about as redneck an industry as you can have and you folks in Houston know it well. It's in the oil and natural gas exploration and production industry. And I said, "Phyllis Frye, there's no way in hell that I can transition in this industry." She said, "I'm not talking about that."

She said, "I'm talking about being yourself." She said, "You're not happy and you're not happy because you're not yourself." And she said, "Start being yourself." I left there and went back to Denver and, boy, those words really ate at me. And they ate at me a lot. And they ate at me because she was right. I wasn't happy, and I wasn't myself.

I started, just kind of not ever intending to transition but, to finding happiness, finding peace in my heart. As I started finding out what it was about my uniqueness as a human being that brought me happiness, I realized it was going to, you know, I was going to end up transitioning in this industry. I thought a lot about it. I thought well, gosh, I could go away somewhere and start over but I don't want to start over. I liked what I was doing. I liked the industry I was in, and I liked the people in the industry. And I was good at what I did, in what I do and so I started. I was just kind of on this little — it was about a two and a half, three year — process of kind of eliminating those things in my life that



Laura Elizabeth Skaer, Attorney,
Employment Law Director, ICTLEP

did not bring me peace and happiness, while concentrating on those that did.

In August of 1991, I got elected president of a ten state, 750 member, independent oil and gas trade association called the Independent Petroleum Association Mountain States or IPAMS. It's a trade that we do a lot of lobbying. I've been back to Washington a lot and testify a lot in the state legislature. I was going along and all this time my appearance is becoming more and more feminine as I'm becoming more and more secure of myself. It was like one week I had all these guys telling me I was the best president that this industry, that this trade association, had ever had.

Two weeks later, when people figured out what was happening in my life, I got called to this breakfast. There were three people at this breakfast including one, who had just a week before, told me that without a doubt — he's one of the founders of the organization — I was the best president he ever had known. Telling me that I should resign because I did not have the right image. The oil and gas industry wasn't ready for this. I thought about that, and I knew from the by-laws they could not force me out. I wanted to work in this industry. I did not want to leave it. So, I kind of pulled in a little bit and didn't push the envelope any further and pulled back. Then I finished my term of office, and then, in August, I transitioned full time.

There's a whole lot of different side stories I can tell about this. This one I want to share is in April of ninety-two. I'd applied for a newly created state board called the Minerals Energy and Geology Policy Advisory Board designed to advise the Governor, the state legislature and the Colorado Department of Natural Resources on those kinds of issues. I had to be from oil and gas. I was one from about 30 people that applied and the appointments hadn't been made yet when I transitioned. I kept thinking, boy, have I blown this because I really want this. I'm really a public policy freak kind of person. All of a sudden I get a phone call one day from a woman with the Department of Natural Resources who called me Larry and said, "I'm calling to advise you that Governor Romer has appointed you to this board," and blah blah blah. I thought, "Wow, that's wonderful!" I hung up, but I go "Oh, my God," and I picked the phone back up. I said, "Susan, I've got to talk to you about something. If you're getting ready to send out a roster, would you please use my initials, please?" I said, "If we can make an appointment, I'll come down. I want to tell you something: why I'm making that request."

And her response was, "Laura, it's okay. We know why."

And I'd said, "You do?" And they go, "Well, yes. It was discussed when your name came up. And our selection committee said, it's irrelevant." I said, "Well, God, did you tell Governor Romer?" And they said, "Well, of course we did!" You know, I had remembered on the application there's a little box that says, "Check here, if there's anything in your background that may cause the Governor embarrassment." I did not check that because I had come to a point where I'm not ashamed or embarrassed about who I am as a person.

So, I said, "Well, what did Governor Romer say?" And she said, "Well, he paused for a minute and he looked and he said, 'Well, you know, in view of the directive to consider ethnic, racial, and gender diversity in making these appointments, I'd say we have gender diversity covered, don't we?'" And I tell you, to be honest, I appreciated that sense of humor far more than the acceptance.

But the point of all of this is that you're your own worst enemy if you choose to be. You can be yourself. You can do it in any walk of life. You can do it in any industry, and no one else is holding you back but yourself. And whatever fears you've concocted, they're within you. They're not real. Because I have found that even the person who told me I ought to resign — who's a deacon in the Southern Baptist Church, and who freely admits both when I'm not there and to my face that he cannot reconcile this in his personal belief system — turned around and told somebody, about to lead some ad hoc committee, that I should be appointed chair. I was the best person for the job. It almost brought tears to my eyes to find out that. God, here's somebody who's very fundamental, but he can recognize that.

One of my supporting friends, through all of this, had written a note to me. He said, "You know, people

with strong hearts and strong souls will understand," and he said, "and accept. And even if they don't accept or understand, they will at least respect your right as a human being to live your life to the fullest." You know what, that is really the way ninety-nine percent of society is. All you got to do is believe in yourself and you can make it happen.

By Phyllis Frye:

Now you know why I played Star Wars. She's terrific.

UNTIL YOU ARE HONEST WITH YOUR CLIENTS

By Phyllis Frye:

Before I introduce our main attraction, I want to introduce his guest, Roxanne Armstrong. Would you please raise your hand. Thank you for coming.

We are here as attorneys to learn about the ethical considerations of representing transgendered clients. But even more important, in my opinion, we are here as non-attorneys, as laypersons, to learn and understand how the attorney that we hire and we pay our money to in our own home towns or states or nations; we have come to learn how that attorney must act in order to represent us, transgendered people, in an ethical manner.

In short, if somebody is not going to treat you fully and completely with education and knowledge as a transgendered person, don't give that person your money. Or make that person buy one of our "Proceedings" and learn what-in-the-heck they're talking about.

I have known Marshall Shelsy since 1980 when I did my legal internship with the District Attorney's Office. When I began to establish myself as a practicing attorney in the trial courts, he had moved to become the staff counsel for the 14 judges over the misdemeanor courts here in Harris County. He is extremely active in the Houston Bar Association. He presents many hours of continuing legal education, and does other public speaking.

Marshall has always been helpful. He has always treated me with the highest dignity. He



Marshal A. Shelsy, Attorney,
Staff Counsel, Harris County Criminal Courts at Law

was an oasis back in my early trial practice days when there were not many oases around. I consider him a friend, and I ask you to welcome Marshall Shelsy.

By Marshall Shelsy:

Thank you Phyllis. It's really a pleasure to be here. I don't have to read from my notes to say that. I was sitting with my dear long-time friend, Ray Hill. And Ray was saying, "I came to hear you tonight because dinner speakers are always supposed to be funny." I said, "Oh, my God, I took this seriously, I looked things up in the books for this tonight. I didn't come here with jokes." Ray speaks often for a college class that I teach, and we always have a good time in presenting not only the law but the law in-person, up-front and close. Since I teach a course in Criminal Justice, it contains mostly police officers. It's always fun the evening that Ray comes. We have a good time.

My topic tonight is ethics, and as I said a moment ago, now somewhat less humorously, I really took it seriously. My job as Staff Attorney for the County Criminal Courts at Law here in Harris County is to try to advise and recommend to the judges what the law says and sometimes what they ought to do. And one of the first things that I realized was that on one level, we really shouldn't even be here tonight. That this shouldn't be necessary. That there's no reason for it. And it saddens me greatly that we had to focus on these issues.

And so what I've done is try to look at ethics. I will try to present it to you tonight as the legal purist that I am: just looking at the issues; being a lawyer; what do you owe to the clients; what do the clients owe you; what does the system owe both of you; and how can we make it work? I know the first way we could have made it work is if I had brought my bifocals because I can't read this twelve point type that they gave me. So, I guess I'm going to wind up having to wing this a little bit.

Let me say that I first met Phyllis, as she said, back in 1980. At that time, the big issue was which bathroom is Phyllis going to use? You've got all these guys running around the D.A.'s office with guns on their hips ultimately scared to death. You know, "I'm not going to go to the bathroom." It's foolishness. I'm standing there, I'm an ex-cop, I've just got my law license, I'm trying to figure out. What's the big deal here?

At that point, Phyllis was, within our legal community, truly an oddity to everyone that was there. But what has happened over the last 13 years, and I give Phyllis every ounce of credit that I could give a human being on this earth or in Harris County, Texas; what has happened is Phyllis got out there, or got out here, and was "Phyllis." And she was "Phyllis" until we all accepted her. And she is today, "Phyllis." That's it!

The new lawyers come in and I see them all. I've made it a point as counsel to the court to find a reason to make every new lawyer in Harris County that practices criminal law come through my offices. I want to see them. I want to see what the competition is, I want to see who's going to try to do what to my judges. You don't hear a word. You don't see a word, there are no comments in the elevator when Phyllis gets out anymore. She is accepted in this community as Phyllis Frye, lawyer. And on a certain level, I'm very proud of our community, our legal community, for having done that. I think that now that Phyllis has done this, the community is going to continue to support her.

As she said, I do a lot of MCLE preparation. Selfishly. Because the more informed you are as a lawyer, the easier my job. I don't have to do your job and the judge's job and some other lawyer's job. But, and this is really getting to the back end of the speech, we planned this year, as we have the last two years, to have a certification course for new attorneys that practice essentially pro-bono representing the indigent defendants in criminal courts. And I think this year we are going to make it a point to invite Phyllis in to discuss transgender issues along with other issues of fundamental bias and prejudice that we try to deal with each year.

Because I think the time has come for this community. I think we have a large transgender community, in

Houston at least watching the court system. I'm sensitive too, and I see perhaps more than most folks do. And so, we're going to try to raise the sensitivity level of the newer lawyers and force them to be sensitive to something that they need to be aware of.

The first question I'd like to address to you as lawyers professionally is, "Do you have a duty to disclose to your client your status?" And to that I think the answer is yes. I think you do. And I think so for two reasons: both for you, but primarily for your client, lawyer to lawyer. Until you are honest with your client, some part of you as a lawyer, is going to be sitting there trying to cover, trying to stay in the closet and not giving a hundred and fifty percent to your client, but holding back fifty percent for you.

And your client deserves a hundred and fifty percent. They deserve to get all of your professional resources. Now, that may create a basic conflict. And for those of you who are present, that may be a problem. You know, you may not want to do it, but I think you owe that to your client. I think you have an obligation to that client because, fundamentally, law is a very conservative area and you are not mainstream lawyers in the true sense. And people need to be aware of who they're hiring. You owe them that professionally.

On a human level, I would hope they would all accept that fact, because I have no doubt that you're just a good a lawyer as Phyllis is. Phyllis gets a lot of not guilty's. Let me tell you, the D.A.'s office is afraid of Phyllis. Phyllis does good. She wins. But Phyllis does it because she's up front about it and she gives a hundred percent and I think you all, first and foremost, have to do that.

So, I've thrown the first obligation to you to disclose to your clients. I think you have to be prepared for a client to say, "Wait a minute. I got enough problems, you know, I'm not comfortable and I can't imagine how everybody else in that courthouse is going to be. So, I'm going to another lawyer. I'm sorry." I think you have to be prepared to accept that. That's reality here. It's a shame, it's unfortunate, but it's reality.

Now, purely speaking legally, do you have to tell your appointed client, your ad litem client? No. The law doesn't require it. Why? Well, no lawyer has to worry about the luxury of whether his indigent criminal defendant likes him or not. For purposes of the law, y'all are married. And there isn't a damn thing he can do about it or she can do about it. I still maintain that you've got the issue of a hundred and fifty percent, but purely as a lawyer do you have to say anything? No.

I think another issue you have to consider is branching out and attempting to represent regular folks in mainstream legal issues. Phyllis does a lot of work in a very narrow field, which is criminal law, and then often focuses on more narrow issues that she feels very, very strongly about. I respect that. Phyllis also does a lot of other types of law. She's a resource on transgender issues and on women's issues, but she is also a lawyer in the true general practice sense. And, I think, if the issue is to mainstream, then you must try to do so aggressively in mainstream law with real estate clients who pay money and with wills and probate clients who pay money. I think you owe that to yourselves as well to the community, again for the sake of good lawyering.

I also think again, you've got to consider the fact that you may be rejected. Now, I've never heard Phyllis come into my office and want a cup of coffee and say, "I had a bad day. I had a client pissed off at me and fire me because of who I am." I never heard anybody fire Phyllis at all. I don't know that you've had that happen? Well, you certainly never told me about it. I only hear about the victories. Typical lawyer. You only hear the good stuff. You never hear the bad stuff.

I think when you're advising clients professionally, you have an obligation to tell them that they have an obligation to tell the folks they're dealing with who they are. And in a few minutes, we'll get into why, but needless to say, for your personal self respect, for you as a lawyer and for them as individuals in a situation that's usually very stressful. I mean, today you've got more people going out and hiring lawyers to deal with the lawyers they just dealt with and had a bad situation or bad experience with than you do just going out and hiring lawyers. Legal malpractice has soared in this county.

I recognize that you are putting yourself, and often times your client, into the true traditional Hobson's choice. You're damned if you do, and you're damned if you don't. Do you risk rejection by disclosure? Or do you answer falsely, and — as you all know, essentially on the issue of moral turpitude — you're a liar: you're not worthy of belief in any form. So now where the hell are you? I mean you've got that Hobson's choice. My position is, you don't have a Hobson's choice, you just tell the truth. The Hobson's choice suddenly goes away because you're not a liar, you know? You're Laura. You're Phyllis. You're whoever you are, period. Up-front, close-in and personal, and that's just the way it is. There's only one instance, that I'll talk about in a minute again, when I think that doesn't really work. That's the only time I will eat my words and advocate that you leave one space on the form blank. I think there's a place for that.

But let me start to focus a little bit more on the courtroom, on the places that are out front, in the public, and that I see everyday and the ways in which I think you can gain the turf and stake out your client's turf. It starts with treating your client with respect, sitting down with your client and determining what pronouns your client wants to use. I will tell you that I guess as Phyllis has said, it never dawned on me that there various stages in transgenderal development. To me, people are people. You come to me, and as long as you're nice to me, I'm nice to you. And that's kind of pie in the sky attitude, but I was just raised that way.

And so, in reading the first set of "Proceedings", I had a choice between spending two evenings out in San Antonio a few weeks ago or reading the proceedings. I sat and read the "Proceedings", and it was far more interesting than the Riverwalk, those of you from San Antonio, notwithstanding. And it was fascinating to me. I truly believe if nothing else happens tonight, I am a more effective lawyer, and I think I probably have the best compendium of information on the subject from a legal perspective than anybody's got, short of y'all that have the "Proceedings" of last year. It was a tremendous work. And I know next year when I read the "2nd Proceedings", and I read these very words, I'll sit there and say, "God, was he boring. How did he keep them awake?" I apologize, but again I take this serious. I didn't bring the jokes.

So, the first question is, stake out your client's turf. Decide how your client wants to be referred to, in public and in private. Assuming for a moment that your client wants to stand her ground, then you better damn well stand her ground for her because you are her representative. And if you give just one inch in public, in the courtroom, in deposition, in phone calls, you're hurting your client. That's who you're hurting.

You took an oath, you damn well have to live up to it. Whatever you get out of this is your business on that warm and fuzzy level that we all deal with. I mean I love my job, and I'm very proud of it. But don't mess with my judges. Well, don't let anybody mess with your client. Don't you ever give an inch. Force that other lawyer to refer to your client by her name if that's what your client chooses to do. If your client is comfortable, do what your client wants you to do.

How many of you are from Texas or practice in Texas? Are there any of you? A few. One, two, three, four, five. We have an oddity in Texas law. And again just as a lawyer in preparing for the speech, I was looking for ways you can use the law. How can we get up-front, close-in and personal in this thing? And it dawned on me that in the Code of Criminal Procedure, there's a point in the criminal process, right at the beginning naturally, where the defendant can identify herself or himself by name. And that name that the defendant chooses, by God, is the name that the court has to use in all proceedings from that day forward.

My guess is that most every other state has the same rule or something very close to it at the arraignment stage. But at some point the defendant is entitled to correct the name or state her or his name for the record and can never assert it again. And I think that should be the initial stage, if no other, where you stake out your turf and you force them all to deal with it, period. There are a whole lot of folks at this courthouse here that are very sympathetic for some of the people that go through the system. There are a whole lot of folks that just don't give a damn. But in the end, they'll all respect the law. And if you can make the law work for you, I think that's the sweetest success that you can have. That gives it to you both personally and professionally. And the arraignment in criminal law is that position. That place.

On the civil side, your pleadings, if it's a divorce case and if there's a transgender issue, put it in the damn pleading. Don't sit there with one arm behind your back worrying about, "Oh, well, are they going to try to pop my guy or my girl on this issue." Don't weaken your legal position. Don't weaken your client's self-esteem. You know one of your jobs is as counselor to your client, and unless there's a real reason not to, as a general rule, I would again advocate that you advocate that that client stake out her turf in her pleadings in the courtroom.

I think that's real real important. Because there are attorneys, tactically or out of ignorance, that will think they got something that they're going to go with. And if you just blow it out at the beginning then all of a sudden there are no issues except the real legal issues. If there's an issue of infidelity, if there's an issue of community property or child support or visitation, let's get it on on those issues, but let's not be cluttered with this other stuff. Don't think you're going to blackmail me through something and I'm going to give an inch when I don't need to. Because I don't need to. Correct them when they try to play those games with you. But most importantly, make the system work.

Be prepared to bring in a DSM-III-R and raise issues the way they ought to be raised. And I think that's the next part of this that's important. You need to be prepared as lawyers to subtly, or not so subtly, educate everybody else in that lawsuit. You and your client know what's going on. It's an education issue in an insurance case where the insurance company says, "Oh, no, this is cosmetic surgery. This is purely elective. Whatever reason your client wants to do this, we ain't paying." You've got to be prepared with medical experts to say, "No! No! This is birth defect. And yes, it's cosmetic, but you know, hey Jack, how would you feel if you were born with no nuts? You know? I mean wouldn't you want something there?"

And I'll be curious to see what they have to say with a straight face. I mean I really would. That's what I sit and think about sometimes in court. I'm like, "Ask this question. Let's see what they'll say to this." I just have to sit there and bite my tongue. Again, I think you have to consider that. Get it out in the open. Deal with the issues. Force the issues to be dealt with in the light of day.

Step back to criminal cases for a minute, and I know I'm jumping around. I think everyone's and my biggest fear in the world is to ever spend the night in jail. I don't think anyone can make an informed decision about anything in a courtroom after spending the night in jail. And I especially think that persons who are at various stages of, I guess, the transition are really going to get a double whammy down there.

One of your obligations should be bail first. Get her the hell out of jail. That's no place for anybody, period. The first thing I'd be doing is arguing for bail.

I would be arguing based on the magic words, "42 USC 1983". Make it a civil rights issue. Make it a due process equal protection issue. "Sure, everybody is at some risk in a jail, but my client is at more risk." And if it's not negligence then, "it's going to be your 'custom and practice' if you leave her in and that gives you public official, personal liability." If you start focusing on that with the sheriff or with the mayor or with the city marshall or whoever runs the jail, you're going to get a little bit better response I think. And don't be afraid to throw those terms around.

But bail first. Get your client out, get her out of what is a traumatizing situation at best. I think you need to remember that quick pleas are not going to serve justice and virtually never will serve your client's long term best interest. Don't let them plead just to get out of jail. Fight for bail first, please, for them.

If bail doesn't work, or if your client committed a really bad crime and doesn't need to be out of jail for a variety of reasons, many transgenerals, as I understand it, may be using Premarin, Ogen, Estinyl or other medically prescribed drugs in aid of the transition. You don't want to get lumped together with — because you will if you're not careful — the diabetics, and the drug addicts. You need to get up there and say, "Whoa, this is not some personal choice. This is not something that is really unnecessary. This is not an experiment. This is a human being, and this person needs to have these drugs. This is not just a warm fuzzy issue for my client.

This is my client's life. No, she won't die if she doesn't get them, but there is a genuine medical need and therefore you have a genuine legal responsibility to provide for her."

And again be prepared to bring in a medical expert. The only way you're going to get acceptance is number one, to get up in everybody's face, and number two, do it convincingly and credibly. I don't know a judge really who faced with real evidence, credible evidence is going to rule against you. At least not down here. And we have some pretty horrendous judges on some issues. But on basic human rights issues, I think we have a pretty good judiciary.

But they're not going to go out on a limb and pick up your political band song just to be nice guys and girls. You've got to give a judge evidence on which to rule. Because with that evidence that judge also has a certain amount of political protection. "Hey, they met the burden, I had to rule that way." If they want to hide behind that, that's their business, but they can do it.

Bottom line is, you get what you want for your client. So, you've got to be prepared. Certainly I think confinement is the first real issue that you can sink your teeth into and it's a very prevalent one. Because not everybody gets out of jail, certainly in Harris County, that's true. But you've got to be prepared with credible evidence, credible testimony. I believe Phyllis has or you will get during this conference a list hontree to physicians who are credible, medical witnesses. And I urge you to get those lists or contact Phyllis for them. I think it's necessary that you do that.

Likewise, there are transgenderal addicts and transgenderal homeless folks. And we have no facilities for them. From a standpoint of purely ethics, I think you have an obligation to try and force the system to deal with those issues. Now, if you've got a transgendered client who gets bail, who gets out of jail, who needs to go to a halfway house, the system has to deal with that. Your client shouldn't be denied that process just because we don't happen to have something set up right now. That gets us back to 1980 and Phyllis with the D.A.'s office. I think sadly, we're going to have to go back there over and over on each of these issues. But I think you have to push. The system will respond, but I think you have to push and you have to push credibly.

Employment is one area that I think is probably pretty hotly litigated right now. There are several cases that even I've seen and I don't read a lot of civil law. Forbes Magazine picked up, I think the April 26 issue, a piece on a Boeing engineer who evidently went through transition over a three year period and Boeing finally fired her, I think. You're becoming a mainstream issue, which is great. When you make Forbes, you've really ticked off a bunch of Republicans. I understand there's at least one Republican here from Vermont. The only Republican from Vermont; is that true? She proudly sat back there.

In the area of employment, I have two things to say. One is in this set of proceedings or during this program this year, I understand there's going to be a companion "Co-worker's Manual" to go along with the "Why is he or she doing this to us, Employer's Manual." The Employer's Manual is a great book. Sometime during the year, or at least when we do the appointed attorney course next spring, I'm going to try to get Phyllis to either include it or plagiarize parts of it into that program.

It has some of the most concise explanations and questions most often asked or the questions that ought to be most often asked. And the answers that ought to be most often given. It's a wonderful piece of work. Whoever, if the author is here, my hat's off to you. You did a fine job. It was the first thing I stumbled on in looking through the "Proceedings" and it really set the tone and allowed me to read through and understand more fully what I was doing.

But on the issue of employment, I think that's where you've really got some liability and that's where you got to fully explain to your client the Hobson's Choice again. I've seen some of the case law. I think what you're going to wind up having to tell them is, if you lie, when you try to claim your benefits, you're out. If you lie on the application, you're going to get fired. Don't lie. And I think this is the one time that I'm not

advocating getting up front in everybody's face. Sometimes there's a time to leave the box blank and sometimes there isn't. And I think this is one of those times. If your client has legally changed her identity, you'll leave it at that and go forward. I don't know, some of you may disagree with that and I think it's probably the most controversial thing I'll say tonight, other than the Republican business. But Yolanda would agree with me. Yes.

But I think there really is a point where if it's not an issue up front and your client has established a working history or a relationship with her employer, that is a positive one, A) you may be able to get through it when the time finally comes or B) you're going to have a hell of a good lawsuit.

Now, on the issue of disclosures and contracts, I don't know. I think a transgendered person needs to tell anyone they're dealing contractually with, if it's germane, who they are and why they are, and let that person decide. I think you could have fraudulent misrepresentation. I truly do. And I think there's going to be at least one speaker on that. I don't know whether it's today or tomorrow. Tomorrow.

So, really I'm confining my neutral response only to employment applications in that one little box that says "M" or "F." I'm just afraid that mainstream society isn't ready at this point and as my predecessor said, "You've got to give them time for that." So, I advocate not checking that box. I'm not comfortable with that as a person, but I think it's the only response at this point ethically that you can give your client is let them make that choice. But fully inform them of the possibilities.

Lastly, MCLE. Those of you who are from out of state, I believe most states now have some kind of continuing legal education programs. I urge you to advocate. Again, I do it because I think it's necessary and it's right. There are a lot of folks that aren't going to do it unless you push it at them.

I think you need to do two things in this regard. I think you owe it to yourselves and to the profession to educate the profession. Get involved with the continuing legal education folks in your communities and say, "Well, did you know that there are X number of hundreds." Always put two zeroes after everything. As a bureaucrat in government, you always put two zeroes after everything. If there's a thousand, put two zeroes, you've got 10,000. Now, you've got an issue. Whatever it is, you've got an issue. Add zeroes.

When you sit down and talk to somebody, say, "Did you know that there are this many of us here, and we vote. And as you know, there are other political blocs in this community, and you see what they do, well we do that too. We're just so powerful, you don't even know we exist." And add two more zeroes to the number of dollars that you generate each year. It's amazing. Political potency is a significant issue.

I've watched Ray. I love to have Ray come into my office. It's fun. The lesbian and gay community here is a force to be reckoned with. And I think there's a lesson to be learned there. Political activity works and while it's a very tried and true method, hey, don't reinvent the wheel. I mean you've got enough to deal with it as it is with mainstreaming. Political activity works. Hook on to that train. You've got to get the word out. You've got to raise awareness in local officials.

My judges are very fine folks. I don't know one of them that just would turn his back on a transgender issue. May not be comfortable with it, but he's not going to turn his back on it. And again maybe that's just locally we're very, very lucky. But we have a good bench here. So, follow the rut that works, don't reinvent the wheel, get your experts out in the community. There are plenty of lawyers that are more than willing to fight for their clients if they know what they're fighting. Why and how to do it. It's the only way you're going to perpetuate in your community what Phyllis has done here.

Lastly, I would urge you all to either get a copy of the "Proceedings" from last year or this year's as they come out and put them in your local law library. Now, I think that's real, real important. I have a set of the first "Proceedings" in my office. It's there right along with all my other MCLE material. I'll put the second set there. If Phyllis doesn't send them to me for free, I'll buy them.

I think you've got significant legal issues from an ethical standpoint to deal with each day, both that you owe the community as well as the community owes you. I tried to find a whole lot of great answers to all these pithy questions and couldn't. I mean the books just don't have them. You are truly on the cutting edge, and it's kind of fun to be on the cutting edge because you can make it up as you go along and see if it works.

I mean that is kind of neat. We're all bound by *stare decisis*. It's the first thing you learn in Legal Research and Writing I. It means whatever came before is what we have to perpetuate. Nothing's come before for you. And to be able to write on a clean slate as a lawyer, I think, is a real, real opportunity.

I read an article that has nothing to do with transgender law, but it has to do with applying Admiralty Law to future commercial trips in space. Just a bizarre set of analogies, but I guess it could work. The point is you can start to establish a *corpus juris* in transgender law just any old way you want. I mean you get to make the facts. There's nothing that says it can't go your way. Nothing at this point. To me that's the most encouraging thing. There's nothing that says it can't go your way. I think you owe it to yourself and to the legal community to make it go that way. Thank you.

By Phyllis Frye:

That was terrific. And don't worry about the jokes and the humor. Jokes and humor are a lot of fun, but they're kind of like candy. And I really think we got treated to meat and potatoes tonight. And I want another round of applause for Marshall. That was Raymond Hill's voice calling out some more glowing words for our friend Marshall Shelsy.

I would like to — for all of us to acknowledge and thank Cathryn Nash and Mary Sherman and our Chef Eugene Nickolson for the wonderful time we've had tonight.

Okay. We're going to adjourn. I'll see you tomorrow morning. We start at 9:00 sharp with Employment Law and with Legal Intervention Law. I'll see you tomorrow at 9:00 o'clock. Thank you.