

FAMILY LAW PROJECT
Connie Moore, Atty

By Phyllis:

Connie Moore is another member of the Bar Association for Human Rights. She and her significant other law partner, Debra Hunt, do a very good job in the area of Family Law. I've known Connie for a very long time. And I can tell you many many stories. But if I do, I'll have to get into the recent win in Brazoria County, just south of here, and I know she wants to talk about it. And I know if she doesn't talk about it, I'm going to talk about it. So without further ado, I want to introduce Connie Moore, Attorney, from Houston.



By Connie Moore:

Good afternoon. May I say evening? It's getting pretty close. We're going to wrap up today's sessions of the reports from the committees, and I'm going to tell you what we discussed in the Family Law committee and present that to you. We have passed out

for you a report which was done this afternoon to kind of summarize some of the cases that we discussed. It also highlights some of the progressive areas for change, where I will get on my soap box just a little bit. I know that Phyllis won't mind. It's nice to be invited, to get on my soap box. Sometimes, when I'm invited to speak, they say, "okay, talk to us, but can you stay down just a little bit off that soap box?"

First of all, our family law situations within the transgenderal community very often revolve around definitions. Labels. Is this person a transsexual, a transgenderist, post-operative, pre-operative? What is the legal status of the sex of a transgenderist? What does the birth certificate say? Can the birth certificate be changed? If so and if not, what kind of implications does this have in the family law arena and how are significant?

So we're going to try to take these a little systematically and first of all tell you the current status of the law as well as just a little bit of history. Where did these laws come from, and then hopefully, some guidance on where we can go with them.

The first change that is often addressed in a transgender community is the change of name. In most jurisdictions this is a court order change that can be accomplished and determined on a case by case basis. I find it surprising that I still hear stories of persons having difficulty having name changes. As a matter of fact, we heard very recently from a woman in New York who has been required by a local judge in New York to have her sexual reassignment surgery before he will permit her name change. She's having a very difficult time with this.

In addition to name changes, very often it is desirable to have gender change designation as well as a sex change designation. We categorize these in two different categories for obvious reasons, and also because even though the sex change designation is not possible in some jurisdictions, sometimes the gender change can be accomplished, which can at least ease the day-to-day living anxieties of the transgender community.

I'd like to point out to you for those of you who are not aware of some of the work that Phyllis has done in the transgender community, specifically here in Texas. She has developed and created her own progressive strategy. When she petitions a court for a change of name, a change of gender and a change of sex, she often obtains a change of name, a court order requiring public authority such as the Texas Drivers License, Department of Public Safety to change the designation of gender on identification documents, and a further order that is prospective, that essentially says when this order is coupled with a doctor's affidavit the two documents together can be presented to the State of Texas to allow a change on a birth certificate. We're going to talk about this just a little more in our progressive strategies for change as well.

Changing the sex designation on birth records is specifically authorized in some jurisdictions and specifically allowed in others: this is done in two different fashions. One is legislatively and one is simply by court order, judicial changes. In fact, that is the way it is decided in a majority of the jurisdictions that we have examined within our committee. A variety of methods has been used throughout the world to make a determination that sex will be changed, won't be changed, or what the sexual identity of a specific person is. And we'll talk about this in some of the cases.

It is interesting to note that the court, some of the courts, have looked at as many as seven different factors, which influence or determine, gender status and sex status.

This includes unchangeable as well as changeable factors. That is critical for many of the courts. Unchangeable factors are such as chromosome make-up, or the ability to bear children after the sexual reassignment surgery. Changeable factors are such as the psychological, the physiological, gonads, the genitals, other things that can be changed. They contrast so with things that cannot be changed. I think that you'll find that we're getting to the point where the things that are changeable are beginning to have a little more weight in the worldwide jurisprudence. They're beginning to not look quite so much at things that are just not changeable.

Within the name, gender and sex identification definitions, I looked first to Europe and the European Convention of Human Rights. This is a convention that was enacted, I believe, back in the '50's and two articles have bearing on the transgender community. Article VII guarantees the right of respect for private and family life. Article XII guarantees the right to marry. The European Commission of Human Rights is a governing body that reviews what's going on throughout the states that have signed the commission and it has issued an opinion regarding violation of Article VIII by the United Kingdom by their refusal to amend a birth certificate to show the new sex. This opinion thought very strongly that a birth certificate should be changed. It did find that the failure to change it did not violate Article XII interestingly enough because it reasons that any obstacle to marrying would be removed once the birth certificate was changed.

Unfortunately, the European Commission on Human Rights does not have the final say in this area. This decision was appealed by the U.K. to the European Court of Human Rights. This appeal essentially undid what the European Commission on Human Rights did. It said that, because of the way that the U.K. had set up its procedure for changing birth certificates, in order for them to accommodate and accomplish this objective, they would have to re-do their entire national procedure which was just too burdensome for the goal of affecting a few. Although that was bleak, the appeal went on to say in a rider to the case, that it felt very strongly

that the U.K. laws needed to be changed to accommodate the needs of the transgender community.

It talked specifically about the fact that some were allowing this change and others weren't, and their place was not to regulate what the different states and countries could do. But their place was to monitor. They indicated that they would be monitoring the situation in hopes that progress would take place -- that the laws would continue to meet the changing needs of society. I felt like there was some room to move there. I believe that the current status of this issue in the U.K. is not decided right now. I think there is very clearly an avenue of change in the U.K.

In the United States, specifically Oregon has denied an application for change of sex on birth and school records. Many states have felt this way: that the birth record is a historical document, it is to be changed only if there is an error and this is not considered an error. This is considered an amendment. This case also went on to say that many states have legislated that the birth certificate should be changed post-operatively, and if the legislature in Oregon wanted to do that, so be it. But this court wasn't.

There was an incredibly bad decision out of New York. I'm starting with the bad stuff so that we can get past that and go to the more positive things and end on a happy note here. But I have to tell you that New York has thrown us several obstacles. New York started out in 1966 essentially with a position so strongly said that even though changing sex on a birth certificate may have some benefit to the transsexual, the certificate should not be changed to "help psychologically ill persons in their social adaptation." Essentially New York was saying, we are not going to enable this.

I was really appalled at this decision. Another thing that I was appalled at is some of the decisions that we found in our jurisprudence and in our search. Some of these decisions are very old. It is incredible the amount of change that has come from some of the courts recently, but some of these bad laws continue to sit because no good laws, no good cases, are being presented now. And we're going to talk about this a little more too.

There are many foreign jurisdictions that allow legislative sex change by law. These include, but please don't consider this list exhaustive, Sweden, Czechoslovakia, Greece, Italy, Holland, Switzerland, Finland and the former laws of West Germany. United States jurisdictions which allow legislative sex change, again please don't consider this list exhaustive, but include Alabama, California, Hawaii, Illinois, Maryland, New Jersey, North Carolina, Virginia and Texas. These states specifically have statutes which allow a birth certificate to be amended.

I've contrasted three. I guess I should say that Tennessee does have a statute about birth certificates but we'll talk about

that when you'll see what that statute says. In Texas, the birth certificate can be amended for sex, color or race without restriction as to the cause of the change. You do need to present evidence that the change is accurate. In California, the amended birth certificate is allowed and in California they go so far to say that the amended birth certificate takes the place of the original for all purposes. It is issued as if it were an original birth certificate. In Tennessee, it's very interesting to know that the amendment of the sex on the birth certificate is prohibited if the change is due to a sex change surgery. So if you were born in Tennessee about the only thing I have for you as far as having your sex changed on your birth certificate is bad news. I haven't found anything in my research that would permit the change in Tennessee because of the statute that specifically prohibits it.

The reasons why we went into so much detail as to what the birth certificate says is, because we found in our discussions of the law of different jurisdictions, that often what is on the birth certificate is determinative as to a person's, quote unquote, true sex.

We next investigated and discussed the validity of marriage in general. One of the things that I would like for you to distinguish is that the courts did distinguish in most of the cases a change of gender, versus a change of sex. Some jurisdictions will even allow a valid marriage for a transgenderist, and I would like to also have you distinguish the ability to enter a valid marriage after your transition as opposed to remaining in a valid marriage. Did I say that right? Entering into a valid marriage after transition as opposed to remaining in a marriage that you're already in when you transitioned.

I'd like to go back to the U.K. to start my discussion here. For many years the leading case and the only case on the validity of a transsexual marriage was the Corbitt vs. Corbitt case, a 1970 case out of the United Kingdom. This was a case for maintenance. The post-operative male-to-female transsexual had been married to a male. At the time of the divorce she filed a motion and requested maintenance. The husband's defense was no valid marriage because the wife was biologically a male. This was one of the most restrictive tests that has been used in the jurisprudence and fortunately it has been criticized widely through many jurisdictions from Australia throughout the United States. Many articles, many other courts have criticized this decision. Essentially, this court used a five element test, as opposed to the seven that I mentioned earlier, for deciding what the sexual identity of the person before them was. They used the chromosomes, the gonads, genitals, psychological aspects, and hormonal factors and secondary sexual characteristics. The Court held, with no explanation, that they were going to look at the first three, that those were the important ones, and they all had to be congruent or alike before sex could be determined for purposes of marriage in England. What this meant was that the chromosomes, the internal

sex organs and external sex organs all had to match. If they didn't match, then this person couldn't get married. This caused an incredible stir throughout jurisprudence because when you interpret it to other fact situations, other than the one that was specifically in front of them, it made some of the other possibilities that would be subjected to this test pretty ludicrous.

I'm going to mention to you a criminal law case specifically for the reason of imparting unto everyone in the different areas of law that you need to understand that the courts look at this sexual identity issue in one area and sometimes want to carry it over to another area. For example, Regina V. Tan was a case that ended up with an incredibly unjust result. Again it was in the U.K., because the U.K. refused to deviate at all from this bad law of Corbitt. Corbitt is clearly bad law yet the court went on to continue to create bad law based on Corbitt. In this criminal case what happened was we had a fully transitioned male to female, married to a biological man, charged as a male with making money from prostitution. I understand that it is illegal for a male to live off the earnings from prostitution in the U.K. while it is not illegal for a female to do so. So we have a situation where we have a female, a male to female transsexual, who was living her life as a female married to a man, apparently living off some earnings from prostitution. She was convicted and the court found in Regina V. Tan that she was a man. Simply because of Corbitt and because the birth certificate, and the chromosomes and that, had never changed. These unchanging things -- unchangeable things -- things that may never change regardless of what an individual does. They said that the conviction was upheld on the basis that they just must be consistent with Corbitt. Even though Corbitt was a family law case, and this was a criminal law case, it really didn't matter. We were going to have them consistent.

So I need for you to really understand that it's not okay to let something slide by in the area of criminal law because you're not worried about that. Or let something slide by in the area of family law because your main important of your progressive change for strategy is within the military. You need to understand that these things can be related to one another.

This was also the case in Australia. The first case that was bad law creating more bad law was the case where the Corbitt reasoning was relied on. There was an awful case where we had hormophrodites. The court said that this person is neither man nor woman so there was no marriage ever for this person to anybody. Fortunately it didn't take too long before that position was eased just a bit.

In 1988, in Australia, what has been called a landmark case in this area, two defendants were accused of, again a criminal case. This is not a family law case but it has wide implications in the family law arena specifically in Australia but elsewhere

also. Two men, excuse me, two defendants were accused of solicitation of two males. Now these defendants were two transgenderals, one was a pre-operative transsexual, the other was clearly transitioned, had been for years. I believe the case said that she began transitioning at age 14 and had been living as a fully transitioned post-op transsexual for years. Both of these were accused and convicted of solicitation of two males. The court affirmed the conviction of the pre-op transgenderal and said that this person has not sexually reassigned and has not made the full transition. The Court of Appeals in the case of R. vs. Harris & McGinnis held that the transsexual who had completed the sexual reassignment surgery was a female and this conviction could not stand. On the other hand, the transgenderist who had not completed sexual reassignment surgery was still biologically a male for purposes of this conviction, so the conviction stood. This was the first published case in Australia where the court had reached that transsexual who had completed the sexual reassignment surgery was allowed to have the sex, the new sex, and was not held to be of the former sex.

There's another case that comes to mind, but not to mind enough for me to explain it here, but it was subsequent to this Harris & McGinnis case, also out of Australia -- I can get the cite if anybody would like to have it -- where the court continued this thinking. So Australia has paved the way to come in with one of the validity of the marriage cases. The validity of a marriage in Australia has not been tested, but we are hoping that with the trend toward the new way of thinking in Australia that this will be the next place that this area of jurisprudence goes.

Let's come back to the United States just a little bit to analyze the validity of transsexual marriages. In New York, and I mentioned earlier that New York is causing us some of the most awful problems and giving us some of the worst cases. A female-to-male transsexual was post-operative as to having all of the female genitals removed. He had not had any surgical phalloplasty and this court held that without the ability to perform as a male, there was no valid marriage. So, it seems that in New York there is greater hope at this point for the male-to-female transsexual to enter into a valid marriage as opposed to the female-to-male transsexual at least under these facts.

In anonymous vs. anonymous, this case was really a joy to read. This was a pre-operative male-to-female transgenderal. The facts of the case, as I recall, the biological male met the pre-operative male-to-female transgenderal and only visited, only got to know one another, spoke, talked, were separated for a few months. The transgenderal met up with the male later at Fort Hood, Texas, and they married. The biological male -- woke up about 2:00 o'clock and reached over to touch his new bride and realized, according to the facts of the case, that he had married a male. Again according to the transcript, he jumped out, got drunker again, drank some more, went to the bus stop, found out that no buses were running, came back and slept on the couch. The facts

of the case were that they never consummated their marriage, they never had sex, they never lived together. He went to New York. He filed for this petition to have this marriage declared void.

The facts of the case did say that the next morning the transgendered told him that he was -- that she was -- undergoing this transition and would be having surgery. In fact, between the time of the marriage and the time of the declaration that the marriage was void, she did in fact have her sexual reassignment surgery. The court in New York held that that really didn't matter. The transsexual was a male at the time of the marriage and that was going to be the date that they were going to look at. We had two biological males at the time of the marriage and that marriage was not going to stand. The New York Domestic Relations Code, I guess they got a little nervous that more people would try to do that so they took it one step further, said a person's sex at the time of the marriage determines the ability to marry. Among other things, the statute says subsequent operative procedures to change sex following this ceremony does not validate in otherwise invalid marriage.

In New Jersey, we have had one of the most positive cases on the validity of a marriage to-date. This is our landmark case here in the United States. M.T. vs. J.T. is a New Jersey case. The complaint was filed by the wife for support and maintenance from the husband. The husband's defense that the wife was a male-to-female transsexual, the marriage was void. The court held that that wasn't going to work in this case. The facts of the case went so far as they knew one another before the surgery, and they had a sexual relationship before the surgery. The transsexual went ahead and had a sexual reassignment surgery, the husband paid for the surgery. After the surgery they got married and now husband is saying, "no wait a minute. We really don't mean to do this. This is a male." And the court said, "I don't think so." And the Court held him to the standard of, "you have married, this is a valid marriage, and you are going to support and pay maintenance to your wife." The Court did talk about them performing the sexual act. That did seem to be important to the New Jersey court that they were having a practicing sexual life in the transsexual life and was able to perform in the manner with her newly acquired sex. They specifically rejected Corbitt, that case out of the U.K. that we talked about earlier.

Ohio is another interesting place where you might want to go sometime. In Ohio, a case was appealed when a marriage license was denied. This was a post-operative male to female transsexual and she wanted to marry a biological male. Ohio would not allow her to get a marriage license because Ohio does not permit a change on the birth certificate and Ohio says, "the birth certificate is what controls and these birth certificates here say that we have two biological males." It was very easy to read between the lines which I liked to do a lot. It left a lot of room for persons who can change their birth certificates in the states of their birth to come to Ohio and get a valid marriage license. That's one of

my progressive strategies for change. Move to Ohio. Especially if you can get your birth certificate amended in the state of your birth, it appears that you can get a valid marriage license in Ohio.

The next state we're going to move to is right back here to Texas. This is the case that Phyllis was referring to when she introduced us. The case is Baker vs. Baker. It is not an appellate case. This case was not appealed from the trial court. We like that. We like to win at the trial court level and not have to appeal them. Unfortunately, that doesn't always leave us with final precedent in the book, but nevertheless.

We have a fact situation here in Texas where we had a female-to-male transsexual. He married a female. He obtained a valid marriage license in Brazoria County to do this. They lived together as husband and wife for 12 years. She filed -- the wife filed a petition for divorce -- and later amended it to have the marriage declared void based on the grounds that the marriage must be invalid as this is a marriage between two women.

We never reached in the case the sexual identity of the husband in this case. Was this person a male or a female, for purposes of declaring a marriage void in Texas? And that was because we have an oddball statute in our family code that I haven't found in any other jurisdiction yet. Section 2.02 of the Texas Family Code states that the validity of the marriage is not effective by any fraud, mistake, or illegality that occurred in obtaining the marriage license. We have other parts of our Texas Family Code that talks about the states great responsibility in making the marriage a very sanctimonious union, and the marriage will not be set aside for any reasons other than as declared in the family code which is bigamy and consanguinity. That's it. That's the only reasons in Texas that a marriage can be declared void.

Now, it can be voidable and it can be annulled for other grounds such as fraud, impotency, a prior divorce that was unrevealed, other things. You still have to cross the fraud threshold. You can't defraud someone into marrying you and then hope you can have it upheld. But the lesson in here is, if you get a marriage license in Texas and you enter into a ceremonial marriage based upon that marriage license, then you have a valid marriage. Period. And we were pretty thrilled by this ruling.

Let's take this just a little further now, from the validity of the marriage into custody, possession and access to children. These issues -- as opposed to a lot of the case laws that I've been telling you and a lot of the statute where this state says you can change your birth certificate, this one says you can't -- of custody and access are very much determined on a case by case basis. Very, very much a factual determination. This is not a kind of category where you can line up different facts -- like the sexual identity where you can come up with some kind of definition or make hopefully some black or white law. The custody cases are

very, very fact specific. And this is a classic case where good facts can make good law, and bad facts can make really bad law.

I've got some examples of these here. The thing that I want you to distinguish when you're dealing with your clients, or with others, is that the transvestite has a very different approach to the custody cases or the visitation cases, than does the transsexual. With different strategies, different options, sometimes different burdens -- it all depends on what your facts are, what you want to do, and how you feel about that. Essentially, there have been several cases that were reported that custody and or visitation was awarded to a transvestite on the condition that he or she not crossdress in the presence of the children. For some persons this is an acceptable solution or alternative. Obviously, for others it leaves a lot to be desired.

The worst cases that we found in our committee and studying the jurisprudence in other jurisdictions usually involve factors other than the transgender identity in the refusal of a court to grant custody. Let me give you an example. An Oregon case, the parental rights of the biological non-transsexual mother were terminated at the request of juvenile authorities. This was not a custody fight between Mom and Dad. This is where the juvenile authorities come in. And they terminated the rights of the biological mother. One of the factors that the court looked at was her continued relationship with her former spouse, who was a transsexual, whose rights had already been terminated. And the thing that I need to point out to you in this case is I can't consider it a lose, lose case simply because there was so many, so many reasons for the court not to like these people that didn't have anything to do with transsexualism. In the record the court held that there were findings against the mother of perjury, drug use, failure to provide the child with adequate environment, unfitness for court supervision. She wouldn't follow the court's orders when she was asked not to take the child out of state. She would, for months at a time. And failure to discontinue her association with the former spouse, the transsexual. And so you need to understand that when you take cases like this forward that when you look and you read, "gosh, I really understand why they felt like they needed to take that child away from that mother. And you need to look for the reasons other than the transsexualism and not let these cases be heard as precedents that this person who is associated with the transsexual was unfit to raise her child.

Examine the cases very closely. A Nevada case, this was the Daily vs. Daily case -- a case of custody between Mom and Dad. And there is a positive thing to this case. There is a very, very well written and well analyzed dissent. I keep referring to the writer of The Dissent as a she in my conversations, and I'm really not sure why. I have no knowledge of the sex of that person, but it just seems to me it was so human and so humanitarian, that maybe. I just keep putting that pronoun with it. I'm sorry.

Nevada. The fact in this situation showed a child who seemed to not want to spend time with the transsexual father and was having some very, very high levels of stress involved with this. She was ten, she wasn't quite sure where she was coming from and where she was going, and she needed some adjusting time. The transsexual father was not visiting the child while this case was going on. So she was allowing her to have this adjusting time. The Court went so far as to terminate the parental rights instead of just limiting visitation. That's what The Dissent was so upset about; that there was a much less restrictive way to cover the majority's concerns; that there could be some harm for this child. The author of The Dissent made a very humanitarian statement that I've noted, and I would like to read and become part of the record in this case because I think it is really very -- it is very important for our youth as we go forward. The writer says, "While Mary may no longer have a father figure, she still has a second parent who desires to contribute to her financial support, and who might some day in the future provide her with needed comfort, affection and help." And The Dissent found that there was no reason in the world why they should take this second parent away from the child.

In Ohio is my worst of the bad case cases. The only positive that I can say about this Ohio case is it's unpublished: it has no precedential value, and no other court can use it to hang their hat on. Essentially, it was a very negative opinion. It was the atypical "visitation was suspended". The visitation was not suspended by the Trial Court. But the Appellate Court overruled the Trial Court, which can be unusual in custody and visitation matters, and wrote a very negative opinion. It was very biased. It was very negative and was fraught, in my opinion, with myths.

In Minnesota is again an unpublished opinion, but at least this one was favorable. This is one of the cases that I was talking about earlier where good facts can make good law. The father in this case is a non-transitioned transgenderal. He has decided at this time to deal with his transsexuality as a male. He is a very stable person and is caring for the child in a very stable environment. The mother, on the other hand, was unable to maintain either stable housing or stable employment. The Court simply found that there was no evidence whatsoever to support that the child was being harmed in any way at all by the father's transsexuality and so did not take the child away from the father.

One of my favorite cases now comes from Colorado. This is published precedent and should be used and used widely and repeatedly. This is a post-divorced case. This is a case where earlier the parents got divorced. They had already decided on custody. Afterwards, the mother, who had had custody of the four children, transitioned from female to male. "He" changed "his" name, married a woman and went through setbacks financially, and went through many changes. In most states, a reason to change custody arrangements is if there have been changes in circumstances. This record was replete with good facts about

goals. The children were all honor students. Much testimony was offered from neighbors and principals that they were exemplary students, very well adjusted, that they had gone through all of the mothers adjustment period without any stress, any cost or any problems whatsoever. The court held that without some kind of evidence that something that a parent is doing is having an effect on a child, it's just not relevant. And this Court found that the transsexuality was not relevant for custody purposes. I was impressed.

Okay, let's talk about what we're going to do with this stuff. Do I have just a little more time for that Phyllis?

Okay. First of all I need to stress that of the cases that we studied and we looked at, especially some of the bad ones, it is time, especially in New York and England, to get in there with some good facts and try to start making some good law out of these bad cases. These bad cases are found very often on bad facts, where you have just bad facts, and the Court sometimes has no way to get through it.

I have seen, and our committee looked at, different cases that reach the end result that we wanted simply because it just seemed fair. I think that, faced with the fairness of it and human relations part of it, the Court felt like they couldn't do anything else.

There's one case, and it was the one that I was trying to recall for you from Australia that came out after the R. vs. McGinnis case that we've cited from Australia. It's Harris & McGinnis. It was a case where a transsexual woman had been raped. And the rapist was trying to get off of the conviction saying, "I didn't rape a woman, I only raped a man, and that's not illegal under this statute." And the Court said, "Bullshit." So very often the Courts are willing to go along and continue to make this law progressive when they have facts that any other decision just could not stand. So, take your good facts and take them to the Courts and let's get some of the old cases struck down.

The other strategy for change is to work for legislative action, to remove the obstacles to changing the sex designation on birth certificates. It seems that the birth certificate issue is going to be one that will continue to sway some courts. And you will be able to get much further in your strategies for planning out your life, if your birth certificate can be changed. So, work for legislation in those areas. We need to all pack up and go to Tennessee. That is the only state in my research that actually had a specific designation that it would not be allowed in the event of sexual reassignment surgery.

The next strategy for change that we talked about a little bit in our committee is using the existing laws and opinions to our advantage. I subtitle this one as, "Cramming their laws down their throat."

There are many cases where they say, "this male-to-female transsexual is still a biological male on the birth certificate so that's the way we're going to leave it. And you can only get a marriage license if we have a biological male and a biological female." It's my understanding that there are many post-operative transsexuals, male-to-female, who choose as their significant life partner a female. So, take your two birth certificates and go get a marriage license. You have a biological male -- so go to New York and do it there please. Have a biological male and a biological female stand there in two dresses and get a marriage license, and then let them do something about it. Let's take their laws and do exactly what they don't want us to do.

Use the opportunity to change your name, your gender, and your sex when possible. If you live in a state where your legislature is silent, where it doesn't say you can, and it doesn't say you can't, then get a court order that says, "change it on the driving license, on anything that is identification purposes". Get it changed for purposes of your birth certificate if you are post surgical. Talk with Phyllis, she knows how to do this. Spread this back to the individual states. She's doing it here in Texas, and it's the only one that I've heard of. She may know more, but we need to send this out and spread it out. Don't go into a driving license place without some kind of documentation to say, "You're not going to do this because you want to, you're going to do this because you're ordered by a court."

As I said, get married or divorced in jurisdictions where marriage laws don't specifically limit marriage between males and females." Come to Texas. Texas does not require a birth certificate to get a marriage license. If you live in Tennessee and you can't, like our very dear client did who got married in Brazoria County who can never have his birth certificate changed to designate that he is a man. He did not need that birth certificate to get a marriage license. In Texas you can get a marriage license by showing proof of identification like a drivers license or a passport. So, use your court order to have your gender changed on your passport and your drivers license, and take that drivers license that says you in your new gender and go get a marriage license in Texas. Because if you get a marriage license and you enter into a valid ceremony with a valid marriage license and your spouse knows what you're doing, that's real important, then you have a valid marriage. Now, I'm not saying that New York is going to declare that it's valid if you decide to get divorced later on in New York. Okay?

I'm not going that far, but I'm saying that I know that the decisions that are made within this community are not decisions that are made over night. I know that the planning that goes on to get what you want for your life is something that is very ongoing. It's something that is planned out for many years sometimes and is a continuing source of making changes to make your life your own. You know that there are some jurisdictions where

you can accomplish things that you can't in others. Once you decide what your objectives are, what's right for you, then you can start investigating in making decisions about how you're going to accomplish that.

So you were born in Tennessee and you can't get your birth certificate changed but you really want to get married. And you either want to marry someone who looks like you or someone who looks the opposite from you, one of those two things. And there's a state where you can do either one. So, if that's what your objective is, is to enter into a valid marriage, then go to a state and live there. And enter into that valid marriage. And then continue to press the courts in the states where they aren't accepting these, use their laws to do what they don't want you to do, and they are going to look at these cases and start realizing how stupid some of them sound.

You read through these cases what we have provided you today, and you start trying to fit other fact situations into the cases. The New York case, it did not use the word procreate, but it came so close to saying it that it was almost as though if you could not biologically have a child then you couldn't marry. So you need to look at the facts and try to apply these cases to other facts and take their laws and ram them down their throats.

The other thing, very briefly. Become better litigators, especially in this area of custody. Plan cases where the best interest of the children are paramount. There were some cases that we examined where they said the father essentially gave up his rights to the children when he chose not to look like a father any more. Essentially, that was his choice. He made this change. He gave up his children. The Court called it a self issue. It just wants to make sure those actions of the litigant can't be concluded as self issue.

Another thing that you need to do is to not underestimate. Do not underestimate the need for experts in this area. This leads right on into the last strategy for change. We need to start educating the judges, the juries, the social workers who come out and do home studies and the psychologist, everyone involved in the decision about where these children are going to be or whose making these decisions. We must begin programs to educate these persons and we must also not underestimate the need for experts to come in at the trial and let a judge know what an adverse ruling what kind of impact that will have on this person's life.

The one thing that this family law expert wanted to leave this group with is that the strategies for change are extremely important. In the family law area, there is a lot of hope. There is a lot of reason to believe that the jurisprudence is changing. We are still being penalized with old laws that need to be amended and updated, and we need to do that. Do not give up hope. Quit giving up. Fight back! Fight back! Fight back! Thank you.

By Phyllis:

That was fantastic. I've got a few postscripts. As you could see, Connie and I kind of affect each other, as do Helen and I, and as do Clyde and I affect each other. We are just radical people. What can I say?

In preparation for this, Connie and I talked a lot about it, and there was one thing that we discussed and you failed to mention so I'm going to add a postscript if you don't mind. And that is in this area where they require the gonads and the chromosomes and the genitals and all this other stuff to match or any other such lunacy that they run us through.

In the area of a pre-operative female-to-male transsexual who has been on hormones for a long time, has body and facial hair, is bulked out in the muscles, has lived as a man for a good while, has had a hysterectomy, has had breast reduction surgery, etc., etc., anatomically, if you continue to think about that person as a female, you will see an enlarged clitoris. However, if you see that person as the man that he is, you do not see an enlarged clitoris. What you see is an underdeveloped penis.

Think about that in law. Think about that in deposition whenever you're suing on a divorce or you're fighting over whether or not you can go to a restroom or whether or not you're going to be fired because you're using the wrong restroom. If, and I know this is true because I'm a member of the community, you're going through transition, and let's assume for this first part of the conversation you are female-to-male, then you are not going to view or talk about or think about or have anything to do with a vagina and a clitoris. All you're thinking about is the future phalloplasty and the fact that you should have been born with a penis and that God, for some reason, left that out but it's coming and it's in the future and it's in the goal. It is a goal. And if phalloplasty were better it would already have happened. So he never talks about his vagina, he talks about his penis. And he never talks about his clitoris, he talks about his penis. You already have mentally and emotionally a completed, completely transitioned male.

How does that affect the male-to-female? And this goes again into persuasion. This goes into oral argument, this goes into the good jurisdictions, this goes into ramming it down their throat in bad jurisdictions. And this goes into deposition prior to trial. If you have a pre-operative male-to-female who has lived for a long time as a woman, has gone through hormone therapy and has breasts and all the other muscle mass and fat distribution changes so that they do have a derriere and the biceps and triceps are sleeked down, and if they've lived as a woman for a long time and they do have their name changed and they have gone to court and they have had their gender changed so that the court recognizes that they are now living the female gender of woman, that is they are in this case female gender of woman, and if there is a legal battle over

losing your job because you're using the wrong restroom or divorce or some way trying to keep you from getting married and everything else, this is the thing that you have to consider. All pre-operatives that I know of, that I've talked to -- and I'm not the medical expert, males-to-females -- don't talk about their penises. Okay? Because they want surgery. They want to have that reformed. So what do they have? Well, they have a closed vagina and an overstimulated clitoris.

Think about it. That could be some very persuasive argument if necessary. Now, this is an ongoing law conference. This conference is going to go on and it will happen again next year. We've got a whole year to think about these things, not just what I just said but a lot of things that Connie said, and that Clyde said -- a whole bunch. This is evolving. And I want you all to be back here, and I want all the people that are listening to this and reading this to be back here next year.

Tonight we're going to finish up health law and I'm going to tell you a story about how I got rid of the ordinance in Houston. Okay. We're going to have the report, and we're going to have the Judge and we're going to have the entertainment.

Yes ma'am? This is Alice Webb. She's going to educate us a little bit. Go ahead.

By Alice Webb:

Okay. That's not the only surgery that females-to-males can have. As far as their genitals are concerned, and there is some surgery to freeze the clitoris up and they lower the labia and it forms the scrotum. That's actually the preferred surgery, as far as I'm concerned now because they can divert the urethra and they can stand up to urinate. They have sensation. It's not as disfiguring, you know. So I don't recommend the phalloplasty actually. A lot of females-to-males elect not to have surgery at all as far as their genitals are concerned because their partners like what they have. As you said, the clitoris enlarges quite a bit. They don't need to have it. They are fully male as far as their partner is concerned. So, the phalloplasty is not a good example for you to use.

By Phyllis:

Well I'm glad you said that. Because you've just reinforced essentially what my argument was, and that is that they are full and complete. Period. Even without the phalloplasty. Lawyers listening to this need do not make their female-to-male clients wait for phalloplasty, but go ahead and take it to the courts. That was the point I was trying to make and you just enforced it, Alice. Thank you for that.