

# KEYNOTE LUNCHEON

Thursday, June 15, 1995

*Speakers:*

- *Laura Elizabeth Skaer, Attorney, Employment Law and Policy Moderator, ICTLEP, Inc.,*
- *Stephen Whittle, Attorney and Law Professor, University of Manchester, UK, Author, "Transoestites, Transsexuals and the Law"*
- *Martine Rothblatt, Attorney, (past) Health Law Director, ICTLEP, and Author, "The Apartheid of Sex"*

## WELCOMING REMARKS

*By Laura Elizabeth Skaer, Keynote Luncheon, Employment and Law Moderator, ICTLEP*

Hello everyone. Welcome to the fourth annual International Conference on Transgender Law and Employment Policy. I think Phyllis has added a couple of other words in the name, but I can't remember them right now.

My name is Laura Skaer, and I am the employment law moderator for the conference. It's my extreme pleasure to be your hostess at today's luncheon and to welcome you to Houston and to the conference. For some reason, I keep seeing all these signs around town about the Rockets, and I'm thinking, Are we getting ready to launch another space mission, or what? [Laughter and catcalls from the audience] Congratulations are in order.

We have a really neat program this morning, or this afternoon I guess. My clock says Texas time; my body is still on Colorado time. I want to tell you a couple of things. In 1992, we had 20 at this luncheon. In 1993, we had 30 at this luncheon and in 1994 we had 42. And this year we're at around 50. That's the



**Laura Elizabeth Skaer, Attorney  
Employment and Law Moderator, ICTLEP, Inc.**

growth of this conference.

I think everyone in this room, as well as many who have been in this room once in the last four years, would agree this would not be possible, this would not be happening without the energy and the love and the driving hard work and the whip cracking of the founder of this conference, Phyllis Frye. Phyllis.

You made it all happen, and I think as a community, we're blessed. I've been involved in a lot of things within our community over the last four or five years; this is the one that I've kind of attached myself to because I think it's the one that has the most meaning for making it out there in the real world. This is where the issues, real world issues are discussed. This is where we're achieving our right to live in our society and to experience life to the fullest. Those kinds of issues are happening here, and it's this conference that's going to lead to that which will come sooner rather than later.

Before we get to the rest of the program, Dee has someone special she would like to introduce and ask to say a few words. Dee.

By Dee McKellar:

Thank you Laura. Some of you may think of me as the board secretary for ICTLEP. The last year I've had the exciting opportunity to serve as board secretary on another organization entirely: one that's putting on a fantastic event this coming Sunday. It's called Spectrum 95. You've seen our program guides. And we've got plenty of them available in the registration room. This is the biggest gay and lesbian event to ever hit Houston.

By Phyllis Frye:

And transgender.

By Dee McKellar:

Yes. I was going to get to that.

We have a trade show with 150 businesses displaying their wares, businesses and community organizations. We have Town Meeting Two, which is truly a community meeting with resolutions as to what the community should be doing as a community. We have entertainment all day long on a small stage and Sunday night we're going to have a gala concert. What is it, five hours, six hours long? Six hours with performers from all over the country. This is a B\*I\*G event.

Now, I said it's gay and lesbian. It started in the gay and lesbian community, but transgenders have been a part of this organization, a part of the event from the very, very start. That's because of one man, the operations director, the man who dreamed this event up about a year ago and has, at great personal sacrifice, pushed it through until it's actually happening.

Allen Bourgeois, stand up, please. Not only has Allen dreamed up this great event and managed to pull it off, he has been behind the transgender community every step of the way. There were major entertainers, national headliner types who called and said, "We'd love to play your concert, but not if transgenders are involved."

And he said, "Well, thank you very much. We're not interested in anybody who does not support the entire community." That took great guts. That took a lot of guts because we're trying to make some money on this. Money to give to charities. We lost a lot of money on that decision. But we're going to make it back because this is going to be a continuing event. And because transgenders are included, it's going to be a great event. So I wanted to thank Allen publicly and let everyone know what a great job he's done for us.

Should we make you an honorary transgender, Allen?

by Phyllis Frye:

He already is.

By Laura Skaer:

Thank you, Dee; and thank you for being inclusive. In Denver, we're doing a pretty good job of getting it right. Most of the publications, as well as an organization called "Equality Colorado," are saying "and transgender" 65 to 70 percent of the time and the initials are GLBT. That's a real improvement because a year ago it was about 20 percent of the time in their publication. So they're getting it right almost all the time, which is really good to see.

Phyllis knows me pretty well to start off with the Moody Blues song. I always figured that if we did not live in the freest country ever known to humankind, and if, in this country, some dictator decided that everybody could have music, but you only got one artist, that's the artist I think I would pick. I can listen to them over and over and never tire. What I really like about them is that so many of their songs are about love and about life; open your eyes and realize the way it's always been. And open your heart and it's a start, realizing we're really not to blame. Life is out there, and it's our choice to make it good, to make it bad or to make it ugly.

I wear a "Protect Choice" button almost all the time now. In a couple of business situations they're not appropriate, but it's primarily because of my involvement in Colorado Narrow and the pro-choice movement. But I'd like to suggest that this slogan is just as applicable to our community and to our issues. It's about choosing to live life to the fullest. It's about having the right to make that choice. It's about not imposing choice on other people. It's recognizing that there are a multitude of choices and that's really what the human experience is all about. As Martine reminds me, it's about the challenge to make choices and to learn to navigate the consequences of those choices.



# CHOICE AND THE HUMAN EXPERIENCE

Introduction by Laura Elizabeth Skaer

We're very fortunate today to have a program that has two wonderful people who are going to talk about choice, about choices we make in our lives. Stephen Whittle is visiting us from Great Britain and has done a wonderful amount of work for our community not only in Great Britain and in Europe but on a full international basis as well.



Stephen transitioned 21 years ago, and he's been involved in setting up almost every single self-help or support group that exists in the United Kingdom. He worked in the construction industry for many years. But three years he ago became a law professor and just completed his doctorate on transsexualism in the law.

He currently coordinates the F-to-M network in the U.K. and in Europe, and he's vice president of an organization called "Press for Change", which is the United Kingdom transgendered lobby group. I think our "It's Time America" people ought to spend some time with Stephen and get the benefit of his experience. He has two wonderful children and he is currently taking the government to the European court on the children's behalf because the government doesn't think he has to right to be legally declared their father. He is making new law across the ocean.

**Stephen Whittle, Attorney and Law Professor,  
Manchester University, U.K.  
Author, "Transvestites, Transsexuals and the Law"**

Stephen authored a book called Transvestites, Transsexuals and the Law. It's a perspective of the law from the England common-law viewpoint. And with that, I will stop the introduction because I could go on and on and on, and he wouldn't have any time for his presentation. But what we're really here for is to hear Stephen give us his perspective on how he came to write that book. Please

welcome Stephen Whittle.

By Stephen Whittle:

Well, thank you for the music. When the Moody Blues were being mentioned, I wondered whether the person I would have chosen was Gloria Gaynor who did so many good songs for us in this community, from "I will survive" to "I am what I am." One of the things that I've always really enjoyed writing as beginnings of chapters in books is in fact pieces of the words from pop music, because I think they often captured our generation's life so well.

I want to actually talk about the book and how I came to write it. I'm going to start with a quote from the French philosopher Michel Foucault. And this is a quote from an interview just shortly before he died from the complications of AIDS in 1991.

"Someone who is a writer is not simply doing his work in his books, in what he publishes. His major work is in the end himself in the process of writing his books. The private life of an individual, his sexual preferences and his work interrelated not because his work translates his sexual life but because the work includes the whole life as well as the text. "

Now, observing transgendered people and transsexuals in particular in assessing their interactions with miscellaneous proceedings, legal or otherwise, has provided me with an awareness of how little time in history is needed for great change. I have seen great changes in the last 20 years, since that point when I decided that I had to risk all and at least die as myself rather than try to live as someone else. When I was not told of my grandmother's funeral in 1975 because "my sort" would not be welcomed, I never imagined that 20 years later the day would come when the mother of a 13-year old would ring me up and ask you, could her son become himself because it was killing him to pretend to be her daughter. What had happened in that intervening 20 years to make a woman not only admit that her daughter was in fact her son, but actually to seek out his sex change for him? I suspect a more powerful force than that needed to bring down the Berlin Wall. It's the history of those changes, the creation of that force which I now want to talk about, as it is that force that enabled me to sit down and write the book that I've been asked to promote.

One of the most startling features of the last 20 years is that a transgendered culture has come into existence, as a diverse assortment of individuals have created a sense of community through their joint moral searching and social outsidership. Being on the outside has even given them a war to fight as they attempt to take their place on the inside.

Janice Raymond, in her 1979 thesis "The Transsexual Empire" had accused transsexuals of being the soldiers in a Trojan horse, built by the patriarchy to be accepted as a gift by the feminist movement. Transsexuals in 1979 had no way of responding other than in anger to this unjust charge. They knew they were outsiders, they knew they were seeking entry, but a gut feeling existed they were not even innocently being the foot soldiers of a male power base. Surely if they were, then they would have had acceptance. But the law in that world of the patriarchy was one of the main instruments that patriarchal control continuously used to reject them. They knew they were

innocent, but they needed to find a defense.

Now, to answer both Raymond's accusation and that which also maintained that they were also traitors to the patriarchy, transgenderists needed education to create their own theoretical responses. But there were no schools for theoretical or revolutionary thought back in 1979 except those of feminism; however, transgenderists were now excluded from feminism by their guilty association. That guilty association was with themselves, their own bodies, their own sense of being. How could it ever be eluded?

Intentionally or not, I think over the last 20 years, we've seen people become followers of Vladimir Ilyich Lenin who said in 1929, "the spontaneous struggle of the proletariat will not become a genuine class struggle until it is led by a strong organization of professional revolutionaries." Now, the working class revolutionary transgenderist has had to become the professional revolutionary transgenderist.

Over the last 20 years, the transgender community has created and exercised its own schools of thought. They have also understood that as Kathryn Mackinnon said in 1987, "sexuality is to feminism what work is to Marxism, that which is most one's own, yet most taken away." They had to reclaim and recreate theory. And if feminism, and the feminist movement itself had rejected them, the feminist theoretical practices were still available. With the theoretical base modeled on feminist practice, transgenderists have developed a transgendered ontology, a transgendered set of knowledge. There have been divisions as well as discussions, but a lot has been learnt. And now those schools are producing academic and political theorists who are themselves transgendered. I think that is one of the major things that's happened over the last 20 years. The community now has its own band of revolutionaries. The gender outlaws who build and throw theoretical bombs to promote and justify this war to gain entry.

For those few revolutionaries, this has been a great personal sacrifice. They gave up their own personal opportunity to pass, to become at least superficially accepted as members of their new gender group. This is probably the greatest sacrifice a successful transgenderist can ever make because that, above all else, "to pass" is what we all seek.

I'm going to tell you a little bit out of the Arthurian legends, the English legends of King Arthur and his knights. One of these is the legend of the Holy Grail. Now, in the legend, the Grail King, Anfortas, whose name actually means infirmity, is dreadfully wounded. That means he was unsexed by the lance of a pagan knight. Anfortas, significantly, has only inherited, not earned, his role as guardian of the Grail and this is the reason he's lost the power of his sex. The healing of Anfortas could only be achieved by an uncorrupted youth who would inherit the supreme crown, that of Grail guardianship, through his own pure life and work motivated by the spirit of unflinching noble love, enduring loyalty and spontaneous compassion. Such was Percival.

Now, after many years of adventure, in which Percival's mettle in all these areas is severely tested, the Grail castle finally appears before him. He rides in and he finds the dreadfully wounded King Anfortas. The task expected of Percival at this point is simple. He just must ask the king what ails

him. If he does, the wound will miraculously heal and Percival will be installed as king.

However, Percival, though moved to great compassion, as a well schooled knight, holds his peace. And that way, he allows his concern for his social image of the knight to inhibit his impulse to ask that one question, and it prevents him from reaching the Grail.

Now, the point of this story is that many transgenderists have been dreadfully wounded by the constructions that have been invented around them. They may be healed by the transgenderists who have given up their social image, that opportunity to "pass", and have placed their compassion above all else and simply asked the question of their comrades and friends "What ails you?"

Those who have made the sacrifice, I think are now beginning to reap the reward. It may not be the Grail, but perhaps it is. Transgenderism is finally being welcomed as a wound, but not necessarily a fatal one, in the relationships that people have with each other. It is that that enables a mother to seek her child's sex change. Transgenderists are unique in that as we approach the 21st century, we are still being self righteously ostracized, even by those oppressed communities who would consider it politically incorrect to oppress any of the minority group.

Now, this, a structuralist might suggest, is the result of transgenderists being nonhuman. The words "man" and "woman" are used to represent the whole of humanity. And since transgenderists fit neither keyword, they cannot be part of humanity. Whatever the reason, the oppression is real; transgenderists often have a perplexing legal status. They lose their jobs, their homes, their families, merely for being who and what they are. Increasingly, though, we are seeing them turn back to the law to provide the solutions to the problems which the law itself creates.

The transgenderist faces a problem of interpretation, as many of us actually know, and as many of us have experienced. As such, transgenderists provided a problem to the law in its role as supposed omniscient protector of true knowledge. Legal knowledge, though, is in itself constructed through texts. It is secured in language which constantly reexamines it, alters it, then recreates it. It's like a game of Chinese whispers.

All legal constructs exist within a series of preunderstandings and unprejudices that have been acquired by lawyers through that accumulated knowledge of written texts. To apply the law means to place interpretation on the texts of others to expound what is within texts and to overlay it onto a new context.

As a result, though legal practitioners attempt to be impartial and to seek justice, what in fact occurs is the ever changing evolution of the traditional authority over ever changing circumstances. Justice is not in the question or in the equation after. To legal texts we must bring the question of meaning, which is in itself a question for the law.

Now, in order to understand the texts of law, we need to search for and recognize the legitimacy they have through the discourses that construct them. I go back to Michel Foucault who in 1971 described how the discourse concerning madness as a medical category was developed and then



he considered through his study on Pierre Rivière how this became interrelated with the power bases of the French criminal justice system. In a similar way, we can look at how the transgenderist as a legal category of person has come into being, or has not, as might be the case actually, in English law. And then we can examine the meaning to the law as a whole.

Now, I'm going to mention two texts to illustrate what sort of legal category the transgenderist has been placed in, and I hope though, because of time restrictions, you'll bear with me as I omit some of the more theoretical details—though most of you will probably breathe a sigh of relief for that, anyway. If anyone wants to have a full copy of my work in this area, give me your name and address and I'll be more than happy to send you copy—but I'm going to use two texts: Janice Raymond's The Transsexual Empire, which I'm sure most of you here will have read at sometime in your auspicious careers, and Neil Jordan's 1993 film, The Crying Game. They both appear very different, and do not appear to be legal texts at all. Janice Raymond approaches the issue of the transsexual from her stance as a sex role theorist and feminist who teaches Women's Studies and Medical Ethics. Neil Jordan produced a thriller movie, in his capacity as a Hollywood director, with no apparent theoretical approach to transgenderism at all. The discourses they participated in appear very different, yet they both have become structuring agencies of the discourses that surround and construct the legal category of the transgenderist.

Now, if we look first at Raymond's work, women are the cause of transsexualism according to Raymond's Empire builders, the doctors. Raymond wants to address this accusation on behalf of all women. Now, she could have done that through a defense of women but that would be to admit there was a charge to answer. The best alternative is to resort to counter accusation. And it's through this counter accusation that we see a coherent system of meanings in the text. Raymond uses what could be seen as the discourse of blame directed at men. In this way she employs an adversarial approach to the issues. In analyzing transsexuality, apparently objectively, she adopts the style of a courtroom battle. Women become the prosecutors placing blame at the feet of men. Doctors and transsexuals are token examples of men, according to Raymond.

The text is a separatist feminist discourse on the hegemony of the patriarchy, the power of man, with the transsexual put in the unenviable position of taking up the defense. The arguments for the prosecution as presented by Raymond are undoubtedly very powerful. I will look at just two of those.

Firstly, the transsexual is created by the empire builders, the doctors, as an alternative biological woman. In this way, the Empire of the Patriarchy attacks women so that less sense of self is being penetrated in every way. Women's identities, spirits and sexuality are all invaded for the transsexual man, according to Raymond. The physical loss of a penis does not mean the loss of an ability to penetrate. As Raymond says in probably her most stunning statement, "All transsexuals rape women's bodies by reducing the real female form to an artifact, appropriating this body for themselves. Transsexuals merely cut off the most obvious means of invading women, so they seem non-invasive."

Now, the real notion of rape is a legal notion: unlawful sexual intercourse with a woman who does



not consent to it. This is what Raymond accuses the transsexual of: penetration without consent. A specific legal discourse is now taking place. And presumably, Raymond wants, like all prosecutors, the sentence afforded by law and will plead for the maximum: life imprisonment.

She doesn't flinch from that job in hand. She asks for the restriction of the number of hospitals and centers where transsexual surgery could be performed, and for all transsexuals to undergo nonsexist consciousness-raising counseling and to be given peer encouragement to transcend cultural sex role definitions without undergoing surgery. In other words, to undertake their whole lives as men.

Now, the discourse of rape is also superseded by a much more subtle one of possession, in particular of the flesh of women. When a man penetrates a woman, he's often referred to as possessing that woman. Raymond's constructed transsexual man who identifies as a lesbian feminist exhibits the attempt to possess woman in a bodily sense, while acting out the images into which men have molded women. If you want to take possession of the flesh, what better way than to devour it both literally and metaphysically? The transsexual is participating in the beginning of a world where men not only have real power, but they become women by acquiring the hormones and body of a woman.

Now Raymond's final accusation is the most condemnatory of all: the Patriarchal Empire builders, the therapeutic fathers of transsexual medicine, are little different in their ethics from the Nazi physicians whose experiments in concentration camps included, for example the following:

High altitude tests were done on prisoners to observe the point at which they stopped breathing. Inmates were subjected to freezing experiments to observe the changes that take place in a person during this time of slow death.

Sterilization experiments were carried out to a mercy scale for the purpose of seeing how many sterilizations could be performed in the least possible amounts of time and most economically; thus anesthesia was not used.

Now, despite Raymond's disclaimer, she does not intend directly to compare the two sets of doctors, she has made her point in true Perry Mason fashion. She has concentrated the mind of herself and other women upon the role of the transsexual as collaborator with these experimental techniques. Those transsexuals who identify as lesbian feminists have become little more from the Kapos of the bunkhouses of the concentration camps. She gives details of at least one piece of transsexual surgery having been performed at Auschwitz and presents a completely unsupported statement that some transsexual surgery may have been developed in the Nazi death camps.

Now, women thus become, of course, justified in thinking of transsexuals, not as innocent victims of the patriarchy, which would have been one alternative reading, but as co-conspirators in a genocidal attempt by men to possess all women and to remake them in a mold that suits them. The defense does not have a voice in this text. The historical location of the text places it in early

feminist theory and from it emerges construction of the transgenderist, no longer merely as a medico-legal construction, but part of the story of patriarchal oppression. It begs a response, but as I said, the defense has yet to be heard. Through Raymond's text, the transgenderist story of gender oppression in a search for identity was silenced. But it wasn't actually. And I'll go into that later.

For the discourse presented by Raymond, it's not unique. It exists in other forms and has been repeated in current cultural artifacts which act as agencies in structuring women's and men's knowledge of the transgendered person. Now, film representations of the transsexual transgendered person also participate in a similar discourse, in which the transgenderist devours women. Films such as The Silence of the Lambs, Psycho, Dress to Kill, purport to be about serial killers who are cross dressers; but in depth, they're about women. The cross dresser is merely a blind to the story. They provide the link between different generations and types of women, and of course the cross dresser is the killer, the penetrator of the story. The reason for this is to say that women slash to kill, to show women slashing and killing, would show up the true inadequacies of the films to the viewer. Women do not, as a general rule, commit violent crimes and rarely participate in crimes that involve slashing. The crime of penetration is one perpetrated by men, but the cross dresser, the apparent transgenderist places the act of penetration in the hands of a supposed woman. The transgenderist becomes a representative of those women who ruin their sons, who deny their son's sexuality and their son's rightful place in the patriarchal power mechanism.

Now, Neil Jordan, the director of The Crying Game did exactly the same thing. Where does the killing lie in that film? (I hope most of you have seen it. If you haven't, go out and see it.) It's the death of Jude at the hands of the transgenderist, Dil, that recreates the story of Psycho. The film is about men's fear of women. And Jude represents the *vagina dentata*, the castrating bitch, the evil and criminal woman who wrecks men's lives. Dil is both the woman killer and the woman who rapes; she penetrates and slashes Jude with numerous bullets and she literally has a penis. She acts for the state in bringing justice against women who commit crimes against their sons and against men. Yet there is also criminality because of her femaleness. She is the man who plays the woman, the woman who plays the man. Real femininity as portrayed by Jude is exterminated and transvestism is used to do away with the feminine altogether. The patriarchy always wins.

Now, Janice Raymond said that all transsexuals rape women. Films such as The Crying Game go further and state that all transsexuals and transgenderists consume women both metaphysically and through the flesh, showing two separate discourses, creating a fear of the transgendered person for both men and women. Raymond uses the discourse of feminist separatism; Jordan uses the discourse of the patriarchy. Both use the transgenderist as a representative. Firstly, Raymond uses them as a representative man who seeks to consume femaleness to take as their own in order to uphold the power structures inherent in the patriarchy. All women should be frightened of them. Jordan uses them as representative women to show the fear that the patriarchy and men should have of all women, especially mothers. All men should fear them.

Both are legal discourses in that they expound issues of power and crime and they place criminal

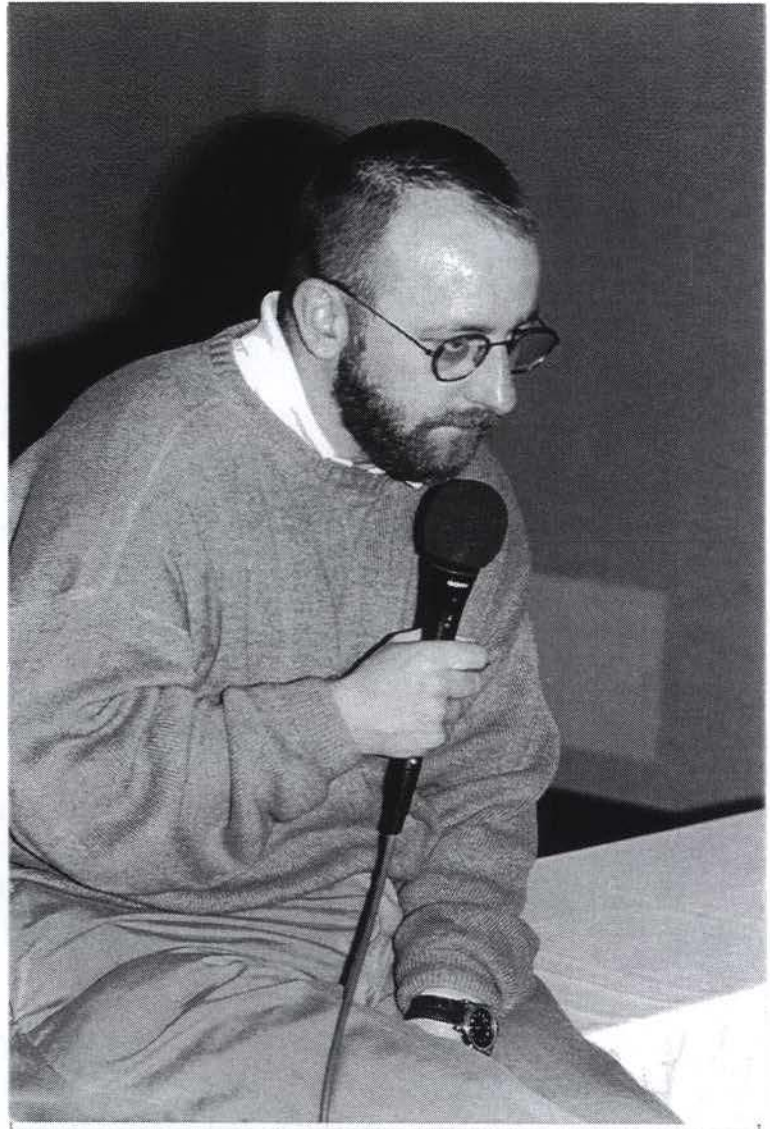
actions in the hands of the transgendered person. Both charge them with serious and horrific crimes, but are on a par with those of Nazi war crimes and cannibalistic murders. Both leave no place for the defense. What defense could there be? There is no defense for cannibalism. There is no defense for war crimes. They are ultimately indefensible, inexcusable and unforgivable. Such crimes are atrocities that can never be atoned, in that they surpass the morally acceptable at even the most immoral of times, war and famine.

Now, both Raymond and Jordan have participated in creating a scapegoat in the war between feminism and the patriarchy. For the transgenderist, it's not a case of, Whose side are you on, but of, How on earth can you extricate yourself from always being the defendant at the war crimes trial? How do you stop being that foot soldier in the Trojan horse that is offered to each citadel? How can you obtain citizenship anywhere?

Now, transgenderist dialogues around who they are and what it means to be transgendered have recently taken up both the challenge of the medico-legal construction and transsexuality and the academic feminist theories of sex roles. They are creating a transgendered body of theory which is attacking, whilst also expanding the paradigms of sex and gender.

The 1990s have seen a huge change for many in the transgendered community of their own personal praxis concerning sex and gender. And it is this change and its cultural expression, what I would term the real life postmodernist practice of hearing and listening to many voices, and the acknowledgement of the individual truisms of those voices, through which the community is not just deconstructing gender, but also reconstructing gender. Transgendered behavior not only challenges sexual dimorphism in that boundaries are crossed, but it provides a challenge to the belief that those boundaries were ever there.

Now, important to the understanding of the transgendered community's current ideas and



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Manchester University, U.K.  
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thoughts on theories of gender are the transition that their organizing centres have gone through. From the self help organizing of a few transvestite networks in the 1960s and '70s, there's now arisen a plethora of groups catering to a range of significant levels of diversity in cross gender behavior.

However, many of the people involved in the running of these groups have been involved for over a quarter of a century. They have gained an immense level of respect within the community because of their strong commitment to, and knowledge of, the community and its history. Notwithstanding, many of them have also gone through great personal changes socially, in terms of their own self identification and their public lives. This has not just been to do with aspects of their crossgendered behavior, transgender behavior, that could often be seen to be pivotal to that change, but with their ongoing fight to get public respect and academic recognition for the work they've done. Their personal roads to understanding gender and what it means have informed the current theories that they hold and expound. It is only very recently that transgendered people have felt able to participate in theoretical discussions. The fight to be included has involved the facing of several serious problems.

Firstly, any discussion by the transgendered community has been hampered by the medical discourse surrounding transgendered people which makes transgendered people out to be simultaneously self-interested on one hand, and decidedly barmy on the other hand.

Secondly, they have been hampered by social and legal restrictions which have made it very difficult to come out publicly as transgendered, which further adds another aspect of self interest to any work they might do on gender issues.

Thirdly, Raymond's thesis in The Transsexual Empire, the making of the She-male" discredited for a long time any academic voice they might have, in particular with feminist theorists. As a result of her work, feminists saw transsexuals as misguided and mistaken men seeking surgery to fulfill some imaginary notion of femininity and furthermore upheld the gendered sex-role structure inherent with the patriarchy.

Fourthly, transgendered people have not been allowed either objectivity or sexuality. Objectivity was lost because of the combination of the other three factors. Also, if they question gender and sex roles they would be put in the invidious position of having to justify any personal gender or sex role change they might undertake to accommodate their own sense of gender incongruity. Sexuality was also lost, as it was constructed for them in the form of either repressed homosexuality being appeased through reassignment surgery, or heterosexuality in their new role was imposed upon them by the medical profession in order to justify what was seen as a medical collusion with an unattainable fantasy.

Now, the transgendered community have not attempted to avoid these difficulties; rather, they have tackled them head on. Firstly, the postmodernist acknowledgement of a multiplicity of voices has been adapted to theoretical stances and there is a constant ongoing discussion as to whether the medical profession should take a diagnostic, or merely an enabling, role for those people who



actively seek reassignment treatment.

Secondly, the transgendered community has consistently fought through the courts and the legislature for legal recognition of any new gender role adopted, also for antidiscrimination clauses to include not only sexuality, but also gender role.

Thirdly, transgenderists have tackled radical feminist separatism by continuously asking for answers to all good questions, for example, when Leslie Feinberg, a previous speaker here, author of Stone Butch Blues, along with James Green, a transsexual man, and some male to female transsexuals challenged the "Womyn born Womyn" policy of the 1994 Michigan Womyn's Music Festival. Transgenderists have been active in addressing hetero-sexism and patriarchy both within and without their own community.

Fourthly, and I think this is perhaps most important, transgendered people have questioned the whole notion of objectivity. They do not try to claim it, but instead, they have built upon the tradition this community has of autobiographical writing to give a voice to their self-acknowledged subjectivity.

As to sexuality, they also have begun to reclaim it. The argument is simple. If you can acknowledge in yourself that what makes a person is what takes place between the ears not between the legs, then you are in a privileged position to know that sexuality is a movable and mutable force in us all.

Now, transgendered activists and academics are attempting to deal with the volatile concept of identification, but it is has been against all the odds. This concept is the rigidity of a set of assumptions concerning sex roles that pervades all discussion of gender, that the two sex roles and gender have an incorruptible sameness that makes them all pervasive. Yet, gender and sex are fundamentally different for our community. We face the everyday reality of that difference in our lives, and attempts to reconcile it have led to challenge again, often in quite unanticipated ways.

Expressing the move to a theory in which gender and sex roles are clearly separated, at least for a large number of people, from what that means to the modernist view of gender theory is a challenge the transgender community is not ignoring nor is it prepared to come up with trite self-serving answers. Challenging their own sense of self, looking inward to find out who they are, using the process of autobiography that they know so well, is producing some very interesting answers which challenge the very binary structure of the complacent world in which gender was invented, and by which it has become obsessed. The transgenderist did not, after all, invent gender. Gender, like God, is a concept of the imagination that belongs within and supports the foundations of a patriarchal heterosexist hegemony.

The transgendered community is currently challenging sex role theory and its dimorphism. They are developing a new abstraction of gender from this multiplicity of influences and constructing a new voice of authority in the academy. The building blocks from which they have formulated this new praxis has arisen in three ways.

Firstly, gay culture's recent history, in which a celebration of difference, alongside the gay community's adoption of respectability, has provided models of community development that the transgendered community have followed. These allow and welcome the variety of transgendered lifestyles that exist alongside a fight for legal recognition and social respect.

Secondly, the recent, late 20th century history of the transgendered community and its activists, in particular, has informed the development of current transgendered theory.

Thirdly, the transgendered community have tackled the academic legal and medical collusion which gave contempt to any voice they might have, by refusing to accept the standards imposed upon them by these patriarchal and heterosexist institutions. Creating new standards for ourselves of subjectivity through our own community's tradition of autobiography, we are reidentifying a new paradigm of the imaginary world of gender.

The transgendered community is not promoting the notion that transsexuals are a third sex, but they are seeking a third space in which sex is no longer the signifier, or definer, of gender. They are challenging a dimorphic view of gender, which has made them traitors to both sides of the gender coin, and placed them in the dark.

Now, this does not mean to say that I don't want legal recognition of my new status. I accept that the world is a gendered place. But rather than being a means of oppression, it should be a means of my expression.

I hope the book that I helped write will contribute to that means of expression. The book that I co-authored is part of my attempt to be a professional transsexual revolutionary. I know from personal experience that changes have taken place and more are just over the horizon. This book is just part of adding to the community's theory, and, as such, it will hopefully become part of the history of those changes.

I have been involved as an activist and an organizer in the transgendered, transsexual community in Britain for over 20 years. Much of the book is actually based upon my experiences, particularly in my capacity as legal officer, for several of the self-help groups.

In that role, I am constantly approached by individuals and groups for advice on specific issues that arise for them. These anecdotally narrated incidents repeatedly raise the distinctive issues of the law, many of which I hope are addressed for the first time ever in this law book, probably for the first time, in fact, in any book concerned with transgendered people.

All the specific areas of the law dealt with in the book present problems that arise from the medico-social construction of a legal status that is based upon the knowledge of a person's biology rather than their psychology. The dissection of the self, or spirit, of a person's gender role that transgenderists offer us, means that gender, as a problem, should not lie solely in their domain, in our domain. It should be an issue that needs regular critical appraisal by society at large, and by state institutions such as the courts, in particular.

Biology does not have to be destiny. In the late 20th century, as equal opportunities are being sought by many minority groups, transgenderists, even though belonging to one of the smallest minorities, should not be forgotten as rights are recognized and embodied through law, and I hope that's what we're working towards here.

By Laura Skaer:

Thank you, Stephen, for an excellent talk and an excellent book that is definitely a contributor to this movement.

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## THE APARTHEID OF SEX

Introduction by Laura Elizabeth Skaer:

Next – gosh, how do you introduce a sister? Martine Rothblatt is truly my sister and my friend. I'm not going to go into a lot of flowery introduction for Martine because you can read it on the wall up in the registration room and know about her history as a brilliant entrepreneur in the satellite communication industry, as someone who transitioned in front of God and everyone in Washington D.C., and did it with dignity, and did it successfully, and who has, to be sure, challenged gender roles and sex roles in our society; challenged the meaning of gender and the meaning of sex and the meaning that we as a society place upon those in her recent book The Apartheid of Sex. And I'm sure that she will, in her presentation, challenge preconceived notions and challenge a little bit of intolerance inside of each one of us. Martine Rothblatt.

By Martine Rothblatt:

Phyllis just loves to see my face get all red and embarrassed.

Thank you very much. This presentation is on the Apartheid of Sex, and I really came at this from a legal perspective because I spend a lot of time thinking about sex and gender and the legal aspects of it. The final conclusion I came to was that there really was just one underlying legal issue here, and that is the recognition that we are living under an apartheid system. The apartheid system is one that says that you must be one of only two categories that's determined at the moment of your birth, and who you are as an individual doesn't matter.

So – and this front side is about safe sex and health issues because I am coming at this from health law perspective, and I think all of us have to realize that a lot of our sisters and brothers are out there on the streets, and all of us, are sexual beings in some way. We can't be duped by the conservative agenda to throw away our personal liberty. We can just use a little bit of common sense and practice safe sex.

The main point of this slide show is that we're not born as boys or girls, despite what everybody

says to the contrary. We're just born as people, and we practice being boys or girls until we have it down, quite letter perfect. But I'd like to challenge everybody to imagine a world in which sex wasn't limited to being male or female; in which there was no apartheid of sex and in which we recognize that sex is just part of our personal identity and our personal expression.

Sometimes people say, "Well, how can that be? There are only two words: male or female, men or women." We could stop and think about sex as something like color. There are millions of different hues of color. And there could be millions of different sexual identities. We don't have to trap ourselves in thinking of male and female. We can begin to liberate sexual identity, and gender identity from the constraints of language.

Now, it's true that there are certain basic elements of sexual identity and difficult those elements are for academic admissions to categorize. Some people might find three, some people might find four. Some people might find five. The point is that there are different elements to sexual identities, such as nurturance or assertiveness or aggressiveness or eroticism. That doesn't mean that those elements of sexual identity are not available to every person regardless of what your birth biology might be.

For example, if we imagined sexual identity as colors, somebody could say, "Well, you know, I'm not male or female, my sex is blue." That might mean that person felt that they were a very nurturing person, that their overwhelming essence was one of nurturance, and that's what drove them and they didn't have to limit themselves to being male or female.

Similarly, people could say, "Hey, you know, my sex is gold. I'm, like, really into aggression and assertiveness and I'm not a nurturing person." Or someone may say, "My sex is red. I'm erotic. I love thinking about sexuality, and that's what drives my whole being." Again, it doesn't matter if you have a penis or a vagina. It doesn't matter if you're man or woman, it just matters how you feel.

Enhanced sex is like an endless spectrum of color. It's something far broader than male or female. We might be trained to be male or female, but our minds, our souls go far beyond those two categories. They stretch and become a continuous rainbow of sex, far beyond maleness and femaleness.

Sometimes people may think of themselves as being combinations of sexual elements. You may feel, hey my sex is green. I'm kind of, you know – I'm nurturing and I'm aggressive. I'm a melange of these two things. That's okay, too. And you can change your sexual identity from one month, or one part of your life to another. We don't have to think of ourselves as being male or female for the whole time we're on this planet.

Most people in the world can be looked at as some kind of a melange, a sexual identity of brown. There are mixtures of aggression, nurturance, eroticism, and everything else mixed in. There are basically five billion people in the world today, and five billion unique sexes. Forcing everybody to be male or female is something that the state imposes on us as an ideology. It's nothing inherent



in the nature of the human being.

Some people can be black with gender complexity. Their sexual identity is always in a state of flux. Other people may be white with sexual indecision. For them no gender identity is expressed. A lot of times people say to me, "Well, what sex are you Martine?" And I really do like to try to escape from the male or female trap. So, sometimes I say, "My sex is mauve." It's not just because it's my favorite lipstick color. It's because I look at myself sometimes as a combination of nurturing, aggression and eroticism.

In summary, there are a lot of great myths in the world. In India people are taught that God decreed there would be seven castes. We know that that's a myth, and that's bullshit. Or that there are five races; that's an artificial creation; or three trinities; or two sexes. All of these are just myths. They're not true in the real world.

From ancient history, the patriarchy said, "Well, people who had a penis were aggressive." Or if you had a vagina you were passive. And that's how we got these things, these sexual identity elements, stuck to parts of our anatomy. The ancient polytheists came up with that, and then the monotheists came and they said, "Well, not only are penis people aggressive, but penis people are good and vagina people are evil." And there's the story of Eve and how she corrupted Adam. Even today, we're enmeshed in quantitative patriarchs who say, "Well, if you have a penis, the chances are 58.2 percent that you're going to be quantitative in your thinking. If you are a vagina, 42 percent that you will be creative."

All these people are just creating stereotypes. They're taking some general characteristics and applying it to our genitals. But things like personality, soul, character, aggression, eroticism, these things don't exist between our legs. They exist in our minds, in our souls, and our minds are infinitely complex, totally individual. Therefore sex must be multitudinous, multifaceted, unlimited.

It's true that we're born with either a penis or a vagina, but we create our own sex. And only the endless hues of the color spectrum can possibly label all of the thousands and thousands of sexes from which we could choose if allowed by law.

The time has come to declare that this legal ideology, this legal male or female regime, is bankrupt, is without clothes. The time has come for a new sexual revolution, the declaration of unlimited gender freedom for us all.

Now as mentioned before, gender is as gender does: because we're not born as musclemen from the moment we pop out. I know all of you beautiful ladies in this room know how much time and attention it takes to be a good Barbie doll.

The sex that we practice is limited only by our minds, not by our genitals. Now you may say, "Well, how about X and Y chromosomes? Isn't it true some people have X and other people have Y?" Well, yeah one out of our 46 chromosomes is a bit different. About two percent, that's all. Why

should a small two percent genetic difference make any matter in law, in love, in labor or life? You know, small genetic differences give us different skin tone, but we've overcome the apartheid of race. Small genetic differences give us different genitals. We should now overcome the apartheid of sex.

People say, well, your chromosomes give rise to hormones. Well, yeah, people have different hormone levels, but that's no basis to uphold an apartheid regime. In fact, if you line everybody up in the world, it's impossible to tell where male ends and female begins, because of the fact there's a continuum of hormone levels visible in the world. Indeed, in people's own lives their hormone levels change, go up and down from youth to adolescence until all people in their older years have a convergence of their hormone levels, which really explains the transgendered faces of ancients.

In fact, hormones are so ephemeral, so specious a basis for sex typing that millions of people set their own hormone levels. I guess we know a little bit about that in this room. Hormones are so ephemeral and so specious a basis for sex typing that it's really absurd. If you can set your own levels, or if they change during your life, what kind of a basis is that, a biochemical, variable basis, to split everybody in the world into two absolute categories, male or female?

Now, it's true that there are sometimes medical differences to your hormones, but there are all kind of medical differences among people. Some people have heart problems and asthma, or whatnot. We don't use those medical differences as a basis for separating people into apartheid-like categories, saying where they can and can't go, and who they can and can't marry. Neither shall we let the medical aspects of hormones allow us to map over that kind of categorizing to the socio-economic and legal spheres of life.

People say hormone differences, or chromosomes, give rise to pregnancy. Isn't that an absolute difference between men and women? Well, not necessarily. I'm sure Janice Raymond would just love this picture.

In fact, millions upon millions of women are infertile; about one out of ten. That doesn't make them not women, so clearly, pregnancy can't be the basis of separating people into two absolute categories: male or female. Besides, millions of men are born with some portions of female reproductive tracts. In fact, the presence of nipples on all men shows our common transgendered heritage. So, obviously, chromosomes cannot be an absolute way of separating people into male or female.

How about sperm and egg cells? Don't those separate people absolutely into two categories? Well, not anymore. Today's sperms are a commodity available to men, women, anybody who can pay. Indeed, sperms would be a totally specious basis for separating people into two categories, when you can get them via mail order catalog. Similarly, egg cells are a commodity today available to men, women, anybody who can organize a surrogate pregnancy. Child bearing, then, can't be a basis of absolute difference between people, when it's accessible to any person.

And finally there are millions upon millions of children that await adoption. These children don't come necessarily from the wombs of their parents. These children come from the earth, because in the final analysis, parenting, not child birth, requires love, not genetics.

In summary, not genitals, not hormones, not chromosomes or pregnancy can justify an apartheid of sex. Each of these alleged reasons is either not consistent, not real or not true. It's true that genetics creates biology, but it's the law that creates an apartheid-like separation of sex, starting with the birth certificate. Biology gives rise to many possibilities. But it's the law that creates an absolute division between people, a rigid apartheid of sex.

Now, there are two reasons to change the apartheid of sex, to abolish it. It's unfair and it's unjust. It's unfair because it locks up all of us in a prison of gender that we never ask for and didn't choose. And it's unjust because, as Martin Luther King taught us, it's wrong to treat people differently because of biology over which they have no control and which makes not a damn bit of difference in every day life.

Now, how about separate but equal treatment for men and women? Well, equal rights would be great. We need them, but King also taught us that separate is never equal, as the age old mutilation of women's bodies, minds and lives amply demonstrates. We've had centuries of spinal distension, genital infibulation, and up until this present day and time, mass intellectual castration on the altar of separate but equal.

When half the people in the world own less than one percent of the things, we're not talking about some kind of a natural biosystem, we're talking about an artificially imposed caste system. And you cannot eliminate social differences among people without eliminating economic ones as well.



**Martine Rothblatt, Attorney  
(Past) Health Law Director, ICTLEP  
Author, "The Apartheid of Sex"**

The abolition of the apartheid of sex must begin at birth. Psychologists must stop labeling people as being gender disordered upon childhood. Forcing people to choose one of two different role models when nature, our souls, our spirits have allowed us to choose among thousands of different possibilities. It's so stupid to say that people are born male or female, when upon birth, the billions of brain cells in our mind are not even connected enough for thought, much less for gender. We must demand that government stop branding newborns as male or female and start realizing that we birth people, not sexes.

Some people will say that we can't abolish the apartheid of sex because, if we do, how will we know that two women, two people with the same genitals, might not marry each other? God forbid.

The same type of backwards reactionary said the same thing about the apartheid of race. Only 27 years ago it was illegal for two people of different skin tone to marry each other, well within the life span of almost everybody here. The Supreme Court of the United States struck down those laws, saying that the freedom to marry whomever you wanted to, regardless of their skin tone, was a fundamental human right. Well, my friends, fundamental human rights can no more depend on skin tone than they can depend on genitals. Society got over interracial marriage, and they will get over co-genital marriage as well.

Other critics worry that if we abolish the apartheid of sex, two people with different genitals might go into the same washroom. It's okay for the dogs, but the people are the ones you really worry about. Well, once again, that same kind of thinking was behind the apartheid of race. Only 30 years ago it was illegal in many parts of the country for two people of different skin tone to go into the same washroom. A lot of agitation and demonstration led to the elimination of separate facilities on the basis of skin tone, and now we have to also insist on that ending of separate facilities based on genitals.

Last, but not least, there will be people who say we've got to have an apartheid of sex, because how do we know that two people with different genitals won't compete in the same sports? Well, that same kind of thinking long prevented people with different skin tone, African-Americans in particular, from participating in major league sports.

Finally, Americans got over their fear of losing to African-Americans, which is what it was all about, and men will get over their fear of losing to women. Whether our genes or chromosomes say pigment or penis, say clitoris or color, we've have got to stop categorizing, constraining and legalizing people based on their genes and to start respecting the individuality of each person to express their soul, their spirit however they like.

It's fashionable in some circles today to say that our minds are shaped by our genes, that men are born to think differently than women, or that Africans are born to think differently than Asians. Well, I'm here to share with you today that such claims are pure bullshit. Our brains and our thought patterns are as unique as our fingerprints. Indeed, Dr. Roger Sperry, the discoverer of left versus right brain laterlization, observed that the individuality inherent in the human brain network makes gross and simple by comparison the individuality of our fingerprints. In other



words, our thought cells, our thought patterns are the most unique thing about us.

What happens is authors of books like The Bell Curve make stereotypical remarks about similar looking people and then they dredge up biased data and personal anecdotes to justify those stereotypes. But stereotypes are not science. A stereotype cannot be true unless everyone who looks a certain way acts the same way. That, of course, is never the case.

Stereotypes are started by people who want to create or to maintain an artificial separation among groups of people in society with different rights and privileges for each group. But stereotypers are always inaccurate, usually malicious and sometimes, as history has shown, downright genocidal.

Back in ancient Greek times, the stereotype was raised that women were mere passive receptacles for male seed. This stereotype was challenged as monotheists and Christians arose who then added to that stereotype, that women were inherently evil and full of guile. Finally, when the Renaissance came, scientists added to the stereotypes by claiming that women were less intelligent than men. That this was because men have larger brains or larger brain masses of skull to tissue.

However, throughout history, every one of these sexual dimorphic stereotypes has proven to be false. For example, it was found that for many years the sexual stereotypers said that men were more intelligent than woman because the ratio of male skulls to their brain mass was larger than the ratio of female skulls to female brain mass. For over a hundred years this was accepted in universities as proof positive of male intellectual superiority, why women couldn't vote and couldn't work in the professions that they might choose. Until a couple of hundred years ago, somebody observed that anteaters and birds had a larger ratio of skull mass to brain tissue than did men. Did the stereotypers agree that no we're looking at a continuum of sexual identity and that genitals are no more relevant than skin tones or height or eye color or nose size? No. They came up with one after another different type of specious basis to justify sexual dimorphism.

We've got to all recognize that when people quote some psychological test results saying that they found 55 percent or 65 percent or 75 percent of people with certain genitals act one way, and people with different genitals act another way, that's not science, that's stereotyping. When you make some comment about people who look a certain way because some people look that way, that's not science, that's a stereotype.

For example, in all of the gender dimorphic people's scientific experiments on mass scores, there are always women who test in every range of mass scores that men test in. In other words, there are millions of women who are great in calculus, great in differential equations, and millions of men who can't fathom them at all. What does it mean to read in the paper or read in Newsweek that men are better at math than woman? Nothing. This is just science masking its prejudice and bigotry with statistics and specious results.

We've all got to stop believing in this stereotypical bullshit that males act one way and women act another way. We've got to stop boxing our children into a corner with stereotypes about what they can or cannot succeed at, what they will or will not be good at based on nothing more than their

skin tone or their genitals. The time has come for a revolution in gender science, for a paradigm shift in the way we view the different genders. The time has come to stop talking about two sexes and to recognize an infinite continuum of sexual identity. The time has come to stop drawing conclusions based on average data and to start admitting that the totality of data shows a wide diversity of variation as an intrinsic part of the human species. The time has come for the gender scientists and the psychologist to start joining the forces of gender liberation and to stop serving as mere upholders of an evil and truly oppressive apartheid regime.

Now, finally, what about the sex of sexuality and the language of love? Is it not true that we are attracted to the same or opposite sex, which would imply that they are but two? Well, Simon Lavay, probably the most famous genetic neuroscientist, writing in Scientific American, observed that all people may have same and different sexual preferences, but that some people are simply more willing to break with society's boundaries and borders, perhaps because of genetic predispositions, perhaps because of their upbringing. In other words, our genes no more lead us to look for a male or female mate than our genes lead us to look for a light or dark skin mate. Our genes may just help us rebel.

Even two people with vaginas are not of the same sex. All people are sexually unique, whether we are attracted to a fem or attracted to a butch, attracted to a hunk or attracted to a trans. If you think about it, there are way, way too many different kinds of women and far, far too many different kinds of men to bootstrap anyone's gay or straight orientation into some kind of perverted justification for the apartheid of sex.

The lust of a lesbian for her lover would be no different at all if neither one were ever labeled women by the government of their state. In fact, each of us has a unique sexuality. We are each capable of loving people of any genital, or of any gender, once freed from the chains of the apartheid of sex. As Monique Vidig observed, the separation of people into one of two sexes, male or female, was something that was produced, created by the patriarchal regime in order to justify the oppression of women by men. But as this oppression breaks down, as the pillars of apartheid start to crumble, then everybody will feel free to love people of any gender, regardless of how anybody's body hangs over their bones.

In the unisexual world of the future, words like "Mr." and "Ms". will become as archaic as "thou" and "art". Words like he and she will evolve toward terms like heish. Mom and dad will become parents. Brothers and sisters, sibs. Language changes fast enough so that people living a hundred years ago wouldn't understand much of what we say today.

In the unsexual world of tomorrow, people will explore new sexual identities via cyberspace, choosing to be black or green or aquamarine, depending on how they feel that day. People will image themselves with built-in cameras on their laptops. They'll light-pen in the choices, the changes, the rearrangements. They'll pull down the options menu and then morph, morph, morph themselves until they zap into cyberspace with the new sex for the day. Race around the fiberoptic superhighway dropping into cyberclubs in Tokyo, cybercafés in Toronto, some cyberdive in Toulouse.

Our sexual identity in an age of cyberspace will be a freeborn choice. Our genitals will be but a pleasant surprise. We'll learn how to both energize, vaporize and genderize.

In conclusion, the apartheid of sex is nothing more or less than a state religion that's premised on the assumption that we all walk around with our genitals exposed, and that those genitals say everything material and important about the kind of people we are, and about the kind of thoughts that we think. This is, of course, nonsense. Our genitals are just part of our skin. Our hormones are just part of our flesh and blood, and our genes and chromosomes are just part of our heritage. And these genes and chromosomes and genitals are as irrelevant to our soul, or as irrelevant to our personality, as is our skin tone and our hair texture. We've got to realize that what sex we call ourselves, what race we call ourselves, is something we create in our own mind. Nature just creates possibilities.

Throughout history, brave gender pioneers have been able to carve out new identities of sex and gender from that infinite potential laid out there by nature. As we follow in the foot steps of these gender pioneers, we, too, will be able to break out of the male or female traps of our past. We'll be able to leave behind us the male or female drawers of our childhood. And as we do so, completely, as a people, we'll be able to evolve from a history based on biological limits to a future determined only by cultural choice. We'll be able to unleash, at long last, the full unbridled power of human cultural energy upon the prolific problems of this planet.

And as we do so, we'll evolve from a history based on arbitrary oppression, based on frustration, hatred and warfare up toward a future based on love, on togetherness, on extending hope and caring to all people wherever they may live, whatever they may look like.

I want all of you to please join me in thanking each of you and Phyllis Frye, our executive director, for creating a forum like this where we can celebrate the need to leave behind us the apartheid of sex and move toward a future based on freedom of gender. Thank you.