Phyllis Randolph Frye
www.liberatinglaw.com
prfrye@aol.com

LEGAL ISSUES FOR TRANSGENDER ADULTS AND CHILDREN
WHAT DOES A TRANSGENDER BABY LOOK LIKE?

(Or, how is the brain wired?)
5 years old with my first dog, ~1953

I already knew that something was different
Probably 3rd grade, ~1957, probably 9 years old

I had already been secretly crossdressing for over a year.
1962, 14 years old.
Eagle Boy Scout,
God & Country Award,
Order of the Arrow –
Brotherhood Level, and
Senior Patrol Leader

Successful? YES!
But I would rather have
been in Girl Scouts
1966 Senior at San Antonio Jefferson, ROTC Cadet Colonel, Rifle Team (2 letters), Senior Play, and graduated with A+ average. Also while in high school on yearbook staff and in A Capella Choir

Successful? YES!
But I would rather have been in Pep Squad or a Cheer Leader
1966-67
Texas A&M Corps
First years called “fish.”
*(they called me “fish fry”)*
4 year Army ROTC scholarship
and a one year College of Engineering scholarship
January 1970
Senior Boots and all
Graduated BS in Civil Engineering and 2\textsuperscript{nd} LT, REGULAR commission. Ordered to remain in school for MS Mechanical Engineering.
August 1972 “pushed” out of Army for merely \textit{thinking} trans but held out for an Honorable Discharge
1974
with son by first marriage.
My facial hair was one last attempt at being a guy.
Summer 1980 - LGBT Pride Parade. OUT in law school and founder of “Law Students, Friends of Gays*.”

In August 1980, won the repeal of Houston Crossdressing Ordinance and began my 3L student internship at District Attorney’s Office.

Before my May 1981 graduation, I had UH place Christian Legal Society on probation for discrimination.
May 1981, I received notice of passing the Bar on same day as my graduation. The following Monday, I was sworn-in by Judge Joseph Guarino.
“Phyllis you was great! You was really great! With gratitude”
For almost two decades I was known as the lawyer who wore the hats.

A former prosecutor friend told me recently that the Asst. DA’s called me “THE HAT.”
October 1995, addressing the 2nd National Transgender Lobby Days in DC
SOMETIMES YOU GET A PICTURE THAT YOU LIKE.

I LIKE THIS PICTURE, SO HERE IT IS.
November 2010

The first OUT, transgender Judge in the USA (and possibly — no one has disputed it yet — in the world).
PLEASE PARDON THIS ASIDE THAT HAS NOTHING TO DO WITH BEING TRANSGENDER.

BUT AS YOU MAY HAVE NOTICED FROM GOING THROUGH THE PREVIOUS PHOTOS, I WAS PUTTING ON THE WEIGHT AS THE LAST TWO PHOTOS WILL CLEARLY SHOW.

– 240#, women’s size 22 with 44” waist --
I lost 75 pounds from Nov 2012 to Nov 2014. By rigorous and frequent exercise, eating less, and daily recording of weight. (from 44” waist to 32” waist, and from size 22 down to size 14)
Once a Pariah, Now a Transgender Judge

The 4-Decade Journey of Phyllis Frye, a Movement Pioneer

By SELMA BLAIR

Phyllis Frye, the first transgender judge in the U.S., was once so afraid of the consequences of her identity that she didn’t even want to go to court.

But Frye, who was diagnosed with gender dysphoria at age 21, says she has come a long way since then. She now serves on the Travis County Court of Appeals in Austin, Texas, where she was appointed in 2012 by Gov. Rick Perry.

Frye, 56, was born male and identifies as female. She has been open about her gender identity since 2009, when she came out as a transgender woman.

Frye says she was one of the first transgender people in the state to publicly announce her gender identity.

“People thought I was crazy,” Frye says. “But I knew I had to come out because it was the right thing to do.”

Frye says she was one of the first transgender people in the state to publicly announce her gender identity.

“People thought I was crazy,” Frye says. “But I knew I had to come out because it was the right thing to do.”

Frye began her legal career as an assistant district attorney in Travis County. She later became the first openly transgender person to serve on the Travis County Court of Appeals.

Frye says she was one of the first transgender people in the state to publicly announce her gender identity.

“People thought I was crazy,” Frye says. “But I knew I had to come out because it was the right thing to do.”

Frye began her legal career as an assistant district attorney in Travis County. She later became the first openly transgender person to serve on the Travis County Court of Appeals.

Frye says she was one of the first transgender people in the state to publicly announce her gender identity.

“People thought I was crazy,” Frye says. “But I knew I had to come out because it was the right thing to do.”
“Unsung Hero”
Transgender Judge should be celebrated as someone who lead a social revolution

Transgender judge should be celebrated as someone who led a social revolution.

Caitlyn Jenner, the retired Olympic athlete, may be the only transgender person many Houstonians have even heard of. Jenner’s experience has been more celebrity spectacle than real-life story.

Opponents of HERO, the equal rights ordinance on the ballot in November, have manipulated this lack of familiarity with the transgender community to transform ignorance into baseless fear. Meanwhile, the many transgender Houstonians who lead productive lives are often ignored.

That wasn’t the case on Sunday. A New York Times front-page profile threw a national spotlight on Phyllis Frye, 67, a municipal judge in Houston who came out as a transgender woman nearly four decades ago.

Phillip Frye was a husband, a father and an Eagle Scout. Texas A&M University cadet and Army lieutenant. For dressing in women’s clothing and wanting the identity of a woman, he was disowned by his parents, divorced by his first wife and separated from his son. He was forced to resign from the military and dismissed from several engineering jobs. He underwent “cures” and attempted suicide at one point.

In 1976, Phillip came out as Phyllis. She faced plenty of opposition along the way. Her home was egged, her tires slashed and her driveway spray-painted with obscenities. The federal government rejected her for a job because of her “desire to impersonate the opposite sex,” according to the Times article. A Christian group that she wanted to pray with in law school started meeting without her to avoid praying with her — until she got their group suspended for discrimination.

Not only was she shunned by many, for many years she lived with fear of arrest under a Houston ordinance that made cross-dressing illegal. Frye lobbied city leaders in Houston for four years until the ordinance was repealed in 1990.

Along the way, she earned her law license. Forced to hang out her own shingle because no one would hire her, she became a seasoned attorney. In 2010, she became a part-time municipal judge.

Frye took her oath of office in the same City Council chambers where 30 years ago she had been subject to arrest.

“All my life, I have gotten judged,” she told the Times. “HERO is not just about and for transgender citizens; opponents of the ordinance have consciously narrowed its focus to foster division of Houstonians such as Frye. Like those who HERO seeks to protect against discrimination in employment, housing and other sectors, she is worthy of respect. And that’s the point of the ordinance.

Frye should be celebrated both for her accomplishments as a civically engaged Houstonian and as someone who led a social revolution. Because of Frye’s selfless pioneering, Jenner and others have had an easier time with their transitions. Jenner has been on the cover of magazines, she’s been the subject of hundreds of interviews by serious journalists and those who seek to sensationalize. We suspect that if she showed up in Houston, many of those who decry her lifestyle would ask for an autograph. But what she should have and what the city must certify without hysteria from the talk show set is protection against discrimination.
In 2015 I became a Life Member Of the National Eagle Scout Association (54 years later)
Pictured with fellow Eagle Scout, Judge Charles Spain
Hopefully, with stereotyping put to rest, we next consider law and policy.

In order to understand non-discrimination law and policy in re the LGBTI community, you must understand the next 3 terms!
Sexual Orientation

not the same as

Gender Identity

not the same as

Gender Expression
Thus, we need legal and policy protections for all three:

• Sexual Orientation AND
• Gender Identity AND
• Gender Expression!
Employment
Mia Macy v. Eric Holder (April 20, 2012):

“[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender.”

Transgender people are protected by Title VII of the 1964 Civil Rights Act, and the EEOC will accept and process such complaints of sex discrimination in employment when made by a transgender individual.
The legality of that 2012 EEOC ruling was upheld on March 20, 2016, by the United States District Court in Connecticut in *Fabian v. Hospital of Central Connecticut*.

“Employment discrimination on the basis of transgender identity is employment discrimination "because of sex" and constitutes a violation of Title VII of the [1964]Civil Rights Act.”
EEOC decision on July 15, 2015:

“Sexual orientation discrimination is also sex discrimination because it is associational discrimination on the basis of sex. ...

... [A]llegations of discrimination on the basis of sexual orientation necessarily state a claim of discrimination on the basis of sex.”
Education
BULLYING AND HARASSMENT

You have the right to a safe and equal learning environment.

Under Texas law, every school must have programming to prevent bullying and harassment. Every school must respond adequately to incidents of bullying and harassment.

You also have the right to start a GSA, which can contribute to a safer learning environment.
SEX-BASED DISCRIMINATION IN SCHOOL

April 2016 – The U.S. Court of Appeals of the 4th Circuit ruled that a Virginia transgender high school student, born as a female, can sue his school board on discrimination grounds because it banned him from the boys’ bathroom.

To require otherwise is a violation of Title IX, which prohibits sex discrimination at schools that receive federal funding.
GENDER IDENTITY BASED DISCRIMINATION IN SCHOOL

May 13, 2016 “Dear Colleague” Letter from the US Department of Justice, Civil Rights Division and the US Department of Education, Office of Civil Rights.

http://www2.ed.gov/about/offices/list/ocr/letters/collleague-201605-title-ix-transgender.pdf 9 pages
GIST OF THE DEAR COLLEAGUE LETTER:

- Give clear definitions of transgender

- Open all school resources, facilities and activities to transgender students
- Not allow other’s discomfort to block transgender student access or participation, but
  - allows alternatives for those who are in discomfort.
- Offers guidelines and examples of practices and policies that have been worked out with school districts around the country.

- Threaten to cut of federal funding if a school does not participate.
“Examples of Policies and Emerging Practices for Supporting Transgender Students”

www.ed.gov/ocr/lgbt.html

Click on link on that page for the 25 page pdf document.
For a listing of nondiscrimination policies for school districts and colleges across Texas with respect to sexual orientation, gender identity and gender expression

Texas Transgender Non-Discrimination Summit

www.txtns.org
Gender Markers
LEGAL NAME AND GENDER CHANGE

TG Child - under 18:
with both parents’ agreement,

I take them through the courthouse for BOTH legal change of name and gender identity from M to F (or F to M) on state ID card, social security card, passport and school records WITHOUT the need for any surgery.
TG Adult - 18 and older:

I take them through the courthouse for **BOTH** legal change of name and gender identity from M to F (or F to M) on driver’s license, social security card and passport **WITHOUT** the need for any surgery.

**I DO THIS EACH AND EVERY MONTH!**
Health Insurance
INSURANCE COVERAGE

June 23, 2015 -- the U.S. Office of Personnel Management (the agency that administers health benefits for Federal employees and retirees) issued a carrier letter to their insurance plans instructing them that they can no longer maintain blanket exclusions of transition-related care.
January 2016 -- *Brooklyn, NY* - The United States Department of Health and Human Services (HHS) has ruled for the first time that a transgender person, who was denied genital reconstruction surgery by a Medicare Advantage (Part C) insurer, United Healthcare/AARP Medicare Complete (HMO), is entitled to those benefits.
Public Accommodations

Okay, here is where the big political fight is currently being waged by the “political right.”
RECENT RULING FROM EEOC IN RE RESTROOM USAGE BY PRE OR NON-OP TRANSGENDER

April 2015, EEOC ruled against the US Army in support of a civilian employee who was beginning her transition from male to female.

This case represents well the peril of conditioning access to facilities on any medical procedure. Nothing in Title VII makes any medical procedure a prerequisite for equal opportunity (for transgender individuals, or anyone else). An agency may not condition access to facilities — or to other terms, conditions, or privileges of employment — on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individuals’ gender identity.
“All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.”
And the previously discussed 2016 federal appellate ruling — *Fabian* — enforcing Title IX for the trans-youth at the Virginia high school
And the previously discussed 9 page May 13, 2016 DOE/DOJ “Dear Colleague” Letter.

http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf
Thus, for companies with 15 or more employees (Title VII of 1964 Civil Rights Act) and for all schools and universities receiving federal funding (Title IX of 1972 Education Act), restroom use by transgender individuals is currently protected.
What about the city and state laws that are now being pushed to keep transgender individuals out of the public restroom that does not match their birth sex or their biological sex?
Recently, Houston Equal Rights Ordinance (HERO) – which had nothing to do with restroom use -- was defeated at the ballot box.

The ad campaign against HERO was solely based on keeping men pretending to be transgender out of the women’s restrooms and from sexually harming little girls.
Currently, North Carolina passed a law banning restroom usage except in the restroom marked as consistent with the biological sex or birth sex.

Other states are talking about similar statutes.
Such as Texas’ Lt Gov Dan Patrick, who is aiming to do this in the upcoming 2017 Legislative Session.

Texas Attorney General Ken Paxton and 11 other states have sued DOE/DOJ over the “Dear Colleague” Letter.
On the other side, Target Stores recently adopted a storewide policy allowing transgender individuals to use the restroom that works for their gender expression.

Target Stores is being “targeted” for this policy.
How should we fight the anti-trans folks?

For a future HERO campaign: Use the exact same previous language with the single **AND VERY SIGNIFICANT ADDITION** of the following sub-section entitled: PROHIBITION ON ENTERING RESTROOMS OF THE OPPOSITE SEX which will read as follows: “Section 28-20 ‘Entering Restrooms of the Opposite Sex’ (1968) remains applicable” or similar language.
City of Houston Ordinance Sec. 28-20 (1968)

It shall be unlawful for any person to knowingly and intentionally enter any public restroom designated for the exclusive use of the sex opposite to such person’s sex without the permission of the owner, tenant, manager, lessee or other person in charge of the premises in a manner calculated to cause a disturbance.
Any city that is about to go into a political fight about transgender individuals in the restrooms should adopt this same ordinance.

It shall be unlawful for any person to knowingly and intentionally enter any public restroom designated for the exclusive use of the sex opposite to such person’s sex without the permission of the owner, tenant, manager, lessee or other person in charge of the premises in a manner calculated to cause a disturbance.
For those wishing to “Cause a Disturbance”

Houston Ordinance 28-20
(or similar ordinance of another city or town)
is (or would be) a Class C Misdemeanor.

Punishment is a possible arrest and overnight jail
Plus a fine of up to $500
For those wishing to commit other sex or assault crimes against little girls while in the women’s restrooms, consider ---

Texas Penal Code Section 21.08
Indecent Exposure
Class B Misdemeanor
Punishment up to 180 days in jail
Plus a fine up to $1,000
For those wishing to commit other sex or assault crimes against little girls while in the women’s restrooms, consider ---

Texas Penal Code Section 21.07
Public Lewdness
Class A Misdemeanor
Punishment up to one year in jail
Plus a fine up to $2,000
For those wishing to commit other sex or assault crimes against little girls while in the women’s restrooms, consider ---

Texas Penal Code Section 21.16
Voyeurism, which can be enhanced to a State Jail Felony if of a Child < 14 years old. Punishment up to 2 years Plus a fine of up to $10,000.
For those wishing to commit other sex or assault crimes against little girls while in the women’s restrooms, consider ---

Texas Penal Code Section 21.15
Invasive Video Recording
State Jail Felony
Punishment up to 2 years
Plus a fine up to $10,000.
For those wishing to commit other sex or assault crimes against little girls while in the women’s restrooms, consider ---

Texas Penal Code Sections 20.01 and 20.02, Unlawful Restraint (previously known as false imprisonment), if of a Child can be a Felony Punishment of up to 2 years Plus a fine of up to $10,000.
AND ABOUT THE RADIO AND TV CAMPAIGNS ---

INSURE THAT RADIO AND TV LAWYERS ARE WARNED ABOUT THE PERIL OF THEIR FCC LICENSES IF THEY RUN THOSE LIES AGAIN.
Oh, and by the way, for those who keep pushing for laws to require TG folks to use the restrooms and locker rooms of their so-called “biological sex” or “sex at birth”
Do they want this transman in the women’s restroom?

JAMISON GREEN,
PRESIDENT OF WORLD PROFESSIONAL ASSOCIATION FOR
TRANS GENDER HEALTH,
FULLY "OUT" SINCE ~1991.
Do they want this transman in the women’s restroom?

KYLAR BROADUS, ATTORNEY FOR THE TASK FORCE IN DC, FULLY “OUT” SINCE ~1993
Do they want this transman in the women’s restroom?

SHANNON MINTER,
STAFF ATTORNEY FOR NATIONAL CENTER FOR LESBIAN RIGHTS,
IN SAN FRANCISCO
FULLY “OUT” SINCE ~1994
Do they want this transman in the women’s restroom?

JEN LEVI,
STAFF ATTORNEY GAY AND LESBIAN ADVOCATES AND DEFENDERS IN NEW ENGLAND
FULLY “OUT” SINCE ~2000
Finally, any school district, university, private company, hotel, restaurant or other business should adopt the following similar policy.

It shall be unlawful for any person to knowingly and intentionally enter any public restroom designated for the exclusive use of the sex opposite to such person’s sex in a manner calculated to cause a disturbance.
Yes, my law firm does Diversity training for corporations

-- in re diversity in general, and
-- specifically on transgender issues
You have my permission to post this power-point on the organization website for attendees to download, study and share.
Phyllis Randolph Frye
prfrye@aol.com
liberatinglaw.com