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Julia F. Grafstein

University of Maryland at College Park, grafsteinj5443@gmail.com

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# **The "Burden of Blame": Coalition-Building In the Transgender Movement from the 1970s through the 1990s**

Julia F. Grafstein

University of Maryland at College Park

Coalition-building within the transgender movement has received scant attention from scholars in transgender history. The vulnerable period after the Stonewall Riots in 1969 was one of extreme growth in the transgender movement, as trans people came together to challenge injustices they experienced, such as employment discrimination, cross-dressing laws, police brutality, and equal access to medical care. This essay documents not only the extent of these injustices, but also the ways in which trans people united to educate and support one another in the face of injustice.

Trans activists also sought to educate cisgender people and reform the prejudices of people in power. Through the examination of how trans people built coalitions in their nascent movement, this essay illuminates the power of alliances for minority groups seeking to reform society and build a movement.

## Introduction

“If you think I can be harassed until I leave town, you’re wrong” was Houston pre-operative transgender woman Rachelle Annette Mayes’s response to her seventh arrest for violating Houston’s anti-cross-dressing law.<sup>1</sup> The arrest occurred as she exited the courtroom in which one of her previous cross-dressing charges had been dismissed on a technicality in 1972.<sup>2</sup> When confronted by the claim that she was a publicity seeker, Mayes argued that “the only publicity involved was in trying to inform the public of the plight of transvestites [*sic*].”<sup>3</sup> In 1974, the Supreme Court declined to rule on Mayes's appeal to have Houston’s anti-cross-dressing law declared unconstitutional, after she sued the city. While not the victory transgender activists had hoped for, Mayes’s case drew attention to the impediments cross-dressing laws presented to transgender people. Cross-dressing ordinances embodied the inherently unjust nature of issues plaguing transgender individuals, as daily cross-dressing was deemed necessary by medical practitioners for transitioning even as the behavior was outlawed in most states. Cross-dressing in everyday life forced trans people to come out at their places of work, leading to possible employment discrimination. Despite these difficulties, trans activists persisted in challenging both laws and social norms. As the trans rights movement moved into a new phase in the 1970s, grassroots activists such as Mayes were willing to face intense discrimination and be out in society as they worked to expand legal rights, gain access to improved medical care, and build solidarity with fellow trans people.<sup>4</sup>

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<sup>1</sup> “City’s Report on Transvestism Almost Ready,” *Nuntius*, October 1972.

<sup>2</sup> “City’s Report on Transvestism Almost Ready,” *Nuntius*, October 1972.

<sup>3</sup> “City’s Report on Transvestism Almost Ready,” *Nuntius*, October 1972.

<sup>4</sup> Challenging cross-dressing laws became a central focus of the transgender movement in the 1970s through the 1990s. Activists lobbied judges and state legislatures to end cross-dressing laws and challenged these ordinances in the court. Ordinary people like Mayes, who may not have otherwise been greatly involved in the movement, were crucial in the fight to abolish cross-dressing laws.

The battles against cross-dressing were just one part of a larger movement. Equal access to medical care, access to employment, fair treatment by the police, and eliminating discrimination were the major goals of the movement from the 1970s into the 1990s. This essay analyzes the distinctly transgender issues trans people faced together and how trans people responded by banding together to build a movement.<sup>5</sup> Trans activists sought to challenge the prejudices of people in power; in particular, activists sought to confront medical practitioners, police, and judges who were in positions to perpetuate or mitigate discrimination. As transgender activists increasingly worked together in a larger movement, they focused their efforts on reforming their relationship with the medical community and their position before the law. These goals led to the rise of transgender support groups and educational organizations to teach other trans people how to navigate these challenges.<sup>6</sup>

While trans people had long worked to improve their individual experiences, what was new in this period was a movement that connected activists across the nation and the newly visible attempts to build community networks. Trans activists clearly detailed their goals for the movement to advocate for change. In an article in the *Detroit Gay Liberator*, Queens Liberation

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<sup>5</sup> This essay analyzes the distinctly transgender issues trans people faced together and how trans people responded by banding together to build a movement. I explore trans activism with members of the women's movements and the LGBT movement in other essays. For a fuller discussion of this activism, see my senior thesis, "Alienation and Alliances: Transgender Coalition-Building from the 1970s through the 1990s," available by contacting author.

<sup>6</sup> The vocabulary of the transgender movement has evolved immensely over the past fifty years to become more inclusive and sensitive to the terms it applies to people. This essay uses the most sensitive and accurate terminology; however, original language has been maintained when citing primary sources from the past. In cases that may present confusion, explanatory notes are included. For example, the terms "transsexual" and "transgender" were interchangeable in the 1970s and 1980s, but, as they are no longer, "transsexual" is only used in direct quotations. Using "transgender" and "trans" to encompass the gender diversity we associate with them today became popularized in the 1990s; thus, these are the terms I employ in my aim to be maximally inclusive. Using the gender-neutral pronouns they/their/themselves has also become a powerful way to not only refer to someone whose gender is unknown or cannot be classified but also to acknowledge that "gender is "a set of practices" that contains and defines what is possible for any given individual," as historian Jen Manion declared. Aaron Devor, Ardel Haefele-Thomas, *Transgender: A Reference Handbook* (Santa Barbara: ABC-CLIO, LLC, 2019), 4. Jen Manion, *Female Husbands* (New York City: Cambridge University Press, 2020), 14.

Front, a transgender activist group, succinctly framed the demands of the transgender movement as pertaining to the abolition of all cross-dressing laws, an end to exploitation and discrimination within the gay world, an end to “exploitative practices of doctors and psychiatrists,” free hormone treatment and gender-affirming care, trans assistance centers created in highly populated cities, “equal rights on all levels of society,” the ability to obtain legal documents consistent with their gender identities, and the release of all person in mental hospitals or prisons being held for “transsexualism [*sic*].”<sup>7</sup> After Stonewall, trans activists focused on securing independence from the medical community and the freedom to express themselves however they wished. The abolition of cross-dressing laws, free and on-demand gender-affirming care without having to appeal to or rely on doctors and psychiatrists, and the depathologization of the transgender identity were central to these desires because they were inherently connected to the ease with which trans people could access care and have autonomy over their gender expression. By increasing the number of trans assistance centers, activists would be able to disseminate information on the areas of importance to other trans people, including how to respond to employment discrimination or secure health insurance coverage for gender-affirming care. The medical community had long created stigmas around transgender identity by labelling it as a mental illness; while it is unclear if this led to some trans people being imprisoned for “transsexualism [*sic*]” based on available sources, this was a concern for trans people, as evidenced by imprisonment for “transsexualism [*sic*]” being on the QLF’s list of demands.

Activism in this period took many forms. While transactivists sometimes worked in coalition with like-minded people in the women’s rights and gay and lesbian communities, they also found that it was necessary to organize separately as trans people. Even when they recognized

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<sup>7</sup> Pat Maxwell, “The Emperor’s New Clothes,” *Detroit Gay Liberator*, January 1, 1971.

shared challenges (such as the psychiatric profession's pathologizing of identity and behavior), trans activists articulated a desire to carve out spaces of their own. Thus, in this era, trans activists worked in solidarity with one another to develop a movement that could address their specific needs. The very act of identifying trans-specific political issues allowed the community to build bonds and to recognize that coalitional work with gays and lesbians need not be the sole method of organization.

### **Trans Activism with the Medical Community**

As the Queer Liberation Front document suggests, many trans activists felt that working to reform the relationship they had with the medical profession was among the most critical needs of the community. By the 1970s, the relationship between the medical community and trans people was changing. The movement became infused with a depathologization message, as it experienced a shift toward a second wave of trans activism, which, as historian Joanne Meyerowitz explained, no longer emphasized or relied on “the medical model that defined “transsexualism” as a disease and gave doctors the sole authority to diagnose and treat it.”<sup>8</sup> In the late 1960s and early 1970s, a number of transgender community health organizations arose to allow trans people to get support and advice without interacting with the medical community.<sup>9</sup> These groups, which included the National Transsexual Counseling Unit and the Erickson Educational Foundation (EEF), provided counseling, gave medical referrals, and focused on outreach and education. While many groups were short-lived, their presence indicated the transgender community's recognition of a shared experience and the value of relying on one another for support. Trans people were more

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<sup>8</sup> Joanne Meyerowitz, *How Sex Changed* (Cambridge: Harvard University Press, 2004), 234.

<sup>9</sup> Joanne Meyerowitz, “The Liberal Moment,” in *How Sex Changed* (Cambridge: Harvard University Press, 2004), 237. Genny Beemyn's chapter “Transgender History in the United States,” in the book *Trans Bodies, Trans Selves* examined how transgender organizations and the transgender identity changed over time.

autonomous because they no longer had to rely solely on the medical community for connection with other trans people or assistance. Such organizations also provided peer mentorship on living as a transgender person by giving tips on what clothes or makeup to wear and how to legally change one's name.<sup>10</sup> In the mid-1970s, activists founded new groups to replace the early ones—which had mostly died out due to internal conflicts—and to reflect the movement's new goal of changing policy in addition to providing counseling and referrals.<sup>11</sup> For example, transgender activists Joanna Clark and Jude Patton founded Renaissance: Gender Identity Services in 1976 in Santa Ana, California to advocate for policy changes, educate cis and transgender communities on transgender issues, and supply medical referrals.<sup>12</sup> Similarly, in 1977 Marsha Botzer founded Ingersoll Gender Center in Seattle, Washington to supply trans people with medical referrals and connect trans people through a support group.<sup>13</sup> Their support group has met every week since the organization's conception. The movement's new objectives represented trans people's desire to take control of their identities and how society perceived them, as cisgender people's perceptions of trans people were heavily influenced by the pathologization message the medical community perpetuated. These types of services also expanded knowledge in the community and fostered relationships between trans people, paving the way for the development of a collective minority identity.

Independence from the medical community did not occur overnight, as physicians continued to exert control over trans people throughout the 1970s, 1980s, and 1990s. In the 1970s

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<sup>10</sup> *Cross-Talk* no. 25, June 1991.

<sup>11</sup> Joanne Meyerowitz, "The Next Generation," in *How Sex Changed* (Cambridge: Harvard University Press, 2004), 274.

<sup>12</sup> Joanne Meyerowitz, "The Next Generation," in *How Sex Changed* (Cambridge: Harvard University Press, 2004), 275.

<sup>13</sup> "Our History," About Us, Ingersoll Gender Center, <https://ingersollgendercenter.org/who-we-are/about-us/>. See also Joanne Meyerowitz, "The Next Generation," in *How Sex Changed* (Cambridge: Harvard University Press, 2004), 275.

and 1980s, private doctors began to specialize in gender affirmation surgery, making surgery more accessible and increasing the number of people receiving medical treatment.<sup>14</sup> In 1979, members of the medical community who worked with trans people created the Harry Benjamin International Gender Dysphoria Association, which released its *Standards of Care* at its founding. These guidelines were meant to introduce uniformity to the treatment of transgender people as private surgeons accrued more trans patients.<sup>15</sup> The *Standards of Care* renounced surgery “on demand” and encouraged recommendations for surgery by a psychiatrist or psychologist whom the patient had seen for at least three months. Another prerequisite was that the patient lived full-time in “the social role of the other sex” for three months prior to receiving hormonal therapy, six months prior to receiving nongenital surgery, and twelve months prior to receiving genital surgery. The written recommendations for the procedure from two behavioral scientists were also required before the patient could undergo surgery.<sup>16</sup>

Although the standards tried to be cognizant of the circumstances of many trans people by including a requirement that fees must be “reasonable,” the prerequisite of living as a member of the “genetically other sex” did not show an understanding of how difficult it was for trans people to live as a member of the sex with which they identified full-time. These recommendations were physician-centered, not developed by trans people. At the second International Conference on Transgender Law Employment Policy (ICTLEP), which was transgender-run, the Health Law Committee discussed the irrationality of forcing someone to live as a member of the sex with which they identified because “coming out is more visible to the outside world” and forcing people to

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<sup>14</sup> Joanne Meyerowitz, “The Liberal Moment,” in *How Sex Changed* (Cambridge: Harvard University Press, 2004), 256.

<sup>15</sup> Joanne Meyerowitz, “The Next Generation,” in *How Sex Changed* (Cambridge: Harvard University Press, 2004), 273.

<sup>16</sup> Vern Bullough, Bonnie Bullough, “Transsexualism,” in *Crossdressing, Sex, and Gender* (Philadelphia: University of Pennsylvania Press, Incorporated, 1993), 261.



come out to secure surgery “often puts transsexuals [*sic*] in a cruel situation of being neither male nor female, having to look one sex and use the toilets of the other.”<sup>17</sup> The *Standards of Care* forced trans people into dangerous situations by effectually mandating they come out as transgender in order to secure gender-affirming care. People were arrested for crossdressing or fired from their jobs since discrimination based on gender expression did not begin to be outlawed until 1975, which was the year Minneapolis passed an anti-discrimination law based on gender expression. This made maintaining employment difficult for people who were preparing for gender-affirming care. Trans activists banded together to focus on increasing cisgender people’s, especially medical practitioners’, understanding of the difficulties these requirements presented, as healthcare standards became a central topic of discussion at community events for decades following the imposition of the *Standards of Care*.

In a related vein, trans activists sought to challenge the psychiatric profession’s conception of gender identity. Psychiatrists viewed trans people as having an illness, which was cemented by the addition of “transsexualism [*sic*]” to the *Diagnostic and Statistical Manual’s* list of “gender identity disorders” in 1980. The monograph “Transvestites: Deviant or Minority Group?” by John Talamini, a scholar of cross-dressing trends in the United States, explained how psychiatrists labeling “transvestitism [*sic*]” as a disease placed the “burden of blame... solely upon a group which experiences social prejudice... relegating transvestites to an inferior status.”<sup>18</sup> Doctors rooted their understanding of being trans in the idea that being transgender and cross-dressing were defects caused by lack of self-esteem or being brought up in a “feminine way,” and decided it was something to be cured. Talamini asserted that “considering that many males come to believe...

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<sup>17</sup> Martine Aliana Rothblatt, “Appendix C: Health Law Standards,” Second International Conference on Transgender Law and Employment Policy, August 1993, 7.

<sup>18</sup> John Talamini, “Transvestites: Deviant or Minority Group?” (Boston: Outreach Institute Inc., 1981), 1.

that females are second class citizens, it's understandable that any imitative admiration of the female would be labeled 'pathological.'"<sup>19</sup> Talamini suggested that because men were valued more than women in American society, psychiatrists labeled any male who "imitated" or otherwise presented himself as female as ill and requiring a cure. His assertion illustrated the underlying cause for the pathologization of trans people as the categorical sexism in the medical community. The addition of "transsexualism [*sic*]" to the DSM justified the great measures doctors went to to "cure" people of being transgender. The treatments psychiatrists and physicians utilized enforced sexual and gender norms.<sup>20</sup> Electric shock therapy and the drug apomorphine, which caused nausea, were dominant treatments of the time; psychiatrists used them to create a negative association with people's transgender identities.<sup>21</sup> For example, cross-dresser patients may have been administered an electric shock while being shown a picture of themselves while cross-dressing. When these treatments did not work, many psychiatrists recommended gender-affirmation surgery.<sup>22</sup>

Psychiatrists ultimately decided the best way to "cure" this "illness" was by encouraging heterosexual trans women assigned male at birth to transition to become anatomical women. But they aimed to preserve heteronormative gender norms by choosing only the most stereotypically feminine trans women to transition. They decided that if patients who came to them for gender-affirming care did not present themselves as stereotypical women, then they were not "real" trans

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<sup>19</sup> John Talamini, "Transvestites: Deviant or Minority Group?" (Boston: Outreach Institute Inc., 1981), 3.

<sup>20</sup> This paralleled how the medical establishment treated lesbian and gay people, who were similarly "treated" for the disease of homosexuality. Thus, getting homosexuality removed from the DSM was also a priority for gay and lesbian activists. Marc Stein, *Rethinking the Gay and Lesbian Movement* (Oxfordshire: Taylor and Francis Group, 2012), 176.

<sup>21</sup> John Talamini, "Transvestites: Deviant or Minority Group?" (Boston: Outreach Institute Inc., 1981), 4.

<sup>22</sup> While surgery had been the norm and continued to be promoted by certain psychiatrists, in the 1970s some psychiatrists came to believe that surgery helped few individuals and could not cure a psychiatric disorder. This led to the closure of several gender clinics, validated insurance companies' beliefs that they did not have to cover gender affirmation surgery, and discredited surgeons who conducted and/or recommended gender affirming surgery. Meyerowitz, "The Next Generation," 268.

people. “I only perform this operation on people with marked feminine characteristics,” revealed Dr. Georges Burou, a doctor who performed many gender affirmation surgeries. He elaborated on his selection process: “I turn away many people if I am not satisfied they have a feminine aspect and appearance.”<sup>23</sup> Whether or not people had a “feminine appearance” was subjective, and could vary from doctor to doctor. Doctors, thus, created a pathology of gender dysphoria only to use heteronormative gender norms to decide which of those “afflicted” deserved to be “cured.” Dr. Burou explained that “even nature makes mistakes sometimes. We human beings must do our best to put them right. If necessary with surgery.”<sup>24</sup> His statement encapsulated the view of many doctors who worked with trans people. They adopted the attitude that they knew what was best for trans people and acted as gods in choosing whom they offered surgery. Such attitudes demonstrate why reforming the relationships with the medical community was central to trans activism in the 1970s and 1980s.

Surgical intervention had implications beyond the physical, which made trans health organizations indispensable resources. According to the EEF’s *Legal Aspects of Transsexualism* [*sic*] handbook, some states required proof that the person requesting a change in sex identity could no longer “function as a male” or female. This meant seeing that such persons could no longer play a role in having or bearing children and that they appeared to be a member of the sex with which they identified.<sup>25</sup> Thus, physical appearance was inherently tied to identity through the medical model of being transgender that doctors promoted, which emphasized the importance of acquiring surgery. According to the transgender rights advocate Martine Aliana Rothblatt, the transgender movement desired to “free transsexual [*sic*] expression from mental health

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<sup>23</sup> Paul Hughes, “The Surgeon Who Changes Men into Women,” *Sunday Mirror*, February 22, 1976.

<sup>24</sup> Paul Hughes, “The Surgeon Who Changes Men into Women,” *Sunday Mirror*, February 22, 1976.

<sup>25</sup> “Health Insurance Benefits,” in *Legal Aspects of Transsexualism and Information on Administrative Procedures*, 1971, 6.

professionals” because psychiatrists’ holding the power to decide if they should grant surgery meant some people were able to change their birth certificates to reflect their gender identity or had greater access to care, giving them immense power over trans people.<sup>26</sup> Finding an understanding doctor was imperative to securing care, which made the transgender health organizations crucial resources. In its handbook *Guidelines for Transexuals*, the EEF offered to provide a list of physicians and psychotherapists experienced in working with trans people in the reader’s locality to anyone who inquired so trans people could get the best care possible and have an advocate in the medical community to help them through the process of acquiring gender-affirming care. This was a key resource for trans people, as they relied on trans activists who had experience with the medical community to guide them in their medical journey, illustrating the necessity of trans people’s relationships with other trans people.

Funding gender-affirming care was extremely difficult due to its high cost, workplace discrimination, and the difficulty of obtaining health insurance coverage. Workplace discrimination made finding and maintaining steady employment challenging, which, in turn, made it difficult for people to procure the funds to pay for gender-affirming care.<sup>27</sup> According to an article in the *Berkeley Barb*, a quality gender affirmation surgery cost \$4,000 in January of 1974, which was equivalent to \$26,330 in December 2023.<sup>28</sup> Considering minimum wage was \$2.00 an hour in 1974, \$4,000 was a hefty sum to come by without assistance.<sup>29</sup> As of July 1971, subscribers to Blue Cross were covered for gender affirmation surgery, although an eleven-month

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<sup>26</sup> Martine Aliana Rothblatt, “Appendix C: Health Law Standards,” Second International Conference for Transgender Law and Policy, 1993, 9.

<sup>27</sup> Jessica Xavier, “So You Wanna Be in Politics: A Realistic Assessment of Transgender Political Involvement,” *AEIGS News*, April 1996, 6.

<sup>28</sup> “Inflation Calculator,” U.S. Bureau of Labor Statistics. Jennifer L. Thompson, “Transexual’s Dilemma,” *Berkeley Barb*, July 12, 1974.

<sup>29</sup> “History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938-2009,” U.S. Department of Labor.

waiting period was required to qualify for treatment benefits for a pre-existing condition, the pre-operative work-up had to be performed on an outpatient basis, and hospitalization coverage did not include the recuperation period. The Erickson Educational Foundation published a handbook that asserted that veterans affairs hospitals frequently helped with post-operative problems, but did not cover the gender-affirming surgery itself.<sup>30</sup> Several prerequisites to surgery were detailed in the EEF's book, such as electrolysis to stifle beard growth and hormone injections for at least six months prior to surgery, both of which made post-surgery adjustment easier.<sup>31</sup> Although these prerequisites made sense, funding all of these treatments could be extremely difficult, making health insurance coverage necessary.

Nevertheless, the ways that physicians and trans people interacted were complicated. Many trans people wanted surgical or hormonal intervention, thus requiring engagement with medical professionals. Just as critical was finding a sympathetic physician who could help patients navigate the challenges of the insurance system that too often limited coverage for gender-affirming care. Trans activist organizations created legal guidebooks in response to the difficulties of having to obtain and pay for surgery in order to help other trans people successfully navigate these processes. Doctors played an important role in trans people acquiring gender-affirming care, as their description of their patient's needs could be the deciding factor in access to health insurance coverage for procedures. The attending physician determined the medical necessity of an operation, and, according to the handbook *Legal Aspects of Transsexualism*, the governing "federal standard for payment benefits in the Medicaid program is one of 'medical necessity.'"<sup>32</sup> An EEF

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<sup>30</sup> "Health Insurance Benefits," in *Legal Aspects of Transsexualism and Information on Administrative Procedures*, 1971, 10.

<sup>31</sup> *Guidelines for Transsexuals*, Erickson Educational Foundation, 1976.

<sup>32</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 35.

booklet titled “Guidelines for Transsexuals” explained that no private foundation offered financial assistance for gender affirmation surgery, underscoring the importance to some trans people of health insurance companies covering gender-affirming care. Some health insurance companies explicitly excluded gender-affirming care. The booklet went on to list only seven insurance companies that had paid full or partial coverage for gender affirmation surgery. It claimed that applications for coverage under “cosmetic surgery” or “transsexual [*sic*] surgery” were consistently rejected, but the companies responded well when the “condition” was presented as “a neuroendocrinological or psychohormonal disorder” that required and was responsive to surgical and hormonal treatment. Classifying it as “gender dysphoria” also led to successful claims. The booklet advised that the description of the surgery should be framed based on the wording of the health insurance policy. “In choosing a surgeon,” the booklet urged the patient to assure himself “as far as possible that he will be interested in vigorously pursuing your insurance claim.”<sup>33</sup> An understanding doctor was important in not only recommending surgery but also in being able to pay for it. In their *LA Free Press* article, activists from the Transsexual [*sic*] Activist Organization argued that surgeons should have assisted trans people as opposed to supporting a system with many obstacles that offers surgery “as a final reward to “deserving” and financially well-off transsexuals [*sic*].”<sup>34</sup> The powerful position of doctors created a great deal of tension between them and trans activists, who desired greater control over their ability to secure surgery, and demonstrated the necessity of reforming doctors’ prejudices about trans people.

The transgender community demonstrated their desire for autonomy by consistently demanding that gender-affirming care be available on-demand and that doctors be transparent

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<sup>33</sup> *Guidelines for Transsexuals*, Erickson Educational Foundation, 1976, 29.

<sup>34</sup> Anita Douglas, Brandy Elliott, Tisha Goudie, “Transsexual Liberation: Confronting Suppression,” *Los Angeles Free Press*, September 1975, 10.

about their level of expertise and experience with trans people. The Health Law Standards of Care in the second International Conference on Transgender Law and Employment Policy were written based on the principles of “persons [having] the right to express their gender identity through changes to their physical appearance” and “persons denied the ability to exercise control over their own bodies in terms of gender expression, through informed access to medical services, may experience significant distress and suffer a diminished capacity to function socially, economically and sexually.”<sup>35</sup> By first establishing these principles, the committee signified the shift they desired from the medical model created for transgender people to emphasize the patient’s right to care and autonomous decision-making. Based on these principles, the committee created standards that physicians and surgeons participating in transgender health care must provide gender-affirming care to any patient requesting it, subject only to denial based on the belief that pre-existing conditions would not be aggravated. Granting gender-affirming care was also contingent upon the patient having undergone one year of hormonal therapy (which was used as a sort of trial period for someone desiring to obtain gender affirmation surgery) and the patient’s signature of informed consent.<sup>36</sup> Another standard was that surgeons and physicians “collect and publish on an annual basis the number of sex reassignment surgeries [*sic*] they performed and the number and general nature of any complications and complaints involved.”<sup>37</sup> This informed consent model would ensure that all trans people dealt with credible doctors who understood the risks of what they were going to do. This information also allowed trans patients to make an educated decision about whether or not they wanted gender-affirming care instead of relying on physicians to make the

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<sup>35</sup> “Proceedings from the Second International Conference on Transgender Law and Employment Policy,” August 1993, 10.

<sup>36</sup> *Guidelines for Transexuals*, Erickson Educational Foundation, 1976, 32. “Proceedings from the Second International Conference on Transgender Law and Employment Policy,” August 1993, 10.

<sup>37</sup> “Proceedings from the Second International Conference on Transgender Law and Employment Policy,” August 1993, 10.

decision for them. The second ICTLEP's Health Law committee proposed on demand access to hormones and other forms of gender-affirming care, as "health law must concern itself with a consistent, rational and fair approach to medical treatment" for trans people; "the fact that the part of the body that the transsexual [*sic*] wants to change is sexual in nature must remain an irrelevant factor in a secular body of law," to report explained.<sup>38</sup> Trans people felt that the only role doctors should play concerning access to care was explaining whether or not the care was safe. If patients had an underlying medical condition, then the doctor could tell them that hormones, for example, were not a safe option; otherwise, trans activists claimed, trans people should have been able to decide whether or not they wanted gender-affirming care. These aspects of the Health Law Committee's recommendations remained in their standards of care through all six ICTLEP conferences, illustrating their longevity in application to the state of trans people's relationship with the medical community.

Trans activists did more than articulate these core beliefs. Throughout the 1970s and 1980s, they launched lawsuits and published advice in legal guidebooks to make accessing gender-affirming care easier. The influx of lawsuits and the emergence of published advice also marked a new era of strategies trans activists employed to reach the goals of the trans movement and create a trans community. In February 1978, the Minneapolis Supreme Court ruled that the state's Department of Public Welfare could not categorically exclude gender-affirming surgery from Medicaid. In 1977, the Federal District Court in Georgia made a similar ruling.<sup>39</sup> In the 1980 handbook, *Legal Aspects of Transsexualism*, influential transgender activist Joanna Clark listed six court decisions that required states to fund gender affirmation surgery through Medicaid,

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<sup>38</sup> "Appendix 5: Second Report of the Health Law Project," Second International Conference on Transgender Law and Employment Policy, October, 1993.

<sup>39</sup> "Here and There," *Gay Peoples Union News*, February, 1978, 37.



including the Georgia and Minneapolis cases. Thus, states were becoming more amenable to funding gender-affirming care, which trans activists capitalized on to encourage trans people to take advantage of the new routes to care. Clark claimed that the majority of private health insurance companies did not provide coverage for preoperative evaluation, gender affirmation surgery, or hospital costs, but, like the EEF, encouraged patients to utilize the loophole in Medicaid, which did not explicitly exclude gender affirming care from its covered health services. Clark also stressed that benefits were often denied if the procedure was not medically necessary. Many private companies used the Harry Benjamin International Gender Dysphoria Association standards of care to judge whether the applicant's surgery was medically necessary.<sup>40</sup> Because the surgeries and related care were so expensive and trans people experienced brutal employment discrimination, many trans people relied on health insurance to fund their gender-affirming care. Activist organizations' legal guidebooks were imperative aids for trans people who desired to obtain insurance coverage for gender-affirming care. These legal guidebooks were integral in educating trans people about how to best finance gender-affirming care, as they detailed loopholes and tips that fewer people would have known about otherwise. They were an effective way to disseminate information to a large network of people. Navigating such distinctly trans issues required the help of other trans people, thus illustrating how imperative intra-community relationships were not only in informing other trans people, but also in educating medical professionals about the plight of trans people and how they were affected by their interactions with and the prejudices of those in the medical establishment.

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<sup>40</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 35.

## Transgender Activism in the Legal System

The stigma marking the transgender identity perpetuated by the medical establishment manifested in cisgender society in the form of intense discrimination. Transgender activists' largest target in the area of discrimination was employment discrimination, which was central to many facets of the transgender experience, including access to gender-affirming care and the movement's capacity to organize. Trans people unified to tackle these uniquely trans issues and educate people whose biases resulted in an uninviting and distressing workplace environment. As previously stated, gender-affirming care was expensive; without steady employment, it was difficult to fund. In a 1973 EEF booklet, the author claimed that "from a patient's point of view, the time and money consumed during [the trial period before surgery] presents a severe burden, if not a prohibitive one."<sup>41</sup> Employment was further tied to gender-affirming care because, during the trial period, it was incredibly difficult to maintain employment. Employers commonly used pre-operative trans people's lack of gender-affirming surgery as an excuse to not accommodate their needs. For example, one trans woman's manager denied her the right to change her name and dress as a female at work because she "didn't have proof from [her] doctor that the surgery [had] been completed."<sup>42</sup> Despite having been issued new cards reflecting her "new identity" by the State of Illinois and the Social Security Administration and having a signed note from her doctor, the manager denied her request because "personnel said no."<sup>43</sup> Thus, employment discrimination was largely the result of cisgender people's prejudices.

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<sup>41</sup> *An Outline of Medical Management of the Transexual*, Erickson Educational Foundation, 1973, 3.

<sup>42</sup> "Appendix I: Case Studies: Discrimination Against the Transgendered," Fourth International Conference on Transgender Law and Employment Policy, June 1995, 16.

<sup>43</sup> "Appendix I: Case Studies: Discrimination Against the Transgendered," Fourth International Conference on Transgender Law and Employment Policy, June 1995, 16.

For post-operative trans people, securing employment could be challenging, yet the emergence of guidebooks helped trans people navigate workplace obstacles. The EEF's 1976 handbook *Guidelines For Transsexuals* illustrated the careful thought that trans people must put into employment after undergoing gender affirmation surgery. "In some cases, where your employer is sympathetic and the work you do is appropriate to your new gender role," the booklet explained, vocational plans post-surgery would not be a problem.<sup>44</sup> The book expanded on the complications surgery may present in a hostile environment, advising that the person getting surgery should draw all sick leave and other benefits in order to protect oneself during a period of "cross-gender" testing, when the person may be short on funds. The EEF's guidebook *Legal Aspects of Transsexualism and Information on Administrative Procedures* detailed the option for trans people recovering from surgery to utilize the grants the federal government made to state vocational rehabilitation agencies to "help them serve persons with a physical or mental disability who need help in obtaining and holding an appropriate job." These services included "evaluation of rehabilitation potential, counseling and guidance, personal and vocational adjustment" and other services, and were often open to trans people.<sup>45</sup> The road to assimilation after surgery could be uncertain, so utilizing all available resources was best. The booklet also claimed that "petitions for correction of work licenses usually are routinely granted by trade associations and the accrediting boards of most professions," although school boards often presented resistance to this because of fear of moral endangerment of their students.<sup>46</sup> The willingness of institutions to change work licenses indicated that post-operative trans people likely encountered resistance at the personal level of their work, as opposed to from the agencies which were changing their legal

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<sup>44</sup> *Guidelines for Transsexuals*, Erickson Educational Foundation, 1976, 23.

<sup>45</sup> "Employment and Job Training," in *Legal Aspects of Transsexualism and Information on Administrative Procedures*, 1971, 11.

<sup>46</sup> *Guidelines for Transsexuals*, Erickson Educational Foundation, 1976, 24.

documentation. Despite any opportunities they were granted by the agencies, they were severely limited by the personal prejudices of those they worked with or for.

The experience of Alison, a transgender woman, was typical of many employment discrimination cases. Alison was going to start transitioning but had not done so yet and had worked at the same company for many years. Her employers discovered her intentions to transition and claimed they could give her another job in a different department, all she needed to do was produce a letter of resignation from her current job as a mechanic and another letter requesting a position in a different department. She wrote both letters, but when the time came for her meeting with the company owner, he claimed they could not give her a job in a different department. Alison remembered when she asked if they could let her continue in her current position, the company owner said “no, I don’t think that’s feasible either, I think you should leave here and go find a job where you can deal with it and get out of here.”<sup>47</sup> The ordeal surrounding the status of Alison’s employment after her employers discovered her intent to transition took three to four weeks. Alison’s experience of implicit discrimination characterized a great deal of other trans people’s discrimination experiences. Many people were terminated shortly after being found out to be a trans person or after their intent to transition was discovered, yet their employers did not always say outright that they were let go because of their transgender identity. Many trans people were used as scapegoats for problems or let go for other, sometimes fabricated, reasons.<sup>48</sup>

Trans people had immense difficulty finding or keeping jobs when they were open about their intentions to obtain gender-affirming surgery. A great deal of tension came from the question

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<sup>47</sup> “Appendix I: Case Studies: Discrimination Against the Transgendered,” Fourth International Conference on Transgender Law and Employment Policy, June 1995, 11.

<sup>48</sup> See Appendix I of the fourth ICTLEP for a variety of trans experiences with discrimination, including employment discrimination and hate crimes. “Appendix I: Case Studies: Discrimination Against the Transgendered,” Fourth International Conference on Transgender Law and Employment Policy, June 1995.

of which bathroom a pre-operative trans person may use, the one associated with the sex they were assigned at birth or the one associated with their gender expression. Some employers were willing to accommodate the trans person, who was usually mid-transition in this situation, and allow them to lock the door or put up a note when it was in use. Many employers did not invest the time in finding a suitable solution for the period of time before the trans person was set to have gender affirmation surgery and the trans person was let go. This happened to one unidentified trans woman who was in the trial period of her transition before surgery. She was recently hired as a telephone interviewer, but when her employers discovered she was a pre-operative trans woman, they did not allow her to use the women's restroom or the men's restroom because she was "not female" and the "male employees would be uncomfortable."<sup>49</sup> She then asked if she could keep her job if she did not use the restroom at all, but the employers claimed other employees would be too uncomfortable with her and only offered to maintain her employment if she came to work dressed as a man. After refusing this offer because not only was it "part of [her] treatment to dress as a woman," but she identified as a woman, the woman was terminated and filed a discrimination complaint with the Chicago Commission on Human Relations.<sup>50</sup> Finding work for trans people could also be troublesome because many employers did not want to risk having a problem while trying to incorporate a new employee. "As a result," Phyllis Frye, a practicing attorney and dedicated transgender activist, explained, "most transgenders [*sic*] apply and interview by hiding as much of their past as possible."<sup>51</sup> If that person's identification did not fully match their gender expression, then it was not likely they would get the job. Thus, finding employment was difficult

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<sup>49</sup> "Appendix I: Case Studies: Discrimination Against the Transgendered," Fourth International Conference on Transgender Law and Employment Policy, June 1995, 16.

<sup>50</sup> "Appendix I: Case Studies: Discrimination Against the Transgendered," Fourth International Conference on Transgender Law and Employment Policy, June 1995, 17.

<sup>51</sup> Phyllis Frye, "Facing Discrimination, Organizing for Freedom: The Transgender Community," in *Creating Change: Public Policy, and Civil Rights*, ed. by John D'Emilio, William Turner, Urvashi Vaid (New York: St. Martin's Press, 2000), 4.

and required knowledge about one's rights and possible solutions to make transitioning easier at work.

Education became central to trans activists' crusades against employment discrimination. The International Foundation for Gender Education (IFGE) published a 1992 guidebook for employers of trans people titled "Why Is S/He Doing This To Us?"<sup>52</sup> This handbook addressed what it meant to be transgender and common questions posed by employers about trans people, such as "What do we do about the bathroom issue?" The International Conference on Transgender Law and Employment Policy (ICTLEP) praised IFGE's handbook, claiming "it's no wonder that many employers have opted to discharge the employee rather than try to reinvent the wheel, a wheel they don't even understand."<sup>53</sup> Employers gained practical advice from this book, which enabled them to find solutions to problems many employers claimed to have because they employed trans people. ICTLEP published a sister book to IFGE's called "What Is S/He Doing?" that was aimed at helping other employees understand the transgender identity and become more sympathetic. ICTLEP argued that "through education and cooperation a transsexual [*sic*] stands a better chance of retaining her job than trying to win it back through litigation."<sup>54</sup> When these preemptive strategies did not work, psychologist and transgender support specialist Gianna Eveling Israel encouraged trans people to file a complaint with their State's Labor Discrimination Agency and bring a discrimination suit against the company if they had "the emotional, legal, and financial resources."<sup>55</sup> Transgender activists concentrated on education as the first avenue for

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<sup>52</sup> JoAnna McNamara, "Appendix E: Employment Discrimination and the Transsexual," Fourth International Conference on Transgender Law and Employment Policy, 1995, 20.

<sup>53</sup> JoAnna McNamara, "Appendix E: Employment Discrimination and the Transsexual," Fourth International Conference on Transgender Law and Employment Policy, 1995, 20.

<sup>54</sup> JoAnna McNamara, "Appendix E: Employment Discrimination and the Transsexual," Fourth International Conference on Transgender Law and Employment Policy, 1995, 21.

<sup>55</sup> Gianna Eveling Israel, "Being Transgendered and Dealing with Harassment, Confrontation and Violence," *The TV-TS Tapestry Journal* 72 (Summer 1995), 12.

resolving issues, publishing many handbooks for trans people and people who employed or worked with trans people in order to prevent discrimination.

The intense discrimination trans people experienced, in employment and other areas, facilitated a need for a discourse within the trans community on how to navigate it. Transgender activist Phyllis Frye noticed the difficulties many trans people had finding employment and otherwise engaging with the law and the medical community and also recognized the knowledge gap that everyday trans folk had, which led her to found the International Conference on Transgender Law and Employment Policy in 1991. The International Conference on Transgender Law and Employment Policy was the first conference centered around how the law applied to trans people and how it could be used for progressive change. The event grew out of Frye's frustration with transgender legal issues being excluded from gay and lesbian legal organizations and conferences, and she sought to find a way to educate people on transgender issues as well as to create a forum for discussing and researching said issues. The conference addressed housing, employment, health, anti-discrimination, and criminal and family law as they applied to trans people. Over fifty people attended the first conference. Over time, the conferences grew in size and expanded the range of topics they covered, notably adding sections on female-to-male trans people, trans people of color, and trans people who were not going to get an operation. The conference spawned It's Time America, a prominent transgender activist organization with chapters across the country. The sixth annual conference in 1997 was the last, but the conference had already succeeded in affecting great change by fostering relationships with other organizations and creating political momentum in the transgender community.<sup>56</sup>

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<sup>56</sup> Phyllis Frye, "History of the International Conference on Transgender Law and Employment Policy, Inc.," in *Creating Change: Public Policy, and Civil Rights*, ed. by John D'Emilio, William Turner, Urvashi Vaid (New York: St. Martin's Press, 2000).

Trans people also attempted to navigate the discrimination they faced by changing the law and bringing anti-discrimination cases to court, but the courts were hesitant to bar discrimination based on gender expression. In the handbook *Legal Aspects of Transsexualism*, Clark claimed that discrimination against trans employees was generally overt, as discrimination based on gender expression or “change of sex” was not prohibited by Title VII as of 1980.<sup>57</sup> In the 1975 case *Smith v. Liberty Mutual Insurance Co.*, Bennie Smith, a man, was interviewed for employment in Liberty Mutual Insurance Co.’s mail room in 1969, but his interviewer, the Supervisor for the mail room, recommended against hiring him because he was effeminate. Liberty Mutual admitted they did not hire Mr. Smith for this reason.<sup>58</sup> In its decision, the Georgia District Court held that Title VII did not protect from discrimination based on the “affectional or sexual preference” of the job applicant, despite the plaintiff being characterized as “effeminate” and not as a homosexual.<sup>59</sup> This distinction revealed the ignorance of the court, which combined transgender and homosexual into a single identity for its decision. Later in 1975 in *Voyles v. Ralph K. Davies Medical Center*, a District Court in California expanded the non-applicability of Title VII to include “transsexuals [*sic*] and bisexuals,” which was affirmed on appeal.<sup>60</sup> Ralph K. Davies Medical Center employed Carol Voyles as a hemodialysis technician. When Voyles told her employer she intended to undergo gender affirmation surgery, she was let go from the company because her transition would have “a potentially adverse effect on both patients receiving treatment at the dialysis unit and on plaintiff’s co-workers caring for those patients.”<sup>61</sup> Voyles sued the medical center for back pay

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<sup>57</sup> Discrimination based on sexual orientation and gender expression were added to Title VII in the case *Bostock v. Clayton County* in June 2020. *Bostock v. Clayton County, Georgia*, 590 U.S., 140 S. Ct. 1731 (2020) Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 5.

<sup>58</sup> *Smith v. Liberty Mutual Insurance Co.*, 569 F.2d 325, (5th Cir. 1978).

<sup>59</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980),

<sup>60</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980),

<sup>61</sup> *Voyles v. Ralph K. Davies Medical Center*, 403 F.2d 456, (9th Cir. 1978).



and the restoration of her job because “things became tricky when I try to explain “Charles” and my five years of work as a male.”<sup>62</sup> The court denied her claim on the basis that Congress had no intention of including discrimination based on “affectional or sexual preference” in Title VII.<sup>63</sup> Voyles experienced two-fold employment discrimination, as her employment was terminated at the medical center because she was going to transition and she could not obtain new employment without having to explain her experience at the medical center as Charles. The court’s unwillingness to expand Title VII to include gender identity thus harmed her ability to secure new employment and meant she could have been fired at any time based on transgender identity. *Kirkpatrick v. Seligman & Latz, Inc.* was a 1981 court case in which the court ruled that Kirkpatrick being fired for wearing women’s clothes to work did not count as discrimination against Kirkpatrick as a woman because Kirkpatrick was anatomically male at the time they started wearing female clothes. The court based their idea of sex solely on the anatomy of the trans person without regard for their gender expression, often only seeing sex as based on chromosomes and anatomy.<sup>64</sup> The court also rejected the definitions of sex that scientists offered when testifying in a case, arguing that new definitions of sex must come from Congress.<sup>65</sup> The courts were obstinate in their denial of barring gender identity based discrimination, which meant transgender activists had to find other ways to eliminate discrimination based on gender identity.<sup>66</sup>

Three notable examples of transgender employment discrimination in the 1970s served as high-profile opportunities to increase transgender visibility and eliminate discrimination by the

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<sup>62</sup> “She Sues for His Job,” *Drag* 6, no. 21, 1976, 3.

<sup>63</sup> *Voyles v. Ralph K. Davies Medical Center*, 403 F.2d 456, (9th Cir. 1978).

<sup>64</sup> Marla Aspen, “Health Law Project,” First International Conference on Transgender Law and Employment Policy, August 1992, 250.

<sup>65</sup> JoAnna McNamara, “Appendix E: Employment Discrimination and the Transsexual,” Fourth International Conference on Transgender Law and Employment Policy, 1995, 6.

<sup>66</sup> In 2020, the Supreme Court ruled that employment discrimination based on gender expression or sexual orientation violated Title VII in *Bostock v. Clayton County*. *Bostock v. Clayton County*, 590 U.S. (2020).

courts. Paula Grossman was a fifty-two-year-old music teacher in New Jersey who underwent gender affirmation surgery over spring break in 1971 and wanted to return to school the following September expressing herself as a female teacher. The school board sought to dismiss Grossman, a tenured teacher, but did not reveal the grounds for this dismissal. This decision came after the board requested that Mrs. Grossman resign her tenured position held under her previous name and obtain a new teaching certificate under “Paula Grossman” and accept a one-year contract as a new teacher with the same salary.<sup>67</sup> Mrs. Grossman refused because she did not want to give up her tenured position and because incompetence, the usual grounds for dismissing a tenured teacher, had not been proven. Mrs. Grossman had taught at the school for fourteen years, and the loss of income was hard for her family, who had to go on food stamps for six months.<sup>68</sup> She took her case against the school board to court, arguing that there were no grounds for dismissal, but was denied in the 1978 ruling. The court argued that Mrs. Grossman lacked the capacity to teach because of her “physical condition,” which would have a “psychological impact” on her pupils.<sup>69</sup>

Steve Dain was the second in a series of high-profile transgender employment discrimination cases. A beloved physical education teacher for ten years at Emery High School in California, Dain was suspended because he returned to school after six months of sick leave as a transgender man. The school district claimed they suspended Dain on grounds of “unfitness, immoral conduct, and dishonest use of sick leave.”<sup>70</sup> Dain, one of the first highly visible FTMs, vowed to fight the suspension because he “cared about kids, education and human rights.”<sup>71</sup> Despite his visibility as an out trans man, Dain was not on a quest for trans rights during this fight.

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<sup>67</sup> “Teacher Barred Over Sex Change,” *New York Times*, August 13, 1971.

<sup>68</sup> Judy Klemesrud, “A Transsexual and Her Family: An Attempt at Life as Usual,” *New York Times*, October 23, 1973.

<sup>69</sup> “In Re Grossman,” *Justia US Law*.

<sup>70</sup> Bella Stumbo, “Transsexual Teacher, Broke, Disillusioned, Tires of Fighting,” *Los Angeles Times*, 1978.

<sup>71</sup> Bella Stumbo, “Transsexual Teacher, Broke, Disillusioned, Tires of Fighting,” *Los Angeles Times*, 1978.

He explained that he was “fighting as an American citizen for my life, not as a transsexual [*sic*] for other transsexuals [*sic*].”<sup>72</sup> Although he did not become actively involved with the transgender movement after his case, he served as a mentor for struggling trans people, including influential FTM activist Lou Sullivan.<sup>73</sup> The long and arduous court battle drained Dain’s savings after dragging on for two years. Ultimately, an Oakland Superior Court judge upheld his suspension on the grounds of misusing sick leave but ruled that Dain should be given the choice of accepting dismissal and getting back pay or carrying out a three-year suspension.<sup>74</sup> He chose to be officially dismissed in order to collect his back pay and pension.<sup>75</sup> Although the court did partially rule in his favor, Dain’s life was put on hold as he was wrapped in a legal battle and exhausted his savings.

Renée Richards’s was the most public case of employment discrimination, as she was barred from competing in the U.S. Open after failing to pass a chromosome test. In 1976, Richards sued the U.S. Tennis Association, which mandated that she must pass a chromosomal test to compete in the tournament as a woman. As a trans woman, Richards had just won a match at the La Jolla tournament weeks before the U.S. Open conflict.<sup>76</sup> After she was linked to her birth name “Richard Raskind,” controversy stirred about whether she would be allowed to compete in other matches. One referee claimed that he would not take formal action against Richards and that “if in fact Raskind has had a sex operation, and we knew that beyond a shadow of a doubt, then I would allow the match.”<sup>77</sup> The referee’s statement illustrated society’s view that a trans person was only truly a member of the sex with which they identified if they had undergone gender affirmation surgery. Robin Harris, who lost the La Jolla finals to Richards, argued that “even if she’s had a sex

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<sup>72</sup> Ray Riegert, “A Prisoner of Sex Escapes into Society’s Cage,” *Berkeley Barb*, November 1976.

<sup>73</sup> Lou Sullivan to Jude Patton, June 26, 1985, Lou Sullivan Collection, GLBT Historical Society.

<sup>74</sup> Bella Stumbo, “Transsexual Teacher, Broke, Disillusioned, Tires of Fighting,” *Los Angeles Times*, 1978.

<sup>75</sup> Rob Arias, “District Issues Official Apology to Trans-Rights Pioneer Steve Dain, Emeryville Street Renamed in his Honor,” *The E’ville Eye*, March 24, 2021.

<sup>76</sup> “Robin Harris in Response to Renee Richards Controversy,” *The San Diego Union*, August 2, 1976.

<sup>77</sup> Michael Grant, “Richards’ Identity Confirmed,” *The San Diego Union*, July 25, 1976.

change, she shouldn't be able to compete with women" because being assigned male at birth gave Richards an advantage in the competition.<sup>78</sup> The New York State Supreme Court sided with Richards in her case against the USTA, ruling that requiring Richards to pass a chromosome test to qualify for the U.S. Open was "grossly unfair, discriminatory and inequitable, and violative of her rights under the Human Rights Law of this state."<sup>79</sup> Furthermore, the judge wrote that when a "successful physician, husband and father, finds it necessary for his own mental sanity to undergo a sex reassignment [*sic*], the unfounded fears and misconceptions of the defendants must give way to the overwhelming medical evidence that this person is now female."<sup>80</sup> His opinion was not only quite progressive for this time, but also demonstrated a level of understanding, if elementary, of being transgender inconsistent with other, mostly unsympathetic, court rulings such as those in which Steve Dain, Paula Grossman and so many others had been involved.

Although Grossman, Dain, and Richards did not get deeply involved with the transgender movement after their cases, these early pioneers' court cases provided grounds for other trans activists to challenge discrimination and encouraged trans people to stand up against the discrimination they faced. Richards, for example, did not desire to be in the spotlight, but declared that if "by being in the public eye playing tennis I can show [other members of minority communities] that hope is not dead then it is well worth all the stress I suffer."<sup>81</sup> Richards did not continue to become an outspoken transgender activist, but her courage to publicly seek justice for the discrimination she faced inspired others to do the same. Similarly, Grossman and Dain's stories brought the question of transgender teachers to the national stage and created precedent for other

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<sup>78</sup> Michael Grant, "Richards' Identity Confirmed," *The San Diego Union*, July 25, 1976.

<sup>79</sup> Neil Amdur, "Renee Richards Ruled Eligible for U.S. Open," *The New York Times*, August 17, 1977.

<sup>80</sup> Neil Amdur, "Renee Richards Ruled Eligible for U.S. Open," *The New York Times*, August 17, 1977.

<sup>81</sup> Laurie Pignon, "Sex-Change Tennis: The Big Money Factor," *Daily Mail*, October 19, 1976.

trans teachers to challenge the discrimination they endured.<sup>82</sup> These examples of trans people fighting their employers' biases and shedding light on the injustices trans people suffered also furthered cisgender people's understanding of the trans experience and decreased the stigma around being trans gender for both trans and cis people.

In addition to employment discrimination, transgender activists focused on eliminating another facet of discrimination in the legal system: deliberate and systemic discrimination at the hands of police officers and prison officials. Police and prison officials' prejudices translated to unfair treatment in prisons and making arrests, and these actions were justified by the lack of anti-discrimination laws pertaining to gender identity and the vague and discriminatory cross-dressing ordinances in place in many cities across America. Cross-dressing laws epitomized the contradictory nature of society's ideas of being transgender, and their abuse by police officers became a key focus of transgender activism in the 1970s through the 1990s. As previously mentioned, the Harry Benjamin International Gender Dysphoria Association's standards of care recommended a person interested in gender-affirming surgery lived full-time in "the social role of the other sex" for varying amounts of time based on the gender-affirming care they sought, i.e. for three months before hormonal therapy, twelve months prior to genital surgery, etc.<sup>83</sup> This "trial period" entailed living, working, and dressing in a cross-gender role, while also "[developing] and [expressing] the habit patterns that will cause other people to respond to him as they normally would to a woman," according to the EEF's handbook *An Outline of Medical Management of the Transsexual [sic]*.<sup>84</sup> These recommendations, which many gender clinics and doctors followed,

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<sup>82</sup> Jen Gilbert, "Ambivalent Legacies: A Response to Harper Keenan," *Occasional Paper Series* 2021, no. 45 (April 2021): <https://doi.org/10.58295/2375-3668.1411>.

<sup>83</sup> Vern Bullough, Bonnie Bullough, "Transsexualism," in *Crossdressing, Sex, and Gender* (Philadelphia: University of Pennsylvania Press, Incorporated, 1993), 261.

<sup>84</sup> *An Outline of Medical Management of the Transsexual*, Erickson Educational Foundation, 1973, 12.

failed to recognize the legal complications of cross-dressing laws and how they impacted the ability of trans people to live in “the social role of the other sex.” By the 1960s, cross-dressing regulations abounded in every region of the United States.<sup>85</sup> Aimed at policing gender nonconformity, these laws criminalized people who appeared in public “in a dress not belonging to his or her sex” or sought to “disguise” him or herself as a member of the opposite sex.<sup>86</sup> Police utilized cross-dressing ordinances to regulate morality and sex work, as they often assumed male effeminacy was tied directly to prostitution.<sup>87</sup> In an advice column in the *TV-TS Tapestry*, Rupert Raj, the executive director of the transgender organization the Metamorphosis Medical Research Foundation and executive editor of Metamorphosis Newsletter, warned against visiting bars while cross-dressed, especially while unaccompanied, because there were serious threats of sexual harassment and they would be “victims with no recourse to protection from the law.”<sup>88</sup> No detectable trans men, drag kings, or cross-dressing women were reported to have been arrested for violating cross-dressing ordinances; most of the reported cases centered around trans women, drag queens, and male cross-dressers.<sup>89</sup> Thus, trans people were in a unique position to be discriminated against with no form of recourse.

Although the legal consequences were relatively minor, including fines of \$1 to \$100 and a relatively short amount of time in jail, the arrest experience and subsequent abuse perpetrated by the police made the experience a horrific one, as police frequently humiliated and degraded those

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<sup>85</sup> Kate Redburn, “Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86,” *Law and History Review*, 2023, 1-45.

<sup>86</sup> Kate Redburn, “Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86,” *Law and History Review*, 2023, 1-45.

<sup>87</sup> In the 1970s and 1980s, the law treated cross-dressers and trans people as the same. Thus, police were able to arrest trans people cross-dressing for medical purposes and cross-dressers who did not identify as transgender for the same reason. Kate Redburn, “Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86,” *Law and History Review*, 2023, 1-45.

<sup>88</sup> Rupert Raj, “Places to Go and Not to Go When Dressed,” *TV-TS Tapestry*, 1984, 44.

<sup>89</sup> Kate Redburn, “Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86,” *Law and History Review*, 2023, 1-45.

they arrested. In the early 1960s, for example, a traveling salesman was arrested while cross-dressing after eating dinner in a local restaurant. After spending the night in jail, the assistant chief of police forced him to “dress” again, “took gratuitous mug shots of him, and proceeded to “lead various men into the room and tell each one, ‘I’ll give you fifty bucks if you mount her.’” Another particularly appalling case was that of a trans person named Linda Sue Jackson. In 1977, police officers arrested Jackson several times. On one occasion, they forced Jackson to appear naked in the Malvern City Jail while police “taunted and beat them [*sic*].” During a subsequent arrest, officers drove Jackson to a remote location and beat them with “nightsticks and flashlights, had turpentine poured into [their] anus, and was set upon by two Doberman pinschers.<sup>90</sup> One of the officers poured alcohol on [Jackson’s] wounds” and asked them to perform sexual acts. In “Horror in Arkansas,” a reporter for *Drag* magazine claimed, “a physician at the trial described [Jackson] as the most severely beaten patient he had ever treated.”<sup>91</sup>

Encounters with the criminal justice system, thus, posed dangers to trans people that were compounded by police officers’ biases. In *Legal Aspects of Transsexualism*, Clark asserted that “to cross-dress without running afoul of the law involves avoiding compromising situations, securing proper identification and authorization, and learning to dress appropriately... if you are going to cross-dress, don’t be obvious about it.”<sup>92</sup> Even when they were allowed to cross-dress and more adequately express themselves, a trans person’s gender expression was severely limited by the normative gender roles society enforced both through law and violence. Pre-operative trans people could be given letters from their attending physicians verifying that cross-dressing was a

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<sup>90</sup> Redburn referred to Jackson using they/them pronouns.

<sup>91</sup> Kate Redburn, “Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86,” *Law and History Review*, 2023, 1-45.

<sup>92</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 12.

required part of therapy for “transsexualism [*sic*],” which could be presented to police but was not a guarantee that they would not be arrested. Phyllis Frye claimed that even the full-time pre-operative trans people holding these cards were often arrested.<sup>93</sup> Clark further urged cross-dressers to use “common sense” when cross-dressing in public and be mindful of the situations they put themselves in, despite the cross-dressing being mandated by physicians.<sup>94</sup> It was the horrific experiences at the hands of police and the desire to not be limited in their gender expression that spurred trans activists to repeal cross-dressing ordinances.

Challenging cross-dressing laws became a central concern of many trans activist organizations because violations of these ordinances so often entangled trans people with the criminal justice system.<sup>95</sup> By 1980, people arrested for cross-dressing had successfully challenged their arrests in at least sixteen cities. This was partially the work of transgender activists, who focused on overturning these laws in the courts and by lobbying city councils and state legislatures.<sup>96</sup> In Columbus, Ohio, for example, Kravitz, a public defender, took the case of a pre-operative trans woman who was arrested for cross-dressing. Kravitz took the case to the Ohio Supreme Court, which struck down Columbus’s anti-cross-dressing law in 1975 because it violated the 14th Amendment Due Process Clause. Kravitz took up several cases of transgender people who were arrested for cross-dressing because he “wanted to get at least one cross-dressing decision on the law books as a precedent,” as these laws had been used against trans women and male cross-

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<sup>93</sup> Phyllis Frye, *Facing Discrimination*, 9.

<sup>94</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 13.

<sup>95</sup> Kate Redburn’s article “Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86” detailed how the transgender legal movement developed in tandem with challenges to cross-dressing laws. Vern Bullough and Bonnie Bullough’s book *Crossdressing, Sex, and Gender* (Philadelphia: University of Pennsylvania Press, Incorporated, 1993) analyzed the phenomenon of cross-dressing and its relation to being transgender. Clare Sears’s *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco* (Durham: Duke University Press, 2015) examined the origins and purposes of anti-cross-dressing laws, explaining how the law both defined and policed gender.

<sup>96</sup> Phyllis Frye, *Facing Discrimination*, 9.



dressers.<sup>97</sup> Phyllis Frye's work against the Houston cross-dressing law was among the best-documented examples of a transgender activist successfully repealing a cross-dressing ordinance. In the early 1970s, police used the Houston cross-dressing ordinance to arrest pre-operative transgender woman Rachelle Annette (birth name Anthony, previously known as Toni Rochelle) Mayes at least seven times. Mayes reportedly asked the police chief for some form of identification to prevent other officers from arresting her until she could undergo gender affirmation surgery, to which the police chief responded "if 'it' breaks the law, 'it' will be arrested."<sup>98</sup> Not only did the police disregard the medical basis for cross-dressing that Mayes presented, but they disregarded Mayes's and other cross-dressers humanity, viewing them as undeserving of any type of understanding. The anti-cross-dressing laws perpetuated an already difficult financial situation for many trans people who faced challenges holding jobs and paying for expensive gender-affirming care. Arrests for violating dress ordinances left trans people to pay legal fees and fines for violating the law. "I've probably spent \$1000 in legal fees and bonds since I've began taking the hormones," reflected an exasperated Mayes, "if this keeps up I won't have any money for the operation."<sup>99</sup> Mayes attempted to strike down the Houston bill through the courts, but in 1974 the Supreme Court rejected Mayes's appeal. The justices held the lower court's ruling that the ordinance was constitutional because the "disguise ordinance" protected "a valid state interest by helping protect the survival of the race by banning homosexual disguises" and keeping peace because "an ineffective disguise may engender catcalls and slurring remarks," while an "effective disguise" could lead to trouble if someone has romantic relations with the trans person and finds out the person was not cisgender.<sup>100</sup> The law was essentially to protect cisgender people's comfort at the

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<sup>97</sup> "Ohio Court Kills Anti-Drag Law," *Contact*, May 7, 1975, 7.

<sup>98</sup> "If 'It' Breaks the Law, 'It' Gets Arrested," *Brownwood Bulletin*, August 27, 1972.

<sup>99</sup> "If 'It' Breaks the Law, 'It' Gets Arrested," *Brownwood Bulletin*, August 27, 1972.

<sup>100</sup> "Transvestite Laws Upheld by Court," *Lubbock Avalanche Journal*, April 2, 1974.

detriment of trans people’s rights. Then, in late 1976 along came Phyllis Frye, who decided to lobby to have the ordinance repealed because she had just started her transition and was “terrified of arrest.”<sup>101</sup> She started by contacting each member of the Houston City Council and for several years lectured at universities and lobbied to “municipal judges, to council members, anyone who would listen.”<sup>102</sup> She was spurred on by her personal experience: “each and every day however for those four years when I left the house in the morning, I never knew if I’d be back that night or instead in jail. And each and every day for four years, my spouse, Trish, left the house not knowing whether I’d be back at home or in jail.”<sup>103</sup> In 1977, Frye’s efforts gained traction, as the mayor declared support for repealing the law and seven trans people filed suit to have the cross-dressing law declared unconstitutional.<sup>104</sup> Finally, on August 12th, 1980, Frye’s efforts came to fruition and the City Council repealed the cross-dressing ordinance; two of the men who would have voted ‘no’ were on telephone calls, so their votes were counted in favor of repealing the law.<sup>105</sup>

The revocation of the law, however, did not mean police lost their power to enforce heteronormative gender norms because they could still arrest people for dressing “in lewd fashion.”<sup>106</sup> The First ICTLEP’s Criminal Law and Practice Report created in 1992 urged citizens arrested for cross-dressing to hire a “competent and sensitive” lawyer to challenge the constitutionality of the law and provided several other routes that could be taken to decriminalize cross-dressing, such as identifying sympathetic medical and legal professionals who could help

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<sup>101</sup> Phyllis Frye, “Repeal of the Houston Crossdressing Ordinance,” First International Conference on Transgender Law and Employment Policy, 1992, 105.

<sup>102</sup> Phyllis Frye, “Repeal of the Houston Crossdressing Ordinance,” First International Conference on Transgender Law and Employment Policy, 1992, 105.

<sup>103</sup> Phyllis Frye, “Repeal of the Houston Crossdressing Ordinance,” First International Conference on Transgender Law and Employment Policy, 1992, 105.

<sup>104</sup> “Dress Law Repealed Favored,” *Houston Chronicle*, January 25, 1977.

<sup>105</sup> Phyllis Frye, “Repeal of the Houston Crossdressing Ordinance,” First International Conference on Transgender Law and Employment Policy, 1992, 106.

<sup>106</sup> “Cross-dressing Law Struck Down,” *This Week in Texas*, August 22-28, 1980.

strike down the laws and collecting and sharing information about which localities had cross-dressing ordinances and their enforcement.<sup>107</sup> Thus, cross-dressing laws remained an issue for the transgender community. Even so, the successful repeals of the Houston and Columbus cross-dressing laws were wins for transgender activists and provided examples of successful campaigns to strike down cross-dressing laws, empowering trans activists across the country to pursue abolishing these laws.

Police abuse of trans people extended into imprisonment, prompting trans inmates to utilize the media to shed light on their struggles and elicit a response from transgender activists. Many trans people were imprisoned based on their physical anatomy at the time of incarceration, not how they identified, leading to harassment by other inmates, especially if someone was in the process of transitioning or wanted to start transitioning while in prison. Evidence from around the country revealed the difficulties of pre-operative trans people who were mid-transition while being incarcerated, as these people were often in the most dire situations in prisons. The stories often detailed sexual abuse, physical violence by inmates and prison guards, and extended solitary confinement.<sup>108</sup> The article “She Who was He Awarded 25G” chronicled the case of Jackie Farrell, a trans woman described in court as “busty” who received a \$25,000 settlement and the right to serve her remaining jail time in a women’s prison in a suit against New York State in 1988 because of “fears for her safety.”<sup>109</sup> Farrell was convicted of a prostitution-related charge and, despite wanting to serve her time in a women’s prison, was shuttled among five men’s prisons where she was sexually abused by guards. Farrell’s situation was perhaps only unique because she was able

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<sup>107</sup> Clyde Williams, “Criminal Law and Practice Report,” First International Conference on Transgender Law and Employment Policy, August 26-August 30, 1992, 9.

<sup>108</sup> Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 16.

<sup>109</sup> Alex Michelini, “She Who Was He Awarded 25G,” *Twenty Minutes*, May 1991, 13.

to obtain a settlement from the state and transfer to a women's prison.<sup>110</sup> A prison spokesperson explained that "although she presented the appearance of a female... the experts determined that Farrell was most suited for a male prison." He elaborated that "if officials determine transgendered inmates are "victim-prone," they can be placed in voluntary or involuntary segregation to protect them from other inmates."<sup>111</sup> Farrell's short stays in various men's prisons were not unusual. Trans woman and inmate Evie Grewell attested that "the system 'hides' a prisoner by means of transfers designed to keep the prisoner 'moving' so that their head and their relationships are never stable long enough for significant court action, media contact or organizing activity to get going."<sup>112</sup> Discrimination and harassment of transgendered and gender non-conforming individuals permeated all levels of the law enforcement system, was often deliberately carried out, was systematic, and, although based on personal biases, was mostly justified by vague policies.

As with many other transgender issues, transgender activists focused their efforts on educating the public and drawing attention to the issue of discrimination in the prison system, as well as educating trans people on their rights. Frye contended that prisons were "doubly hard on transgenders [*sic*]," as prison officials often refused to allow transgender inmates to continue their hormones.<sup>113</sup> At the Second International Conference on Transgender Law and Employment Policy, a committee published the "Policy for the Imprisoned, Transgendered," which outlined standards of care and rights of transgender inmates. Included on the list was access to counseling and peer support group participation, the initiation or continuance of gender-affirming care, access to clothing and other personal items in accordance with their gender expression, and the

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<sup>110</sup> Alex Michelini, "She Who Was He Awarded 25G," *Twenty Minutes*, May 1991, 13.

<sup>111</sup> "Transsexual Inmate Settles Lawsuit with New York State," *Cross-Talk*, June 1991, 3.

<sup>112</sup> Evie Grewell, "Confusing Times," *Gay Community News*, May 5, 1984, 15.

<sup>113</sup> Phyllis Frye, "Facing Discrimination, Organizing for Freedom: The Transgender Community," in *Creating Change: Public Policy, and Civil Rights*, ed. by John D'Emilio, William Turner, Urvashi Vaid (New York: St. Martin's Press, 2000), 6.

elimination of harassment, verbal or physical, of trans inmates.<sup>114</sup> ICTLEP official encouraged people to distribute the list to “jailers and sheriffs, and prison officials,” who they hoped would become better educated or prompted to educate themselves about trans issues after reading the list.<sup>115</sup> The EEF’s 1976 *Guidelines for Transexuals* claimed “hormone therapy may be available to you, or not, depending solely on the attitudes and the discretion of prison authorities and medical personnel,” but Clark’s handbook explained that a pre-operative trans person who had been receiving treatment prior to incarceration may have had grounds for continued treatment based on the constitutional right to mental health treatment.<sup>116</sup> The prison officials often had a say in who was able to obtain gender-affirming care. Since trans inmates were placed at the whims of people who might be uneducated about and biased about transgender rights, it was imperative to educate these people and secure their support to change how trans inmates were treated.

In this context of intense police discrimination, transgender activists sought allies in the police force to who were sympathetic individuals and could help foster an improved relationship with the police force. Elliot Blackstone emerged as a powerful ally in the San Francisco Police Department; he was an early advocate for social services for trans people and was instrumental in creating the plethora of services available to Bay Area trans people in the late 1960s and the early 1970s. Blackstone was appointed liaison between the police department and the people living in the impoverished Central City area. San Francisco was a hub for gay, lesbian, and transgender activism; many of these activists worked with Blackstone over the course of his decade-long career as the head of an anti-poverty crime abatement program in San Francisco to establish programs

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<sup>114</sup> “Policy for the Imprisoned, Transgendered,” Second International Conference on Transgender Law and Employment Policy, October, 1993.

<sup>115</sup> “Policy for the Imprisoned, Transgendered,” Second International Conference on Transgender Law and Employment Policy, October, 1993.

<sup>116</sup> *Guidelines for Transexuals*, Erickson Educational Foundation, 1976, 22. Joanna M. Clark, *Legal Aspects of Transsexualism: A Handbook for Transsexuals*, (United States of America: 1980), 15.

for their groups and improve relations with the police. When a group of female transgender sex workers approached him to help stop police harassment of trans women, Blackstone helped create the first peer-run support group for trans people in 1967. Blackstone worked closely with the EEF, which funded the National Transsexual Counseling Unit (NTCU) he oversaw until his retirement. He was also instrumental in halting arrests of pre-operative trans women who used female restrooms. Thus, he became an indispensable resource for trans activists, for whom police discrimination imposed significant impediments to organizing and securing care. Although he worked closely with trans activists and did a lot for the community, Blackstone perpetuated the idea that transgender people were not an apt group for coalition building because their concerns were extremely different from the goals of other activist movements. He described them as “more selfish about their concerns” than gay and lesbian people because they desired to obtain something tangible, while the other groups desired acceptance, and trans people were committed to advancing their crusade for access to gender-affirming care.<sup>117</sup> Blackstone’s partnership with trans activists illustrated the difficulty with which trans activists found allies, since he was still susceptible to negative stereotypes about trans people. Even so, Blackstone was instrumental in educating police officers and increasing acceptance of transgender people and organizations, allowing trans activists to advance the movement and draw the community together.

Not all police officers were receptive to Blackstone’s close relationships with trans people. In an interview with trans activist and historian Susan Stryker, Blackstone recalled an incident in which two trans women who were working with him at the NTCU were arrested for narcotics sales the morning before they were going to speak to the police academy class. One of the women had obtained drugs for her boyfriend, at his request, and sold the narcotics to an undercover officer.

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<sup>117</sup> Elliot Blackstone, “Elliot Blackstone Interview,” interview by Susan Stryker, GLBT Historical Society, November 6, 1996, 32.

She was arrested for dealing. Blackstone claimed the same officer who arrested the women planted narcotics in his desk. One of these women, Suzan Cooke, reflected in an interview with Susan Stryker that other police officers did not like what Blackstone was doing. “You’ve got to understand,” she elaborated, “that these were cops who were four years before, five years, six years before, were ‘busting for being.’ Now, they were no longer even supposed to take you in and bust you for impersonation?... And not only were they losing control, but we were gaining in respectability.”<sup>118</sup> The San Francisco Police Department was notoriously corrupt, as many officers were suspected of taking kickbacks from the gay bars they monitored, and they were displeased that Blackstone was helping the transgender community organize and gain access to care. The whole drug case against the women working for the NTCU was orchestrated, Cooke claimed, to “bust the center, and to bust Elliot.”<sup>119</sup> After the bust, Blackstone was demoted by being reassigned to a foot beat and retired a year later, in 1975. While he accomplished a great deal of good things with the trans community, it would be many years until relations with the police improved.

Trans people faced discrimination at every level of their care and in many aspects of their lives and were often reliant on the whims of people in power to be able to express themselves how they saw fit. They could not rely on the law to seek recourse after employment discrimination or police harassment because gender expression was often excluded from federal and state anti-discrimination laws. Activists, however, remained undeterred. They tirelessly worked to repeal cross-dressing laws, formed relationships with understanding police officers, and worked to educate both cisgender people and members of the trans community on the discrimination they

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<sup>118</sup> Suzan Cooke, “Suzan Cooke Interview,” interview by Susan Stryker, GLBT Historical Society, January 10, 1998, 57.

<sup>119</sup> Suzan Cooke, “Suzan Cooke Interview,” interview by Susan Stryker, GLBT Historical Society, January 10, 1998, 58.

endured and how to best navigate it. Rupert Raj summarized the position from which they attacked their issues best when he said that trans people were “tragic victims of a medical mystery... who deserve at least the same measure of minimal respect that is due any other human being.”<sup>120</sup> It was this desire for respect and equal treatment that spurred the trans response to the injustices they experienced. The emergence of an organized and cohesive trans rights movement between the 1970s and 1990s was a milestone in LGBTQ history that built new relationships of trans solidarity.

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<sup>120</sup> Rupert Raj, “On Transsexualism,” *TV-TS Tapestry*, 1984, 44.



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