

## PREFACE

In 2002, I opened the doors of the Sylvia Rivera Law Project (SRLP). I had raised enough grant money to rent a desk and a phone at a larger poverty law organization, and had spread the word to other service providers like drug treatment centers, legal aid offices, mental health centers, needle exchanges, and community organizations that I would be providing free legal help to trans people. I never would have guessed the number of people who would call the organization for help or the gravity and complexity of the problems they face.

My first call came from the men's jail in Brooklyn.<sup>1</sup> Jim, a 25-year-old transman, was desperate for help; he was experiencing harassment and rape threats. Jim is a trans person with an intersex condition.<sup>2</sup> He was raised as a girl, but during adolescence began to identify as male. To his family he remained female-identified, but in the world he identified as male, changing clothes every night when he returned home and trying to avoid contact between his family and everyone else he knew. The stress of living a "double life" was immense, but he knew it was the only way to maintain a relationship with his family, with whom he was very close.

When Jim was nineteen, he was involved in a robbery for which he received a sentence of five years probation. During the second year of that probation period, Jim was arrested for drug possession. He was sentenced to eighteen months of residential drug treatment and sent to a male residential facility. In what was a purportedly therapeutic environment, Jim discussed his intersex condition with his counselor. His confidentiality was broken and soon the entire staff and residential population were aware of Jim's intersex condition and trans history. Jim faced a threat of rape and the staff of the facility refused to help or protect him. Out of fear and self-protection, he ran away from the facility.

I met Jim after he had turned himself in, wanting to deal with his outstanding criminal charges so that he could safely apply to college and get on with his life. Jim was now in a Brooklyn men's jail, again facing harassment and rape threats. The jail administration's refusal to continue Jim's testosterone treatments had caused him to menstruate; when Jim was strip searched while menstruating, other inmates and staff learned of his status.

Jim and I worked together to convince the judge assigned to his case that Jim could only safely access drug treatment services in an outpatient setting because of the dangers he faced in residential settings. Even when we had convinced the judge of this, we faced the fact that most programs were gender segregated, and would not be safe places for Jim to be known as a trans person with an intersex condition. When I contacted facilities to find a place for Jim, staff at all levels would ask me questions like "Does he pee sitting or standing?" and "Does he have a penis?" indicating to me that Jim would be treated as a novelty and his gender and body characteristics would be a source of gossip. Some facilities said they would not accept Jim because they were not prepared to work with someone like him. Those that did not outright refuse his application indicated their inadequacy to provide him with appropriate treatment. The few lesbian and gay drug treatment programs I identified seemed inappropriate because Jim did not identify as gay and was, in fact, quite unfamiliar with gay and lesbian people and somewhat uncomfortable in queer spaces. Eventually, the judge agreed to let Jim try outpatient treatment on a "zero tolerance" policy where a single relapse would result in jail time. Jim, under enormous stress, engaged in treatment where he was always afraid he might be outed and where his participation in the daily hours of group therapy required hiding his identity. Not surprisingly, Jim relapsed. Now he would be sentenced to prison.

When I went before the judge to request that Jim be placed in a women's prison because Jim believed it might be safer for him based on his experiences in men's facilities, the judge's response was, "He can't have it both ways." Once again, Jim's gender and body status and his inability to successfully navigate the gender requirements of the extremely violent systems in which he was entangled—because of his involvement in criminalized activity stemming from his poverty—was considered part of his criminality and a blameworthy status. The judge "threw the book" at Jim, sentencing him to the maximum number of years possible for violating parole and requiring him to serve the time in a men's prison.

Another client I met around the same time was Bianca, a nineteen-year-old transwoman. Bianca came to me for help with a range of issues. First, she wanted to sue her high school. In 1999, Bianca was attending public high school in the Bronx. After struggling with an internal understanding of herself as a woman for several years, Bianca eventually mustered the strength to come out to her peers and teachers. She and another transgender student, a close friend, decided to come out together. They arrived at school one day dressed to reflect their female gender identities. The two students were stopped at the front office and not allowed to enter school. Eventually, they were told to leave and not come back. When their parents called the school to follow up and find out what to do next, their calls were not returned. They were given no referrals to other schools, and no official suspension or expulsion hearings or documents. I met Bianca three years later. She had been unable to obtain legal representation, and when I began investigating the possibility of a lawsuit, I discovered that the statute of limitations had expired. She no longer had a viable legal claim.

When I met Bianca, she was homeless, unemployed, and trying to escape from an abusive relationship. She was afraid to go to the police both because of fear of retaliation from her boyfriend and because she rightly feared the police would not only refuse help, but also humiliate, harass, or hurt her because she was trans. All of her identification (ID) indicated a male name and gender; there would be no way for her to interact with the police without being identified as a trans person. As we searched for places for Bianca to live, we ran up against the fact that all of the homeless shelters insisted on placing her according to birth-assigned gender; Bianca would be the only woman in an all men's facility, and she was afraid of the abuse she could face in such a situation. Women's shelters for domestic violence survivors refused to recognize her as a woman and thus were unwilling to take her in. When Bianca applied for welfare, she was given an assignment to attend a job center as part of participation in a workfare program. When she tried to access the job center, she was brutally harassed outside, and when she finally entered and attempted to use the women's rest room, she was outed and humiliated by staff. Ultimately, she felt too unsafe to return and her benefits were terminated. Bianca's total lack of income also meant that she had no access to the hormone treatments she used to maintain a feminine appearance, which was emotionally necessary and kept her safe from some of the harassment and violence she faced when she was

more easily identifiable as a transwoman on the street. Bianca felt her only option for finding income sufficient to pay for the hormones was to engage in criminalized sex work. At this point, she was forced to procure her hormone treatments in underground economies because it would have been cost prohibitive to obtain her medication from a doctor since Medicaid—had she even been given those benefits—would not cover the costs. This put her in further danger of police violence, arrest, and other violence. Additionally, because Bianca was accessing hormones through street economies, she was at greater risk of HIV, hepatitis, and other communicable diseases.

Jim's and Bianca's stories, it turned out, were not unusual. As the calls continued to pour into SRLP, I met an endless stream of people facing a series of interlocking problems related to being basically unfathomable to the administrative systems that govern the distribution of life chances: housing, education, health care, identity documentation and records, employment, and public facilities, to name but a few. My clients faced both the conscious bias of transphobia that produces targeted violence as well as numerous administrative catch-22s that render basic life necessities inaccessible. Each client's story demonstrated the interweaving of these different types of obstacles. I heard consistent reports of police profiling, police brutality, and false arrest; sexual harassment and assault; beatings and rapes; firings from jobs; evictions; denials and rejections from caseworkers in social service and welfare agencies; rejections from legal services; and family rejection. The impact of each of these situations was exacerbated by the ways gender is an organizing principle of both the economy and the seemingly banal administrative systems that govern everyone's daily life, but have an especially strong presence in the lives of poor people. My clients did not fit into gendered administrative systems, and they paid the price in exclusion, violence, and death. Most had no hope of finding legal employment because of the bias and violences they faced, and therefore turned to a combination of public benefits and criminalized work—often in the sex trade—in order to survive. This meant constant exposure to the criminal punishment system, where they were inevitably locked into gender-segregated facilities that placed them according to birth gender and exposed them to further violence. For immigrants seeking an adjustment of status that would enable them to live legally in the United States, just one prostitution charge could destroy their eligibility. Even admitting that they had

ever engaged in sex work to an immigration lawyer would disqualify them from receiving assistance with the adjustment of status process.

Non-immigrant clients also faced severe documentation problems and specific catch-22s related to identification and health care. Proof of having undergone gender-confirming health care, especially surgery, is required by the majority of ID-issuing agencies in the United States including many Departments of Motor Vehicles (DMVs) and many departments issuing birth certificates to change gender on the ID.<sup>3</sup> However, the majority of private health insurers and state Medicaid programs have rules excluding this care from coverage, which means that those who cannot pay for this care out-of-pocket probably cannot get it and thus cannot change the gender on their IDs. In many states, this care is deemed essential for changing gender on birth certificates, though the state simultaneously has a Medicaid program that explicitly excludes this care from coverage. For most trans people, these rules make getting correct ID nearly impossible. Not having appropriate identification creates difficulties and dangers when dealing with employers or the police and other state agents, trying to travel, attempting to cash checks, or entering age-restricted venues: the person's trans identity is exposed every time ID is shown. These barriers make it exceedingly difficult for trans people to gain the economic resources necessary to obtain gender-confirming health care if this is something they want or need. These administrative policies and practices severely constrain access to health care and employment for most trans people.

The stories I heard from my first clients and continued to hear from the trans people I met through my work at SRLP portrayed a set of barriers—both from bias and from the web of inconsistent administrative rules governing gender—that produce significant vulnerability. The impact of these conditions ranges across subpopulations of trans people: even those with class privilege, education, white privilege, US citizenship, physical and mental ability perceived as average or above, and English-language skills experience many of these hurdles. Those with such privileges have many of the same ID problems, often cannot afford health care, experience incidents of physical attack, have their parental rights terminated by courts, are arrested for using bathrooms or barred from gender appropriate bathrooms at work and/or school, are discriminated against in hiring, are discriminated against by insurance companies, and lose family support. Most experience a downward

mobility in terms of wealth/income because of their trans identities. However, access to certain privileges that serve in determining the distribution of life chances (e.g., whiteness, perceived ablebodiedness, employment, immigration status) often offer some individuals degrees of buffering from the violences faced by people of color, people with disabilities, immigrants, indigenous people, prisoners, foster youth, and homeless people. The most marginalized trans people experience more extreme vulnerability, in part because more aspects of their lives are directly controlled by legal and administrative systems of domination—prisons, welfare programs, foster care, drug treatment centers, homeless shelters, job training centers—that employ rigid gender binaries. These intersecting vectors of control make obtaining resources especially difficult, restrict access to zones of retreat or safety, and render every loss of a job, family support, or access to an advocate or a health care opportunity more costly. The most marginalized trans populations have the least protection from violence, experience more beatings and rapes, are imprisoned at extremely high rates, and are more likely to be disappeared and killed.

This book looks at the conditions that are shortening trans people's lives and investigates what role law plays in producing those conditions and what role law could or should play in changing them. In the last two decades, the public discourse about trans identities and trans rights has changed significantly. Concern about the exclusion of trans people from gay and lesbian political strategies has heightened. Media coverage of trans issues has increased. Emerging trans political formations have begun institutionalizing by creating new nonprofit organizations and professional associations focused specifically on trans issues, work that also produces new terminology, knowledge, and advocacy tools concerning gender identity and expression. These developments are raising important questions about trans politics. What is the relationship of trans political strategy to the strategies of the lesbian and gay rights work that has garnered so much attention in the last three decades? What role should law reform play in trans political strategy? How will forming nonprofits focused on trans issues impact trans people's lives and trans resistance politics? Who should lead and what forms of leadership should trans politics utilize? What relationship does trans politics have to other political movements and issues? Specifically, how does trans politics interface with anti-racism, feminism, anti-capitalism, anti-imperialism, immigration politics, and disability politics?

In proposing what role law reform should have in trans resistance, this book draws from the insights of Critical Race Theory, women of color feminism, queer theory, and critical disability studies to reveal the mistakes and limitations of white lesbian and gay rights strategies. Critical political and intellectual traditions have generated a vivid picture of the limitations of reform strategies focused on legal equality for movements seeking transformative political change. These traditions have highlighted the ineffectiveness of the discrimination principle as a method of identifying and addressing oppression, and have illustrated that legal declarations of “equality” are often tools for maintaining stratifying social and economic arrangements. Further, these traditions provide ways of understanding the operations of power and control that allow a more accurate identification of the conditions trans people are facing, and the development of more effective strategies for transformation than the liberal legal reform framework permits. Scholars and activists in these traditions such as Ruth Gilmore, Andrea Smith, Angela Davis, Lisa Duggan, Grace Hong, Roderick Ferguson, Chandan Reddy, and Angela Harris<sup>4</sup> describe the operation of key political developments, such as the decreasing bargaining power of workers, the dismantling of welfare programs, the growth of the prison industrial complex (PIC) and immigration enforcement, and the rise of the nonprofit formation, and also identify the complexities involved in practicing resistance politics in an age of cooptation and incorporation. This book examines these questions from a critical trans political perspective, applies the analysis these traditions have developed to the struggles facing trans people, and illustrates the ways trans resistance fits into the larger frameworks being developed in these conversations.

To that end, the chapters that follow raise concerns that have emerged with the institutionalization of the lesbian and gay rights agenda into a law reform-centered strategy. These concerns caution trans scholars and activists to learn from the limitations of that approach. The compromises made in lesbian and gay rights efforts to win formal legal equality gains have come with enormous costs: opportunities for coalition have been missed, large sectors of people affected by homophobia have been alienated, and the actual impact of the “victories” has been so limited as to neutralize their effect on the populations most vulnerable to the worst harms of homophobia. Further, the shifting discourse and strategy of lesbian and gay rights work toward privatization, criminalization, and militarization have caused it to be incorporated into the neoliberal agenda in

ways that not only ignore, but also directly disserve and further endanger and marginalize, those most vulnerable to regimes of homophobia and state violence.

This book demands a reconsideration of the assumption that trans politics is the forgotten relative of the lesbian and gay rights strategy, and that its focus should be to seek recognition, inclusion, and incorporation similar to what has been sought by lesbian and gay rights advocates. Instead, I suggest that a more transformative approach exists for trans politics, one that more accurately conceptualizes the conditions trans people face and more directly strategizes change that impacts the well-being of trans people. Such an approach includes law reform work but does not center it, and instead approaches law reform work with the caution urged by the critical traditions to which trans politics is indebted and of which it is a part. It makes demands that exceed what can be won in a legal system that was formed by and exists to perpetuate capitalism, white supremacy, settler colonialism, and heteropatriarchy. It is rooted in a shared imagination of a world without imprisonment, colonialism, immigration enforcement, sexual violence, or wealth disparity. It is sustained by social movement infrastructure that is democratic, non-hierarchical, and centered in healing. This book aims to describe some of what that critical trans politics requires and suggest what models we already have and might expand for practicing critical trans politics.