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## Panel Three: Introduction

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# Panel Three: Introduction

*Suzanne Goldberg\**

I think some of my colleagues will ask questions about these cases, to ask who is a man or woman, but if the question is legally, what is male or female, and if you think about the questions that you've read, say, in common law out of the Supreme Court – and I'll just talk about discrimination cases, although I think you can talk about other ones, too – think about the sex discrimination cases. The struggle is about, what is discrimination, but the Court in *Craig v. Born* is talking about different control restrictions for men and women. Or in *Mississippi University of Women vs. Hogan*, where the Court is talking about whether men can go to nursing school. Or, more recently, *VMI*, when the Court is talking about whether women can go to military school. Or even the case of Johnson Controls, where the company is asking whether the company can maintain different rules for men and women, whether they can be exposed to lead in the place of work.

The Court is not telling us who is a man or woman. The Court's not grappling with those questions. It is grappling with the question of, what is sex discrimination. But the interesting question for us is, how do you answer? What is the definition for sex discrimination if you are not clear on what is sex?

In some ways it makes sense just to ask, what is sex discrimination. Because the point of sex discrimination laws is to disrupt social

norms. So we have to figure out which social norms are we trying to disrupt through the law. But when we have to figure out, what does sex discrimination law prohibit, we have to think of which social norms of sex are we trying to disrupt. Are the cases pointing to chromosomes? Are they pointing to breasts and beards? Are they pointing to genitals? No.

There is no rigidly rooted definition of sex discrimination as far as the Court is concerned. How can we think about really expanding the idea of sex discrimination, the commitment of anti-discrimination laws to recognizing the collective identities of people that implicate sex, but also implicate and can't be separated out from so many other characteristics and aspects of identity?

So I think our panelists today will take off in a somewhat different direction, but I thought that it might be useful to keep the question of sex in that context in the back of our minds as we proceed to a wonderful discussion here from a variety of perspectives. I won't go through the biographies, but I will just tell you the order in which they are speaking.

First, we have Dinh Tran, who is for the Advocates for Children, the Queer Youth Education Advocacy project providing services to homeless, gay, lesbian, bisexual and transgendered youth in the school systems, and is also a graduate from this Law School in 2002, so

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\*Professor Goldberg earned an A.B. in political science magna cum laude from Brown University. Following graduation, she was a Fulbright Fellow researching women and public policy issues at the National University of Singapore. In 1990, she received her J.D. cum laude from Harvard Law School, then served as law clerk to New Jersey Supreme Court Justice Marie Garibaldi. Professor Goldberg then joined the Lambda Legal Defense and Education Fund

as a Skadden Foundation Fellow in 1991. She served as senior staff attorney at Lambda from 1993 until 2000, when she joined the Rutgers faculty. She has published several articles in the areas of gay rights, workplace rights, equality theory, and international human rights law, and co-authored the book *Strangers to the Law: Gay People on Trial*. In addition to teaching and research, Professor Goldberg directs Rutgers' Women's Rights Litigation Clinic.

we're delighted to have her back. Next, Taylor Flynn, who is a Professor at Northeastern University and a former colleague of the Lesbian and Gay Rights Movement from the ACLU of

Southern California. And finally Dr. Peter Savastano, who is a Professor of Anthropology at Seton Hall University. So let me turn the platform over to Dinh. Welcome.